Tab 1	**CS/CS/SB 90** by **GO, EE, Baxley**; (Compare to CS/H 07041) Election Administration					
940740	D	S	UNFAV	RC, Thurston	Delete everything after	04/20 09:46 AM
262784	D	S	RCS	RC, Baxley	Delete everything after	04/20 09:46 AM
937796	AA	S	UNFAV	RC, Farmer	Delete L.58 - 344:	04/20 09:46 AM
524636	AA	S	RCS	RC, Brandes	btw L.60 - 61:	04/20 09:46 AM
~~105356~~	AA	S	WD	RC, Thurston	Delete L.185 - 195:	04/20 09:46 AM
139050	AA	S	UNFAV	RC, Brandes	Delete L.185 - 195:	04/20 09:46 AM
396232	AA	S	RCS	RC, Farmer, Mayfield	btw L.388 - 389:	04/20 09:46 AM
112822	AA	S	RCS	RC, Brandes	btw L.388 - 389:	04/20 09:46 AM
525218	AA	S	UNFAV	RC, Brandes	Delete L.463 - 497:	04/20 09:46 AM
284554	AA	S	UNFAV	RC, Farmer	Delete L.661 - 666.	04/20 09:46 AM
742050	AA	S	UNFAV	RC, Farmer	Delete L.759 - 771.	04/20 09:46 AM
153722	AA	S	UNFAV	RC, Farmer	Delete L.772 - 776.	04/20 09:46 AM
522990	AA	S	UNFAV	RC, Brandes	btw L.896 - 897:	04/20 09:46 AM
~~869832~~	D	S	WD	RC, Brandes	Delete everything after	04/20 09:46 AM
539276	A	S		RC, Thurston	Before L.42:	04/12 01:15 PM
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 2	**CS/SB 102** by **CA, Burgess**; (Compare to CS/H 01053) Matters of Great Governmental Concern

Tab 3	**CS/SB 220** by **GO, Brandes (CO-INTRODUCERS) Rodrigues**; (Identical to 1ST ENG/H 00997) Public Records and Public Meetings

Tab 4	**CS/CS/HB 259** by **JDC, EEC, Williamson, Byrd (CO-INTRODUCERS) Andrade, Bell, Beltran, Brannan, DiCeglie, Duggan, Fetterhoff, Fine, Fischer, Grall, Gregory, Harding, Hawkins, Ingoglia, Leek, Maggard, Maney, Massullo, McClain, Overdorf, Payne, Roach, Robinson, W., Rommel, Roth, Sabatini, Salzman, Shoaf, Sirois, Smith, D., Snyder, Yarborough**; (Similar to CS/S 00498) Safety of Religious Institutions

706888	A	S	UNFAV	RC, Thurston	Delete L.12 - 26:	04/20 11:01 AM

Tab 5	**CS/SB 334** by **EN, Gruters (CO-INTRODUCERS) Hutson, Perry, Harrell**; (Compare to H 00239) Regulation of Smoking in Public Places

Tab 6	**CS/SB 410** by **CJ, Rodriguez**; (Similar to CS/CS/H 00545) Reproductive Health and Disease Education

Tab 7	**CS/SB 506** by **GO, Garcia**; (Compare to CS/CS/H 00195) Transparency in Government Spending

Tab 8	**CS/CS/SB 522** by **AP, RI, Diaz**; (Similar to CS/H 00219) Vacation Rentals					
888468	A	S		RC, Diaz	Delete L.303 - 446:	04/13 03:47 PM
763808	SA	S		RC, Diaz	Delete L.300 - 446:	04/19 11:54 AM

Tab 9	**CS/SB 532** by **ED, Burgess**; (Identical to CS/H 00135) Workforce Education

Tab 10	**CS/SB 654** by **MS, Bradley**; (Similar to CS/CS/CS/H 01069) Public Records/Department of Military Affairs					
392722	A	S	RCS	RC, Bradley	Delete L.22 - 53:	04/20 11:10 AM

Tab 11	**SB 760** by **Burgess (CO-INTRODUCERS) Baxley, Perry**; (Compare to CS/H 00355) Florida High School Athletic Association (FHSAA)

Tab 12	**CS/SB 762** by **CJ, Baxley**; (Similar to H 00683) Public Records/Criminal Conflict and Civil Regional Counsel Offices

Tab 13	**CS/CS/SB 844** by **CA, GO, Hooper**; (Similar to CS/CS/H 00781) Public Records

619874	D	S	RCS	RC, Hooper	Delete everything after	04/20 12:13 PM

Tab 14	**CS/CS/SB 856** by **CA, RI, Hutson**; (Similar to CS/CS/H 00839) Express Preemption of Fuel Retailers and Related Transportation Infrastructure

Tab 15	**CS/SB 896** by **RI, Brodeur (CO-INTRODUCERS) Hutson**; (Similar to CS/CS/H 00539) Renewable Natural Gas

713270	A	S	RCS	RC, Gruters	Before L.16:	04/21 04:52 PM

Tab 16	**CS/SB 954** by **JU, Bean**; (Compare to CS/H 00625) Attorney Compensation

387788	D	S	RCS	RC, Bean	Delete everything after	04/20 05:02 PM

Tab 17	**CS/SB 1014** by **GO, Baxley**; (Compare to CS/CS/CS/H 00835) Employee Organizations

162200	D	S		RC, Baxley	Delete everything after	04/13 08:51 AM
225434	SD	S		RC, Stargel	Delete everything after	04/19 01:25 PM
776404	ASA	S		RC, Stargel	Delete L.155 - 156:	04/19 03:29 PM

Tab 18	**CS/HB 1055** by **GOS, Gregory (CO-INTRODUCERS) Massullo**; (Similar to S 01446) Pub. Rec./Trade Secrets

~~128754~~	D	S	WD	RC, Baxley	Delete everything after	04/21 04:42 PM
418456	D	S	FAV	RC, Baxley	Delete everything after	04/21 04:42 PM
		H	FAV			04/21 04:42 PM

Tab 19	**CS/CS/SB 1076** by **CA, GO, Brodeur**; (Compare to CS/CS/CS/H 00053) Public Works Projects

579782	A	S	RCS	RC, Brodeur	Delete L.21 - 69:	04/21 02:52 PM
~~688082~~	A	S	WD	RC, Brodeur	btw L.83 - 84:	04/21 02:52 PM

Tab 20	**CS/SB 1120** by **RI, Gibson (CO-INTRODUCERS) Powell, Gruters**; (Similar to CS/CS/H 01307) Telephone Solicitation

Tab 21	**CS/CS/SB 1128** by **CA, RI, Hutson**; (Similar to CS/CS/H 00919) Preemption Over Restriction of Utility Services

587846	D	S	RCS	RC, Hutson	Delete everything after	04/21 08:54 AM

Tab 22	**CS/CS/SB 1146** by **AP, CA, Brodeur (CO-INTRODUCERS) Perry**; (Compare to CS/CS/H 00401) Florida Building Code

485418	A	S	RCS	RC, Brodeur	Before L.88:	04/21 03:44 PM
~~444374~~	AA	S	WD	RC, Brodeur	Delete L.23 - 26:	04/19 03:14 PM
954366	AA	S	RCS	RC, Brodeur	Delete L.23 - 29:	04/21 03:44 PM
283658	A	S	RCS	RC, Brodeur	Delete L.400:	04/21 03:44 PM
435284	A	S	RCS	RC, Brodeur	Delete L.460 - 930:	04/21 03:44 PM
970712	A	S	RCS	RC, Brodeur	btw L.930 - 931:	04/21 03:44 PM

Tab 23	**CS/CS/SB 1194** by **AP, TR, Hooper**; (Compare to CS/H 00057) Transportation

629784	A	S	RCS	RC, Bracy	btw L.212 - 213:	04/20 11:58 AM

Tab 24	**SJR 1238** by **Rodriguez**; (Identical to H 00061) Percentage of Elector Votes Required to Approve an Amendment or a Revision

Tab 25	**CS/SB 1274** by **CA, Perry**; (Compare to H 00487) Growth Management

596852	A	S	RCS	RC, Hutson	Before L.14:	04/20 04:40 PM
307734	A	S	UNFAV	RC, Farmer	btw L.64 - 65:	04/20 04:40 PM

Tab 26	**SB 1294** by **Brodeur**; (Similar to CS/H 00663) Cottage Food Operations

849448	A	S	RCS	RC, Brodeur	Delete L.49 - 51:	04/21 03:01 PM

Tab 27	**SB 1324** by **Harrell**; (Similar to CS/1ST ENG/H 01313) Digital Driver Licenses and Identification Cards

744864	A	S	RCS	RC, Harrell	Delete L.130:	04/21 04:32 PM
~~384118~~	A	S	WD	RC, Harrell	btw L.154 - 155:	04/21 04:32 PM
564816	A	S	UNFAV	RC, Harrell	btw L.154 - 155:	04/21 04:32 PM
802498	AA	S	UNFAV	RC, Farmer	Delete L.105:	04/21 04:32 PM

Tab 28	**CS/SB 1326** by **TR, Harrell**; (Similar to CS/H 01315) Public Records/Department of Highway Safety and Motor Vehicles

Tab 29	**CS/SB 1408** by **BI, Burgess**; (Compare to CS/CS/H 00415) Department of Financial Services

369026	A	S	UNFAV	RC, Farmer	Delete L.734 - 751.	04/20 02:51 PM

Tab 30	**CS/SB 1488** by **GO, Stargel**; (Similar to CS/H 01207) Public Records/Members of the Legislature

Tab 31	**SB 1512** by **Wright**; (Identical to H 01201) Space Florida Board of Directors

Tab 32	**CS/SB 1520** by **JU, Boyd**; (Identical to CS/H 01139) Ancillary Property Rights

856906	A	S		RC, Boyd	Delete L.22 - 38.	04/16 12:09 PM

Tab 33	**CS/SB 1620** by **TR, Brandes**; (Similar to CS/CS/H 01289) Autonomous Vehicles

577314	A	S	RCS	RC, Brandes	Delete L.23 - 28:	04/21 03:59 PM

Tab 34	**CS/SB 1704** by **GO, Broxson**; (Similar to CS/H 01639) Public Records/County Supervisor of Elections

Tab 35	**CS/SB 1876** by **JU, Albritton**; (Similar to CS/CS/1ST ENG/H 00421) Relief from Burdens on Real Property Rights

902146	A	S	RS	RC, Albritton	Delete L.64 - 65:	04/21 04:13 PM
579552	SA	S	RCS	RC, Albritton	Delete L.64 - 65:	04/21 04:13 PM
228802	A	S	RCS	RC, Albritton	Delete L.347:	04/21 04:13 PM

Tab 36	**SB 1884** by **Rodrigues**; (Identical to H 01409) Preemption of Firearms and Ammunition Regulation

Tab 37	**CS/SB 1922** by **JU, Gruters (CO-INTRODUCERS) Hooper**; (Similar to CS/CS/1ST ENG/H 01559) Dissolution of Marriage

508836	D	S	RC, Gruters	Delete everything after	04/19 08:28 AM
334300	AA	S	RC, Farmer	Delete L.55:	04/19 06:11 PM
333684	AA	S	RC, Gruters	Delete L.373 - 374:	04/19 03:17 PM

Tab 38	**CS/CS/SB 1948** by **AP, CM, Bean (CO-INTRODUCERS) Bradley, Pizzo, Bracy**; (Similar to CS/CS/1ST ENG/H 01463) Department of Economic Opportunity

Tab 39	**CS/CS/SB 1966** by **AP, RI, Diaz (CO-INTRODUCERS) Garcia**; (Similar to CS/CS/CS/H 01517) Department of Business and Professional Regulation

356500	A	S	RC, Diaz	btw L.1025 - 1026:	04/16 07:13 PM

Tab 40	**SB 7002** by **HP**; OGSR/Trade Secrets/Department of Health
Tab 41	**SB 7006** by **EN**; OGSR/Trade Secrets/Department of Environmental Protection
Tab 42	**CS/SB 7008** by **GO, EN**; OGSR/Trade Secrets/Department of Environmental Protection
Tab 43	**SB 7010** by **MS**; OGSR/Space Florida
Tab 44	**SB 7020** by **CM**; OGSR/County Tourism Promotion Agencies/Florida Tourism Industry Marketing Corporation
Tab 45	**SB 7022** by **RI**; OGSR/Proprietary Confidential Business Information
Tab 46	**SB 7024** by **RI**; OGSR/Agency Trade Secrets
Tab 47	**SB 7028** by **RI**; OGSR/Data Processing Software
Tab 48	**SB 7030** by **RI**; OGSR/Trade Secrets/Department of Business and Professional Regulation
Tab 49	**SB 7032** by **RI**; OGSR/Prescription Drug Purchase Lists
Tab 50	**SB 7034** by **RI**; OGSR/Trade Secrets/Department of Business and Professional Regulation
Tab 51	**SB 7038** by **AG**; OGSR/Division of Fruit and Vegetables/Trade Secrets
Tab 52	**SB 7040** by **AG**; OGSR/Department of Agriculture and Consumer Services
Tab 53	**SB 7042** by **AG**; OGSR/Trade Secret/Department of Citrus
Tab 54	**SB 7044** by **AG**; OGSR/Noncommodity Advertising and Promotional Program Participants/Department of Citrus
Tab 55	**SB 7046** by **AG**; OGSR/Trade Secret/Marketing Order/Department of Citrus

Tab 56	**SB 7048** by **AG**; OGSR/Manufacturer's Formula/Department of Agriculture and Consumer Services

Tab 57	**SB 7058** by **AG**; OGSR/Dairy Industry Business' Trade Secrets

Tab 58	**SB 7070** by **ED**; (Compare to CS/H 00937) Impact of COVID-19 on Educational Institutions

502390	D	S	RCS	RC, Gruters	Delete everything after	04/21 09:02 AM
959540	AA	S	RCS	RC, Gruters	Delete L.92 - 139:	04/21 09:02 AM
~~487960~~	AA	S	WD	RC, Thurston	btw L.142 - 143:	04/21 09:02 AM
~~269424~~	AA	S	WD	RC, Thurston	btw L.142 - 143:	04/21 09:02 AM

Tab 59	**SB 2012** by **Stargel**; (Compare to CS/H 01475) Promoting Equality of Athletic Opportunity

905484	D	S	RC, Stargel	Delete everything after	04/19 06:12 PM
834330	AA	S	RC, Book	Delete L.19 - 25:	04/20 07:00 AM
708024	AA	S	RC, Book	Delete L.20 - 33:	04/20 07:03 AM
791156	AA	S	RC, Farmer	btw L.71 - 72:	04/19 07:55 PM
726032	AA	S	RC, Book	btw L.71 - 72:	04/20 06:58 AM
352320	AA	S	RC, Powell	btw L.71 - 72:	04/20 09:01 AM
688590	A	S	RC, Book	Delete L.106 - 112:	04/19 08:30 AM
407712	A	S	RC, Book	btw L.176 - 177:	04/12 04:36 PM
315338	A	S	RC, Farmer	btw L.176 - 177:	04/12 05:35 PM
746008	A	S	RC, Powell	btw L.176 - 177:	04/13 08:40 AM
510910	T	S	RC, Book	In title, delete L.43 -	04/19 08:31 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Passidomo, Chair
Senator Garcia, Vice Chair

MEETING DATE: Tuesday, April 20, 2021
TIME: 8:30 a.m.—6:00 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/CS/SB 90** Governmental Oversight and Accountability / Ethics and Elections / Baxley (Compare CS/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 RC 04/14/2021 Temporarily Postponed RC 04/20/2021 Fav/CS	Fav/CS Yeas 10 Nays 7
2	**CS/SB 102** Community Affairs / Burgess (Compare CS/H 1053, S 1874) **(If Received)**	Matters of Great Governmental Concern; Authorizing the Legislature to declare, by concurrent resolution, that a circumstance or conduct that has caused substantial economic loss or other similar harm to governmental entities in at least a specified number of counties is a matter of great governmental concern; providing that the Attorney General has the sole authority to file certain civil proceedings; authorizing the Attorney General to take certain actions in certain civil proceedings; providing that any award, excluding attorney fees, are subject to full appropriation by the Legislature, etc. CA 03/30/2021 Fav/CS AP 04/15/2021 Temporarily Postponed AP 04/19/2021 Temporarily Postponed RC 04/20/2021 Temporarily Postponed	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/SB 220** Governmental Oversight and Accountability / Brandes (Identical H 997)	Public Records and Public Meetings; Providing an exemption from public records requirements for any personal identifying information of an applicant for president of a state university or a Florida College System institution held by a state university or a Florida College System institution; specifying when the personal identifying information of applicants who are in the final group of applicants is no longer confidential and exempt; specifying that certain meetings are not exempt from public meeting requirements; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. ED 01/26/2021 Favorable GO 02/17/2021 Fav/CS RC 04/14/2021 Not Considered RC 04/20/2021 Favorable	Favorable Yeas 9 Nays 6
4	**CS/CS/HB 259** Judiciary Committee / Education and Employment Committee / Williamson / Byrd (Similar CS/S 498)	Safety of Religious Institutions; Authorizes, for specified purposes, concealed weapons or firearms licensee to carry firearm on certain property of church, synagogue, or other religious institution. RC 04/14/2021 Not Considered RC 04/20/2021 Favorable	Favorable Yeas 10 Nays 6
5	**CS/SB 334** Environment and Natural Resources / Gruters (Compare H 239)	Regulation of Smoking in Public Places; Revising a short title; authorizing counties and municipalities to further restrict smoking, except for smoking cigars or pipe tobacco, within the boundaries of public beaches and public parks under certain circumstances; prohibiting smoking within the boundaries of a state park; providing an exception, etc. CA 01/26/2021 Favorable EN 03/15/2021 Fav/CS RC 04/20/2021 Temporarily Postponed	Temporarily Postponed
6	**CS/SB 410** Criminal Justice / Rodriguez (Similar CS/CS/H 545)	Reproductive Health and Disease Education; Requiring each school district to publish specified materials on the district website to notify parents of their right to exempt their student from reproductive health and disease education; requiring district school boards to annually approve curriculum relating to reproductive health and disease education in an open, noticed public meeting; requiring each school district to publish specified materials on the district website to notify parents of their right to exempt their student from reproductive health and disease education, etc. CJ 03/30/2021 Fav/CS RC 04/20/2021 Favorable	Favorable Yeas 11 Nays 5

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/SB 506** Governmental Oversight and Accountability / Garcia (Compare CS/CS/H 195)	Transparency in Government Spending; Requiring nongovernmental entities that have received a specified amount of state funds to submit an annual report detailing certain compensation data to the Department of Management Services; requiring such reports to be verified under penalty of perjury; requiring the department to post the information received through such reports on a specified website; requiring a nongovernmental entity to post the reported compensation information on its website; prohibiting a governmental entity from expending, transferring, or distributing funds to a nongovernmental entity if compliance with reporting requirements is not met, etc. GO 03/17/2021 Fav/CS AP 04/15/2021 Favorable AP 04/19/2021 RC 04/20/2021 Favorable	Favorable Yeas 15 Nays 0
8	**CS/CS/SB 522** Appropriations / Regulated Industries / Diaz (Similar CS/H 219, Compare H 1481, S 1988)	Vacation Rentals; Requiring advertising platforms to collect and remit taxes for certain transactions; revising an exemption to the prohibition against certain local regulation of vacation rentals; preempting the regulation of advertising platforms to the state; requiring advertising platforms to adopt an antidiscrimination policy and to inform their users of the policy's provisions; authorizing the department to adopt emergency rules; providing requirements and an expiration for such rules, etc. RI 02/16/2021 Fav/CS AP 03/11/2021 Fav/CS RC 04/14/2021 Not Considered RC 04/20/2021 Temporarily Postponed	Temporarily Postponed
9	**CS/SB 532** Education / Burgess (Identical CS/H 135)	Workforce Education; Revising the workforce education programs that school district career centers are authorized to conduct, etc. ED 03/02/2021 Temporarily Postponed ED 03/09/2021 Fav/CS HP 03/17/2021 Favorable RC 04/20/2021 Temporarily Postponed	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**CS/SB 654** Military and Veterans Affairs, Space, and Domestic Security / Bradley (Similar CS/CS/CS/H 1069)	Public Records/Department of Military Affairs; Providing an exemption from public records requirements for certain information received or maintained by the Department of Military Affairs which is stored in a United States Department of Defense system of records, is transmitted using a United States Department of Defense network or communications device, or pertains to the United States Department of Defense; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. MS 03/30/2021 Fav/CS RC 04/20/2021 Fav/CS	Fav/CS Yeas 16 Nays 0
11	**SB 760** Burgess (Compare CS/H 355)	Florida High School Athletic Association (FHSAA); Requiring the FHSAA to allow certain schools and home education cooperatives to maintain full membership in the association or to join by sport; prohibiting the FHSAA from discouraging such school or cooperative from simultaneously maintaining membership in another athletic association; requiring, rather than authorizing, the FHSAA to allow public schools to join other athletic associations, etc. ED 02/16/2021 Favorable CA 03/10/2021 Favorable RC 04/20/2021 Temporarily Postponed	Temporarily Postponed
12	**CS/SB 762** Criminal Justice / Baxley (Similar H 683)	Public Records/Criminal Conflict and Civil Regional Counsel Offices; Authorizing the issuance of confidential registration certificates and license plates or decals under a fictitious name to criminal conflict and civil regional counsel offices to conduct specified activities; expanding a public records exemption to include all records pertaining to a registration application submitted by any office of criminal conflict and civil regional counsel; providing for future legislative review and repeal; providing a statement of public necessity, etc. CJ 03/23/2021 Fav/CS GO 03/31/2021 Favorable RC 04/20/2021 Temporarily Postponed	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**CS/CS/SB 844** Community Affairs / Governmental Oversight and Accountability / Hooper (Similar CS/CS/H 781)	Public Records; Prohibiting a county recorder from removing a grantor name, grantee name, or party name from the index on the publicly available website unless the information is subject to a specified public records exemption; prescribing requirements for a person claiming a public records exemption to request removal of information from a publicly available website, subject to penalty of perjury; requiring that a request for maintenance of an exemption be notarized and confirm the individual's status; requiring the daily schedule of deeds and conveyances to include notification of any information therein which is subject to a request for removal, etc. GO 02/17/2021 Not Considered GO 03/03/2021 Fav/CS CA 03/30/2021 Fav/CS RC 04/20/2021 Fav/CS	Fav/CS Yeas 15 Nays 0
14	**CS/CS/SB 856** Community Affairs / Regulated Industries / Hutson (Similar CS/CS/H 839)	Express Preemption of Fuel Retailers and Related Transportation Infrastructure; Prohibiting a municipality, county, special district, or political subdivision from taking certain actions to prohibit the siting, development, or redevelopment of fuel retailers and the related transportation infrastructure and from requiring fuel retailers to install or invest in a particular fueling infrastructure, etc. RI 03/09/2021 Fav/CS CA 03/16/2021 Fav/CS RC 04/20/2021 Favorable	Favorable Yeas 11 Nays 5
15	**CS/SB 896** Regulated Industries / Brodeur (Similar CS/CS/H 539)	Renewable Natural Gas; Authorizing the Florida Public Service Commission to approve cost recovery by a gas public utility for certain contracts for the purchase of renewable natural gas, etc. RI 03/09/2021 Temporarily Postponed RI 03/16/2021 Fav/CS EN 03/29/2021 Favorable RC 04/20/2021 Fav/CS	Fav/CS Yeas 11 Nays 5
16	**CS/SB 954** Judiciary / Bean (Compare CS/H 625)	Attorney Compensation; Requiring an attorney who accepts certain engagements to obtain a fee disclosure statement signed by the person responsible for administering an estate; deleting provisions relating to the determination of reasonable compensation for attorneys of personal representatives; deleting provisions relating to the determination of reasonable compensation for attorneys of trustees, etc. JU 03/15/2021 Fav/CS CM 03/29/2021 Favorable RC 04/20/2021 Fav/CS	Fav/CS Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	**CS/SB 1014** Governmental Oversight and Accountability / Baxley (Compare CS for CS/CS/H 835 & H 947)	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 RC 04/14/2021 Not Considered RC 04/20/2021 Temporarily Postponed	Temporarily Postponed
18	**CS/HB 1055** Government Operations Subcommittee / Gregory (Similar S 1446)	Pub. Rec./Trade Secrets; Provides exemption from public records requirements for trade secret held by agency; provides notice requirements; provides agency employee is not liable for release of certain records; provides for future legislative review & repeal of exemption; provides statement of public necessity. RC 04/20/2021 Fav/1 Amendment	Fav/1 Amendment (418456) Yeas 16 Nays 0
19	**CS/CS/SB 1076** Community Affairs / Governmental Oversight and Accountability / Brodeur (Compare CS/CS/CS/H 53)	Public Works Projects; Revising a prohibition relating to any solicitation for construction services paid for with state-appropriated funds; revising the definition of the term “public works project”; prohibiting the state or any political subdivision that contracts for a public works project from taking specified action against certain entities that are engaged in a public works project or have submitted a bid for such a project, etc. GO 03/10/2021 Fav/CS CA 03/30/2021 Fav/CS RC 04/20/2021 Fav/CS	Fav/CS Yeas 9 Nays 6
20	**CS/SB 1120** Regulated Industries / Gibson (Similar CS/CS/H 1307, Compare H 857, S 1682)	Telephone Solicitation; Prohibiting certain telephonic sales calls without the prior express written consent of the called party; removing provisions authorizing the use of certain automated telephone dialing systems; providing a cause of action for aggrieved called parties; prohibiting a commercial telephone seller or salesperson from using automated dialing or recorded messages to make certain commercial telephone solicitation phone calls, etc. CM 03/09/2021 Favorable RI 03/23/2021 Fav/CS RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
21	**CS/CS/SB 1128** Community Affairs / Regulated Industries / Hutson (Similar CS/CS/H 919)	Preemption Over Restriction of Utility Services; Prohibiting municipalities, counties, special districts, or other political subdivisions from restricting or prohibiting the types or fuel sources of energy production used, delivered, converted, or supplied by certain entities to customers; voiding existing specified documents and policies that are preempted by this act, etc. RI 03/09/2021 Fav/CS CA 03/16/2021 Fav/CS RC 04/20/2021 Fav/CS	Fav/CS Yeas 14 Nays 2
22	**CS/CS/SB 1146** Appropriations / Community Affairs / Brodeur (Compare CS/CS/H 401)	Florida Building Code; Authorizing fee owners or fee owners' contractors to select private providers to provide inspection services for onsite sewage treatment and disposal systems if certain requirements are met; prohibiting the Department of Health from requiring that pools serving assisted living facilities be compliant with rules relating to swimming pool lifeguards; prohibiting a local government from requiring certain contracts for the application for or issuance of a building permit; requiring local jurisdictions to reduce permit fees under certain circumstances, etc. CA 03/30/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021 RC 04/20/2021 Fav/CS	Fav/CS Yeas 10 Nays 6
23	**CS/CS/SB 1194** Appropriations / Transportation / Hooper (Compare CS/H 57, H 6015, S 376, CS/S 1500, CS/S 1670)	Transportation; Authorizing governing bodies of municipalities and counties to abandon and convey their interests in certain roads and rights-of-way dedicated in a recorded residential subdivision plat to community development districts under specified conditions; providing that certain governmental entities may not prohibit certain vendors from responding to competitive solicitations of certain contractual services; requiring contractors wishing to bid on certain contracts to first be certified by the department as qualified; repealing part III of ch. 343, F.S., relating to the creation and operation of the Northwest Florida Transportation Corridor Authority, etc. TR 03/24/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021 RC 04/20/2021 Fav/CS	Fav/CS Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
24	**SJR 1238** Rodriguez (Identical HJR 61)	Percentage of Elector Votes Required to Approve an Amendment or a Revision; Proposing an amendment to Section 5 of Article XI of the State Constitution to increase the percentage of elector votes required to approve an amendment to or a revision of the State Constitution from 60 percent to 66 and 2/3 percent, except that the repeal of an amendment or revision need only be approved by the same percentage of elector votes as was required at the time of passage of such amendment or revision, etc. EE 03/01/2021 EE 03/09/2021 Favorable RC 04/20/2021 Temporarily Postponed	Temporarily Postponed
25	**CS/SB 1274** Community Affairs / Perry (Compare H 487)	Growth Management; Authorizing landowners with development orders existing before the incorporation of a municipality to elect to abandon such orders and develop the vested density and intensity contained therein under specified conditions; revising the required acreage thresholds under which a small scale development amendment may be adopted, etc. CA 03/30/2021 Fav/CS RC 04/20/2021 Fav/CS	Fav/CS Yeas 17 Nays 0
26	**SB 1294** Brodeur (Similar CS/H 663)	Cottage Food Operations; Citing this act as the "Home Sweet Home Act"; revising the definition of “cottage food operation”; increasing the annual gross sales limitation for exempting cottage food operations from certain food and building permitting requirements; authorizing the sale, offer for sale, acceptance of payment, and delivery of cottage food products by mail; preempting the regulation of cottage food operations to the state; prohibiting local governments from prohibiting or regulating cottage food operations, etc. RI 03/09/2021 Favorable CM 03/22/2021 Favorable RC 04/20/2021 Fav/CS	Fav/CS Yeas 14 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
27	**SB 1324** Harrell (Similar CS/H 1313, Compare CS/H 1315, Linked CS/S 1326)	Digital Driver Licenses and Identification Cards; Requiring the Department of Highway Safety and Motor Vehicles to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards; authorizing the department to contract with one or more private entities to develop an electronic credentialing system; authorizing the department to enter into contracts with private entities for a specified purpose; prohibiting such private entities from storing, selling, or sharing personal information collected from scanning the digital proofs of driver licenses and identification cards, etc. TR 03/10/2021 Favorable AP 04/15/2021 Favorable AP 04/19/2021 RC 04/20/2021 Fav/CS	Fav/CS Yeas 17 Nays 0
28	**CS/SB 1326** Transportation / Harrell (Similar CS/H 1315, Compare CS/H 1313, Linked S 1324)	Public Records/Department of Highway Safety and Motor Vehicles; Providing exemptions from public records requirements for secure login credentials, Internet protocol addresses, and geolocation data held by the Department of Highway Safety and Motor Vehicles; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. TR 03/10/2021 Fav/CS AP 04/15/2021 Favorable AP 04/19/2021 RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
29	**CS/SB 1408** Banking and Insurance / Burgess (Compare CS/CS/H 415, H 587, CS/CS/H 815, CS/H 823, CS/CS/CS/H 1209, CS/S 360, CS/S 742, S 998, S 1902)	Department of Financial Services; Specifying powers and duties of the Division of Public Assistance Fraud; specifying a condition that must be met before certain firefighter cancer-related benefits may be paid from the State Risk Management Trust Fund; specifying a criminal penalty for the willful and knowing dissemination of a sexual harassment victim's personal identifying information, except under certain circumstances; prohibiting persons from acting as or advertising themselves as being funeral directors, embalmers, direct disposers, or preneed sales agents unless they are so licensed; prohibiting a firesafety inspector from knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept certain compensation, etc. BI 03/10/2021 Fav/CS AP 04/15/2021 Favorable AP 04/19/2021 RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
30	**CS/SB 1488** Governmental Oversight and Accountability / Stargel (Similar CS/H 1207)	Public Records/Members of the Legislature; Providing an exemption from public records requirements for certain identifying and location information of current members of the Legislature and the spouses and children of such legislators; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. EE 03/16/2021 Favorable GO 03/31/2021 Fav/CS RC 04/20/2021 Favorable	Favorable Yeas 15 Nays 2
31	**SB 1512** Wright (Identical H 1201)	Space Florida Board of Directors; Revising the membership of the board of directors of Space Florida to include two ex officio, nonvoting members appointed by the Legislature, etc. MS 03/09/2021 Favorable GO 03/24/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
32	**CS/SB 1520** Judiciary / Boyd (Identical CS/H 1139)	Ancillary Property Rights; Providing that a utility easement is an interest in real property and subject to certain actions unless otherwise provided in the instrument creating the easement; revising rights that are not affected or extinguished by marketable record titles; requiring persons with certain interests in land which may be extinguished by this act to file a specified notice to preserve such interests, etc. JU 03/09/2021 Fav/CS CA 03/30/2021 Favorable RC 04/20/2021 Temporarily Postponed	Temporarily Postponed
33	**CS/SB 1620** Transportation / Brandes (Similar CS/CS/H 1289)	Autonomous Vehicles; Defining the term “low-speed autonomous delivery vehicle”; authorizing the operation of a low-speed autonomous delivery vehicle on certain streets and roads; providing construction; authorizing the operation of a low-speed autonomous delivery vehicle on streets or roads with a posted speed limit of up to 45 miles per hour under specified conditions; providing requirements for low-speed autonomous delivery vehicles; providing that certain fully autonomous vehicles are not subject to certain provisions of law or regulations, etc. TR 03/10/2021 Fav/CS CA 03/24/2021 Favorable RC 04/20/2021 Fav/CS	Fav/CS Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
34	**CS/SB 1704** Governmental Oversight and Accountability / Broxson (Similar CS/H 1639)	Public Records/County Supervisor of Elections; Creating a public records exemption for portions of records containing network schematics, hardware and software configurations, or encryption or which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches held by a county supervisor of elections; providing that such confidential and exempt information must be available to the Auditor General and may be made available to governmental entities for specified purposes; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. EE 03/16/2021 Favorable GO 03/31/2021 Fav/CS RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
35	**CS/SB 1876** Judiciary / Albritton (Similar CS/CS for H 421 & H 1101, Compare H 1101, S 1380)	Relief from Burdens on Real Property Rights; Revising the definitions of the terms “action of a governmental entity” and “real property”; revising notice of claim requirements for property owners; authorizing property owners to bring actions to declare prohibited exactions invalid; revising the definition of the terms “land” or “real property”, etc. JU 03/22/2021 Fav/CS CA 03/30/2021 Favorable RC 04/20/2021 Fav/CS	Fav/CS Yeas 10 Nays 6
36	**SB 1884** Rodrigues (Identical H 1409)	Preemption of Firearms and Ammunition Regulation; Providing that written or unwritten policies are subject to provisions allowing for recovery of damages if such policies violate specified provisions; providing that a plaintiff challenging a local government regulation concerning firearms is considered a prevailing plaintiff for certain purposes in specified circumstances, etc. CA 03/16/2021 Favorable JU 03/29/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 11 Nays 6
37	**CS/SB 1922** Judiciary / Gruters (Similar CS/CS/H 1559)	Dissolution of Marriage; Requiring the court to prioritize certain forms of alimony; revising provisions related to durational alimony; creating a presumption that equal time-sharing is in the best interests of a child, with an exception; requiring the court to grant a final judgment of dissolution of marriage and reserve jurisdiction to adjudicate other substantive issues, under certain circumstances, etc. JU 03/22/2021 Temporarily Postponed JU 03/29/2021 Fav/CS RC 04/20/2021 Temporarily Postponed	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
38	**CS/CS/SB 1948** Appropriations / Commerce and Tourism / Bean (Similar CS/CS/H 1463, Compare H 1291, S 1640, CS/CS/S 1906) **(If Received)**	Department of Economic Opportunity; Renaming the executive director of the Department of Economic Opportunity as the Secretary of Economic Opportunity; revising the application process and funding for development grants awarded by the department to local governments; requiring the department to implement an integrated, modular system hosted in a cloud service, rather than an integrated Internet-based system, for the reemployment assistance program; revising the timeline for employers' responses to notices of benefits claims sent by the department, etc. CM 03/15/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	Temporarily Postponed
39	**CS/CS/SB 1966** Appropriations / Regulated Industries / Diaz (Similar CS/CS/CS/H 1517, Compare CS/CS/H 867, CS/CS/S 630) **(If Received)**	Department of Business and Professional Regulation; Requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division's electronic data submission system; requiring that certain entities file reports, rather than returns, relating to tobacco products with the division; providing that specified records relating to tobacco products may be kept in an electronic or paper format; removing provisions relating to an additional fee for application and renewal, transfer of funds, recommendations by the Construction Industry Licensing Board for use of such funds, distribution of such funds by the department, and required reports of the department; deleting requirements relating to certain fees collected by the department for electrical and alarm system contracting, etc. RI 03/30/2021 Fav/CS AP 04/15/2021 Fav/CS AP 04/19/2021	Temporarily Postponed
40	**SB 7002** Health Policy	OGSR/Trade Secrets/Department of Health; Amending a provision which provides an exemption from public records requirements for certain trade secrets contained in records, reports, or information submitted to the Department of Health; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 14 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
41	**SB 7006** Environment and Natural Resources	OGSR/Trade Secrets/Department of Environmental Protection; Amending a provision relating to an exemption from public records requirements for trade secrets contained in information obtained by the Department of Environmental Protection; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 15 Nays 0
42	**CS/SB 7008** Governmental Oversight and Accountability / Environment and Natural Resources	OGSR/Trade Secrets/Department of Environmental Protection; Amending a provision which provides exemptions from public records requirements for trade secrets contained in information obtained by the Department of Environmental Protection; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Fav/CS RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
43	**SB 7010** Military and Veterans Affairs, Space, and Domestic Security	OGSR/Space Florida; Amending a provision which provides an exemption from public records requirements for records of Space Florida regarding information relating to trade secrets; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
44	**SB 7020** Commerce and Tourism	OGSR/County Tourism Promotion Agencies/Florida Tourism Industry Marketing Corporation; Amending a provision which provides an exemption from public records requirements for trade secrets held by county tourism promotion agencies; amending a provision which provides an exemption from public records requirements for the identity of a person who responds to a marketing or advertising research project conducted by the Florida Tourism Industry Marketing Corporation and for certain trade secrets; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
45	**SB 7022** Regulated Industries	OGSR/Proprietary Confidential Business Information; Amending a provision which provides an exemption from public records requirements for proprietary confidential business information submitted by a voice communications services provider to the E911 Board, the Division of Telecommunications within the Department of Management Services, or the Department of Revenue; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
46	**SB 7024** Regulated Industries	OGSR/Agency Trade Secrets; Amending a provision abrogating the scheduled repeal of a public records exemption for data, programs, or supporting documentation that is a trade secret held by an agency and which resides or exists internal or external to a computer, a computer system, a computer network, or an electronic device, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
47	**SB 7028** Regulated Industries	OGSR/Data Processing Software; Amending a provision relating to an exemption from public records requirements for certain data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret and agency-produced data processing software that is sensitive; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
48	**SB 7030** Regulated Industries	OGSR/Trade Secrets/Department of Business and Professional Regulation; Amending a provision which relates to an exemption from public records requirements for trade secrets contained in certain information submitted to the Department of Business and Professional Regulation as required by specified provisions relating to medical gas; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
49	**SB 7032** Regulated Industries	OGSR/Prescription Drug Purchase Lists; Amending a provision which provides an exemption from public records requirements for trade secrets contained in certain prescription drug purchase lists submitted to the Department of Business and Professional Regulation; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
50	**SB 7034** Regulated Industries	OGSR/Trade Secrets/Department of Business and Professional Regulation; Amending a provision which relates to an exemption from public records requirements for trade secrets contained within complaints or pursuant to an investigation of such complaints obtained by the Department of Business and Professional Regulation, which are submitted by permittees relating to the manufacture, repackaging, or distribution of a drug or for a permit or product registration or for the renewal of such permit or product registration; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
51	**SB 7038** Agriculture	OGSR/Division of Fruit and Vegetables/Trade Secrets; Amending a provision which provides an exemption from public records requirements for information related to trade secrets held by the Division of Fruit and Vegetables of the Department of Agriculture and Consumer Services; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
52	**SB 7040** Agriculture	OGSR/Department of Agriculture and Consumer Services; Amending a provision which provides an exemption from public records requirements for trade secret information of a person subject to a marketing order held by the Department of Agriculture and Consumer Services; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
53	**SB 7042** Agriculture	OGSR/Trade Secret/Department of Citrus; Amending a provision which provides a public records exemption for trade secret information provided to the Department of Citrus; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
54	**SB 7044** Agriculture	OGSR/Noncommodity Advertising and Promotional Program Participants/Department of Citrus; Amending a provision which provides an exemption from public records requirements for the trade secret information of noncommodity advertising and promotional program participants held by the Department of Citrus; deleting the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
55	**SB 7046** Agriculture	OGSR/Trade Secret/Marketing Order/Department of Citrus; Amending a provision which provides an exemption from public records requirements for the trade secret information of a person subject to a marketing order held by the Department of Citrus; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
56	**SB 7048** Agriculture	OGSR/Manufacturer's Formula/Department of Agriculture and Consumer Services; Amending a provision which provides an exemption from public records requirements for a manufacturer's formula filed with the Department of Agriculture and Consumer Services; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0
57	**SB 7058** Agriculture	OGSR/Dairy Industry Business' Trade Secrets; Amending a provision which provides an exemption from public records requirements for a dairy industry business' trade secrets held by the Department of Agriculture and Consumer Services; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/20/2021 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
58	**SB 7070** Education (Compare CS/H 937, CS/H 1261, CS/S 1296)	Impact of COVID-19 on Educational Institutions; Requiring the Board of Nursing to extend an approved program's probationary status under certain circumstances; prohibiting an educational institution that has taken certain reasonably necessary actions to diminish the impact or spread of COVID-19 from being civilly liable for such actions; providing that general publications of educational institutions are not evidence of an implied contract to provide specified services during the COVID-19 public health emergency; authorizing school grades calculated during a certain school year to be used for eligibility for the Florida School Recognition Program, etc. RC 04/14/2021 Not Considered RC 04/20/2021 Fav/CS	Fav/CS Yeas 9 Nays 7
59	**SB 2012** Stargel (Compare CS/H 1475)	Promoting Equality of Athletic Opportunity; Creating the "Promoting Equality of Athletic Opportunity Act"; requiring that certain athletic teams or sports sponsored by certain educational institutions be designated on the basis of students' biological sex; prohibiting athletic teams or sports designated for female students from being open to male students; specifying conditions under which persons who transition from male to female are eligible to compete in the female category; requiring a student that fails to comply with certain conditions to be suspended from female competition for 12 months; requiring the Board of Governors of the State University System to adopt regulations and the State Board of Education to adopt rules regarding the resolution of disputes, etc. ED 03/23/2021 Favorable HP 03/31/2021 Favorable RC 04/14/2021 Temporarily Postponed RC 04/20/2021 Temporarily Postponed	Temporarily Postponed
	Continuation of the published agenda for Friday, April 16, 2021, if necessary		
60	**CS/SB 358** Education / Berman (Identical CS/H 1119)	Water Safety and Swimming Certification for K-12 Students; Citing this act as the "Edna Mae McGovern Act"; defining the term "water safety"; requiring public schools to provide specified information to certain parents or students, etc. ED 03/30/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
61	**CS/SB 418** Governmental Oversight and Accountability / Burgess (Identical CS/CS/H 327)	Public Records/Persons Provided Public Emergency Shelter; Creating an exemption from public records requirements for the addresses and telephone numbers of persons provided public emergency shelter during a storm or catastrophic event and held by the agency that provided the emergency shelter; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. MS 02/16/2021 Favorable GO 04/06/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	
62	**CS/SB 420** Judiciary / Hooper (Similar CS/CS/H 273, Compare CS/CS/H 719, CS/CS/S 54)	Motor Vehicle Insurance Coverage Exclusions; Providing that private passenger motor vehicle policies may exclude certain identified individuals from specified coverages under certain circumstances; requiring excluded drivers to meet certain requirements for financial responsibility, etc. BI 03/03/2021 Favorable JU 03/09/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	
63	**CS/SB 490** Governmental Oversight and Accountability / Bracy (Compare H 185, CS/H 1553)	Juneteenth Day; Designating Juneteenth Day as a legal holiday; repealing a provision relating to Juneteenth Day; deleting provisions designating Juneteenth Day as a special observance, to conform to changes made by the act, etc. GO 03/17/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	
64	**SB 518** Diaz (Compare CS/H 433, CS/CS/H 1049, CS/CS/S 44)	Drones; Expanding the authorized uses of drones by a state agency or political subdivision to include the assessment of damage due to natural disasters, etc. MS 03/09/2021 Favorable CA 03/30/2021 Favorable RC 04/16/2021 Favorable RC 04/20/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
65	**CS/SB 616** Rules / Gruters (Similar H 317)	Public Accountancy; Requiring that certain applicants not be licensed in any state or territory in order to be licensed by endorsement; requiring that a majority of the hours required for continuing education include specific content; authorizing certain Florida certified public accountants to apply to the Department of Business and Professional Regulation to have their license placed in a retired status, etc. RI 03/01/2021 Favorable CM 03/15/2021 Favorable RC 04/16/2021 Fav/CS RC 04/20/2021	
66	**CS/CS/SB 716** Judiciary / Health Policy / Book (Compare CS/CS/H 361)	Consent for Pelvic Examinations; Revising the definition of the term “pelvic examination”; revising the circumstances under which a pelvic examination may be performed without consent; providing that certain health care practitioners and students need only obtain written consent for the initial pelvic examination for certain patients under certain circumstances; requiring such written consent form to inform the patient that multiple pelvic examinations may be conducted during the course of care and treatment, etc. HP 03/17/2021 Fav/CS JU 03/29/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	
67	**CS/CS/SB 768** Rules / Children, Families, and Elder Affairs / Baxley (Similar CS/CS/H 1063, Compare H 459, CS/S 494, S 898)	Administration of Vaccines; Revising the specified immunizations or vaccines that certified pharmacists and registered interns may administer to adults; authorizing certain pharmacists to administer influenza vaccines to individuals 7 years of age or older under certain circumstances, etc. HP 02/17/2021 Favorable CF 03/30/2021 Fav/CS RC 04/16/2021 Fav/CS RC 04/20/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
68	**CS/CS/SB 804** Community Affairs / Children, Families, and Elder Affairs / Harrell (Identical CS/CS/H 319)	Substance Abuse Services; Providing criminal penalties for making certain false representations or omissions of material facts when applying for service provider licenses; requiring the Department of Children and Families to suspend a service provider's license under certain circumstances; expanding the applicability of certain exemptions for disqualification to applications for certification of a recovery residence or a recovery residence administrator, respectively; specifying that certain dwellings converted to recovery residences do not have a change of occupancy under the Florida Building Code due to such conversion, etc. CF 03/02/2021 Fav/CS CA 03/24/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	
69	**SB 826** Baxley (Identical H 871)	Child Protection Teams; Revising the definition of the term "officer, employee, or agent" as it applies to immunity from personal liability in certain actions to include any member of a Child Protection Team established by the Department of Health in certain circumstances, etc. CF 03/09/2021 Favorable JU 03/29/2021 Favorable RC 04/16/2021 Favorable RC 04/20/2021	
70	**SB 848** Powell (Identical H 483)	Electronic Legal Documents; Revising the definition of the term "online notarization"; clarifying that supervising the witnessing of an electronic record by an online notary public is a notarial act; revising the statutory form for an affidavit for acceptance of and reliance upon a power of attorney to reflect means of notarization; revising the form for a petition of summary relief for the sale or transfer of certain property owned by an absentee to reflect means of notarization, etc. CM 03/02/2021 Favorable JU 03/09/2021 Favorable RC 04/16/2021 Favorable RC 04/20/2021	
71	**CS/SB 902** Regulated Industries / Rodrigues (Similar CS/H 463)	Community Association Pools; Exempting certain homeowners' association pools from supervision by the Department of Health; providing exceptions, etc. RI 03/30/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
72	**CS/SB 950** Transportation / Book (Similar CS/CS/H 605)	Bicycle and Pedestrian Safety; Revising and providing requirements for the driver of a motor vehicle overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian; requiring the Department of Highway Safety and Motor Vehicles to provide an annual awareness and safety campaign regarding certain safety precautions; exempting a motor vehicle driver from certain provisions relating to no-passing zones when overtaking a bicycle or other nonmotorized vehicle, an electric bicycle, or a pedestrian; making a technical change; revising requirements for vehicles turning at intersections; prohibiting persons riding bicycles in a bicycle lane from riding more than two abreast, etc. TR 03/30/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	
73	**CS/SB 964** Regulated Industries / Diaz (Identical CS/H 1051)	Environmental Compliance Costs; Redefining the term “environmental compliance costs” to include costs or expenses prudently incurred by an electric utility in complying with specified reclaimed water reuse requirements, etc. EN 02/15/2021 Favorable RI 03/01/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	
74	**CS/CS/SB 1060** Regulated Industries / Judiciary / Bradley (Similar CS/CS/H 891)	Limitation of Liability for Voluntary Engineering or Architectural Services; Defining the term “structures specialist”; exempting engineers, architects, and structures specialists from liability for certain voluntary engineering or architectural services under certain circumstances, etc. JU 03/02/2021 Fav/CS RI 03/16/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	
75	**CS/CS/SB 1070** Community Affairs / Judiciary / Berman (Similar CS/H 609)	Estates and Trusts; Requiring the court to allow an officer to elect to post and maintain a certain bond; providing that certain provisions of a will are void upon dissolution of marriage; specifying that a trust director submits to specified personal jurisdiction by accepting appointment as a trust director; creating the "Community Property Trust Act"; providing that certain property held in a community property trust qualifies as homestead property, etc. JU 03/22/2021 Fav/CS CA 03/30/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
76	**CS/CS/SB 1080** Health Policy / Regulated Industries / Hutson (Similar CS/CS/H 987)	Tobacco and Nicotine Products; Revising age limitations relating to mail order, Internet, and remote sales of tobacco products; providing that it is unlawful for persons under 21 years of age to smoke tobacco or vape in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school during specified hours; preempting the establishment of the minimum age for purchasing and possessing, and the regulation for the marketing, sale, or delivery of, tobacco products to the state; requiring retail nicotine product dealers to acquire a permit, etc. RI 03/09/2021 Fav/CS HP 03/24/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	
77	**CS/SB 1234** Judiciary / Boyd (Compare CS/H 371)	False Reports of Crimes; Defining the term “public safety agency”; authorizing enhanced fines for the willful making of false reports of crimes under certain circumstances, etc. CJ 03/09/2021 Favorable JU 03/29/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	
78	**CS/SB 1288** Judiciary / Boyd (Identical CS/H 6077)	Assets of an Estate in Administration; Deleting a requirement that assets of an estate in administration may be placed in a savings and loan association only if such savings and loan association is a member of the Federal Savings and Loan Insurance Corporation and doing business in this state, etc. JU 03/09/2021 Fav/CS BI 03/16/2021 Favorable RC 04/16/2021 Favorable RC 04/20/2021	
79	**CS/SB 1434** Banking and Insurance / Wright (Similar CS/H 425)	Disposition of Unclaimed Property; Requiring the Department of Financial Services to provide copies of wills and trusts included in safe-deposit box contents under certain circumstances; requiring specified agreements for certain claims; increasing the threshold required to use a different method of identity verification for electronic claims; requiring the department to adopt forms for an Unclaimed Property Recovery Agreement and an Unclaimed Property Purchase Agreement, etc. BI 03/30/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
80	**SB 1456** Rodrigues (Identical CS/H 311)	Public Records/Examination and Assessment Instruments; Expanding an exemption from public records requirements for examination and assessment instruments used for statewide standardized assessments and student progression to include those instruments used for statewide kindergarten screening, youth enrolled in Department of Juvenile Justice programs, limited English proficient students, civic literacy assessments, measuring minority and underrepresented student achievement, and certification of educators and those administered by a Florida College System institution, a state university, or the Department of Education; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. ED 03/30/2021 Favorable GO 04/06/2021 Favorable RC 04/16/2021 Favorable RC 04/20/2021	
81	**SB 1476** Brodeur (Identical H 6095, Compare CS/H 1345)	Controlled Substances; Removing from Schedule V certain drug products in finished dosage formulation which have been approved by the United States Food and Drug Administration, etc. CJ 03/23/2021 Favorable HP 03/31/2021 Favorable RC 04/16/2021 Favorable RC 04/20/2021	
82	**CS/SB 1934** Rules / Book (Similar CS/H 1579)	Health Care Practitioner Discipline; Subjecting health care practitioners to disciplinary action for specified offenses; revising provisions relating to immediate suspension of licensure to apply to all health care practitioners; requiring the Department of Health to issue emergency orders to suspend health care practitioners' licenses if they enter a criminal plea to, or are convicted or found guilty of, a felony relating to homicide or are arrested for committing or attempting, soliciting, or conspiring to commit acts that would constitute violations of specified criminal offenses, etc. HP 03/17/2021 Favorable CJ 03/23/2021 Favorable RC 04/16/2021 Fav/CS RC 04/20/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
83	**CS/CS/CS/SB 1946** Rules / Community Affairs / Environment and Natural Resources / Polsky (Similar CS/CS/H 1515, Compare CS/CS/S 1086)	Anchoring Limitation Areas; Providing that certain areas are grandfathered-in anchoring limitation areas; authorizing counties to establish anchoring limitation areas that meet certain requirements; specifying size requirements for the anchoring limitation areas; prohibiting vessels from anchoring in such areas for longer than a specified time; prohibiting Monroe County from establishing an anchoring limitation area until the county meets certain requirements, etc. EN 03/22/2021 Fav/CS CA 03/30/2021 Fav/CS RC 04/16/2021 Fav/CS RC 04/20/2021	
84	**CS/SB 7004** Governmental Oversight and Accountability / Transportation (Similar H 6099, Identical CS/H 7037, S 1004)	OGSR/Financial Information/Private Entity Applicant; Amending a provision relating to an exemption from public records requirements for financial information of a private entity applicant which the Department of Transportation requires as part of a certain application process; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Fav/CS RC 04/16/2021 Favorable RC 04/20/2021	
85	**SB 7014** Banking and Insurance (Similar H 7049)	OGSR/Office of Insurance Regulation; Adding the Office of Insurance Consumer Advocate to the list of entities to which the Office of Insurance Regulation may disclose confidential and exempt information; removing the scheduled repeal of an exemption from public records requirements for certain proprietary business information and information that is confidential and held by the Office of Insurance Regulation, etc. GO 03/31/2021 Favorable RC 04/16/2021 Favorable RC 04/20/2021	
86	**SB 7026** Regulated Industries (Identical H 7003)	OGSR/Florida State Boxing Commission; Amending a provision relating to an exemption from public records requirements for proprietary confidential business information obtained through an audit of a promoter's books and records or provided by a promoter to the Florida State Boxing Commission; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/16/2021 Favorable RC 04/20/2021	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
87	**SB 7036** Agriculture (Identical H 7007)	OGSR/Department of Agriculture and Consumer Services; Amending a provision which provides an exemption from public records requirements for criminal or civil intelligence or investigative information or any other information held by the Department of Agriculture and Consumer Services as part of an examination or investigation with another state or federal regulatory, administrative, or criminal justice agency; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/16/2021 Favorable RC 04/20/2021	
88	**SB 7050** Community Affairs	OGSR/Unsolicited Proposals; Amending a provision which provides exemptions from public records and public meetings requirements for unsolicited proposals received by a responsible public entity and portions of meetings at which such proposals are discussed; removing the scheduled repeal of the exemption, etc. GO 03/31/2021 Favorable RC 04/16/2021 Favorable RC 04/20/2021	
89	**SB 7066** Regulated Industries (Compare CS/H 1311)	Public Records and Public Meetings/Public Service Commission; Exempting discussions of certain confidential information by the Public Service Commission during certain hearings from public meetings requirements; requiring such hearings to be recorded by a certified court reporter; providing that only redacted transcripts are subject to public records requirements; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. RC 04/16/2021 Favorable RC 04/20/2021	
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 90
INTRODUCER:	Rules Committee; Governmental Oversight and Accountability Committee; Ethics and Elections Committee; and Senator Baxley
SUBJECT:	Election Administration
DATE:	April 20, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Biehl	Roberts	EE	**Fav/CS**
2.	Candeleria	McVaney	GO	**Fav/CS**
3.	Biehl	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/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 (VBM) ballot is sufficient to all elections through the end of the calendar year of the next regularly scheduled general election;
- Limits a person's lawful possession of a VBM ballot to his or her own, those of his or her immediate family, and two others, and expands the definition of "immediate family" to include a grandchild;
- Prohibits a governmental entity from mailing or otherwise providing a VBM ballot without a request;
- Requiring that a voter's signature be verified against a signature within the preceding 4 years; if a hard copy signature is not available within that time frame, the verifier may use the most recent hard copy signature on record;
- Limits use of drop boxes to a county's early voting hours of operation and requires drop boxes at all locations to be monitored in person;
- Creates additional security and accountability measures related to drop boxes;
- Conforms the distances for the two no-solicitation zones;
- Adds giving any item to a voter to the list of activities prohibited within the no-solicitation zone, except that supervisors' staff may still provide needed items to voters within the no-solicitation zone;

- Improves security for voter registration and VBM ballot requests by requiring an additional identifier number for the elector and requiring additional risk assessments for the online voter registration system;
- Increases transparency by creating new requirements for real-time election data reporting, observers of canvassing processes, duplication of VBM ballots, notice regarding canvassing board members, and notice regarding drop box locations;
- Moves up the starting time for canvassing vote-by-mail ballots from 22 days before an election to 35-40 days before an election;
- Subjects no-party-affiliation candidates to the same oath requirements as those for candidates affiliated with a party;
- Conforms provisions regarding the declaration of felon voting eligibility and third-party voter registrations to court orders; and
- Makes other, administrative changes intended to facilitate election administration.

Except as otherwise provided in the bill, the bill takes effect July 1, 2021.

II. Present Situation:

Please see "Effect of Proposed Changes."

III. Effect of Proposed Changes:

Felon Declaration of Voting Eligibility (Sections 1, 3, and 6)

Present Situation

Until 2018, the Florida Constitution disqualified a person convicted of a felony from voting or holding office until his or her civil rights had been restored.[1] In the 2018 general election, Florida voters approved a state constitutional amendment to provide voting rights restoration to specified felons (Amendment 4). Specifically, the ballot language provided that "any disqualification arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation."[2] The provision excludes a "person convicted of murder or a felony sexual offense" from restoration of voting rights unless and until his or her civil rights are restored.[3]

In 2019, the Legislature passed statutory language implementing Amendment 4. The language included detailed changes to the requirements for the felon declaration of voter eligibility in the statewide voter registration application that were designed to more closely track the language of the amendment. Specifically, it provided three options as to whether the applicant:

- Had never been convicted of a felony;

[1] Article VI, s. 4, FLA. CONST. (2018).
[2] *Id*. See also Time, *'Our Voice Will Count.' Former Felon Praises Florida Passing Amendment 4, Which Will Restore Voting Rights to 1.4 Million People*, Alejandro De Le Garza, November 7, 2018, available at http://time.com/5447051/florida-amendment-4-felon-voting/ (last accessed on February 17, 2021).
[3] The Department of State, Division of Elections, Proposed Constitutional Amendments and Revisions for the 2018 General Election, p. 10-11, https://dos.myflorida.com/media/699824/constitutional-amendments-2018-general-election-english.pdf. (last accessed on February 17, 2021).

- Had been convicted of a felony, but had his or her civil rights restored through executive clemency; or
- Had been convicted of a felony, but had his or her voting rights restored pursuant to Amendment 4.

After passage of the implementing legislation, certain felons and voting rights groups challenged the legislation in both state and federal courts. The federal district court judge noted in an order that the changes to the felon declaration of voter eligibility failed to reach felons whose rights had been restored in other states or through other methods, including executive pardons.[4] During the litigation, the Secretary of State stated that every Florida supervisor of elections (supervisor) was accepting the prior felon voting declaration language.[5]

Effect of Proposed Changes
Section 1 addresses the order of the federal district court judge and conforms to the current practice of the Division of Elections (division) and supervisors in publishing and processing voter registration applications by reverting the statutes to the pre-2019 felon declaration of voting eligibility language.

Sections 3 and 6 make conforming changes, including the elimination of a public-records exemption specifically created for the application form's invalidated felon voting attestation requirements.

Voter Registration (Sections 2, 4, and 7)

Online Voter Registration System

Present Situation
Current law requires the division to maintain a website via which an applicant can submit a voter registration application, including both first-time applications and updates, and submit information necessary to establish an applicant's eligibility to vote.[6] The online system must use a unique identifier for each applicant to prevent unauthorized persons from altering a voter's registration information.[7] If an applicant has a Florida driver license or identification card number, that information must be compared with information maintained by the Department of Highway Safety and Motor Vehicles (DHSMV).[8]

The division must, every two years, conduct a comprehensive risk assessment of the system. The assessment must comply with specified methodology for identifying security risks, determining the magnitude of such risks, and identifying areas that require safeguards.[9]

[4] See, Jones v. DeSantis, 410 F. Supp. 3d 1284, 1308 (N.D. Fla. 2019).
[5] *Id*. at 1308. Before the 2019 change, the statutes governing Florida's statewide voter registration form used to simply require an applicant to mark a checkbox affirming that he or she was not a convicted felon, or, if so, that he or she had his or her voting rights restored.
[6] Section 97.0525(2), F.S.
[7] Section 97.0525(3)(a), F.S.
[8] Section 97.0525(4), F.S.
[9] Section 97.0525(3)(b), F.S.

Effect of Proposed Changes
Section 2 makes a number of changes to system requirements that are intended to increase security, as follows.

The bill adds to the current requirement that a unique identifier be used to prevent unauthorized persons from altering a voter's registration information to require that for an applicant to update his or her voter registration record, he or she must provide his or her date of birth and:
- Either his or her Florida driver license number or Florida identification card number, or, if he or she has neither,
- The last four digits of his or her social security number.

Regarding new applicants for voter registration, the bill requires the applicant to provide:
- Either his or her Florida driver license number or identification card number, or, if he or she has neither,
- The last four digits of his or her social security number.

The bill provides conforming provisions for the verification of a social security number, if submitted by an applicant.

The bill creates additional requirements for the comprehensive risk assessment by requiring it to incorporate:
- Load testing and stress testing to ensure that the system has sufficient capacity to accommodate foreseeable use, including during specified periods of high volume;
- Screening of computers and networks used to support the system for malware and other vulnerabilities;
- Evaluation of database infrastructure in order to fortify defenses against cyberattacks; and
- Identification of any anticipated threats to the security and integrity of data collected, maintained, received, or transmitted by the system.

Required Identifiers for Changes to Registration Information

Present Situation
Current law provides the following requirements for changes to voter registration:
- For an address change within the state, the elector may notify the supervisor via telephone or electronic means, in which case the elector must provide his or her date of birth, or may submit the change on a voter registration application or other signed written notice.
- Other address changes must be submitted using the voter registration application.
- For a political party change or name change, the elector must notify the supervisor by using a signed written notice that contains the elector's date of birth or voter registration number.

Effect of Proposed Changes
As an additional security measure, Section 7 requires that for any medium by which a registration change is made, the elector must also provide one of the following identifier numbers:
- His or her Florida driver license number;
- His or her Florida identification card number; or
- The last four digits of his or her social security number.

Duties of Department of Highway Safety and Motor Vehicles

Present Situation
Current law requires the DHSMV to participate in specified agreements to verify voter registration information.[10]

Effect of Proposed Changes
Section 4 requires the DHSMV to assist the Department of State (DOS) in regularly identifying changes in residence address on the driver license or identification card of any voter and requires the DOS to report all such changes to the appropriate supervisors, who must update voters' registration records accordingly.

Third-Party Voter Registrations (Section 5)

A third-party voter registration organization is any person, entity, or organization that collects any voter registration application, but does not include:

- A person who seeks only to register to vote or collect a voter registration application from that person's spouse, child, or parent; or
- A person engaged in registering to vote or collecting voter registration applications as an employee or agent of the division, supervisor, DHSMV, or an official voter registration agency.[11]

Florida Statutes and division rules govern activities of third-party voter registration organizations.

In 2012, a federal district court judge entered a permanent injunction ruling a number of statutory and rule provisions in violation of federal law.[12] The following changes are made to conform to the provisions of the injunction.[13]

Requirements for Registration Agents

Present Situation
Current law requires that before an organization engages in any voter registration activities, it must register and provide specified information to the Division of Elections, including, in part:

- The names, permanent addresses, and temporary addresses of each registration agent;[14] and
- A sworn statement from each registration agent stating that he or she will obey all state laws and rules regarding the registration of voters.[15]

Effect of Proposed Changes
Section 5:

[10] Sections 97.057(11)-(12), F.S.
[11] Florida Division of Elections, *Third-Party Voter Registration Organizations*, https://dos.myflorida.com/elections/for-voters/voter-registration/third-party-voter-registration-organizations/ (last viewed April 20, 2021).
[12] *League of Women Voters of Florida v. Detzner*, case no. 4:11cv628-RH/WCS (signed August 30, 2012).
[13] The DOS has already revised its rules to comply with the injunction.
[14] Section 97.0575(1)(c), F.S.
[15] Section 97.0575(1)(d), F.S.

- Provides that the identifying information requirement does not apply to persons who only solicit applications and do not collect or handle voter registration applications; and
- Deletes the sworn statement requirement.

Deadline for Submission of Completed Applications

Present Situation
Current law requires an organization to deliver a completed voter registration application to the Division of Elections or supervisor within 48 hours or on the next business day.[16] The federal injunction provided that an organization must have 10 days at a minimum.

Effect of Proposed Changes
Section 5 extends the deadline to 14 days, except that it may not be after registration closes for the next ensuing election.

Information Provided to Applicant

Present Situation
Current law does not require organizations to provide specific information to voter registration applicants.

Effect of Proposed Changes
Section 5 requires an organization to notify each applicant that the organization may not deliver the application in less than 14 days or before registration closes for the next ensuing election and that the applicant may deliver his or her application in person or by mail. It also requires each organization to inform an applicant how to register online with the Division of Elections and how to determine whether his or her application has been delivered.

Division of Election Rules

Present Situation
Current law requires the Division of Elections to adopt rules to ensure the integrity of the registration process, including rules requiring organizations to account for all state and federal registration forms used by their registration agents.[17]

Effect of Proposed Changes
Section 5:
- Deletes the requirement that the rules require organizations to account for all state and federal registration forms; and
- Creates a new requirements that the rules include controls to ensure that all completed forms are promptly delivered to the Division of Elections of Supervisor.

Election Data Reporting (Section 8)

Present Situation

[16] Section 97.0575(3)(a), F.S.
[17] Section 97.0575(5), F.S.

Current law requires supervisors to submit to the Department of State precinct-level election results within 30 days after an election's certification by the Elections Canvassing Commission, except for ballot types for which fewer than 30 voters voted.[18] There are no requirements regarding reporting of data related to voter turnout or vote-by-mail (VBM) ballots.

Effect of Proposed Changes

Section 8 requires each supervisor to publish on his or her website:

- Voter turnout data throughout the day on Election Day (at a minimum, at 8 a.m., 2 p.m., and 6 p.m.); and
- Daily updates on the number of VBM ballots requested, returned, and left to count.

Section 8 also clarifies current law regarding the ballot type or precinct subtotals which are exempted from precinct-level reporting requirements.

Candidate Oaths (Sections 9, 10, and 11)

Present Situation

Current law requires each candidate for any office other than a judicial office to take and subscribe to in writing a specified oath or affirmation.[19] It also requires any person seeking to qualify for nomination as a candidate of any political party to, at the time of subscribing to the oath or affirmation, state in writing:

- The party of which the person is a member;
- That the person has not been a registered member of any other political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify; and
- That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.[20]

Effect of Proposed Changes

Section 9 situates a person seeking to qualify for office as a candidate with no party affiliation similarly to those who are affiliated with a political party by requiring such a person to, at the time of subscribing to the oath or affirmation, state in writing that he or she:

- Is registered without any political party affiliation; and
- Has not been a registered member of any political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.

Sections 10 and 11 make conforming changes to items that must be submitted to the filing officer by the end of the qualifying period.

No-Solicitation Zones (Sections 14 and 24)

Present Situation

[18] Section 98.0981(2), F.S.
[19] Section 99.021(1)(a), F.S.
[20] Section 99.021(1)(b), F.S.

In 2019, the Legislature expanded the distance from the entrance to a polling place, polling room, early voting site, or certain supervisor of elections office within which solicitation of a voter is prohibited from 100 feet to 150 feet.[21] "Solicitation" in that context is defined to include, but not be limited to:

- Seeking or attempting to seek any vote, fact, opinion, or contribution;
- Distributing or attempting to distribute any political or campaign material, leaflet, or handout;
- Conducting a poll except as pursuant to a specified exception;
- Seeking or attempting to seek a signature on any petition; and
- Selling or attempting to sell any item.[22]

Another statutory provision prohibits solicitation of a voter in an effort to provide assistance to vote within 100 feet of the entrance of a polling place or early voting site.[23]

Effect of Proposed Changes

Section 14 expands the distance from the entrance of a polling place or early voting site within which a person may not solicit a voter in an effort to provide assistance to vote from 100 feet to 150 feet. This change makes consistent the two no-solicitation zones.

Section 24 adds "giving or attempting to give any item to a voter" to the activities that are prohibited within the no-solicitation zone. It makes clear that an employee of or volunteer with the supervisor may still provide nonpartisan assistance to voters within the no-solicitation zone such as, but not limited to, giving items to voters.

Finally, Sections 14 and 25 add drop box locations to the types of locations that are covered by the no-solicitation zones.

Retention of Election Materials (Section 15)

Present Situation

Florida law requires all ballots, forms, and other election materials to be retained in the custody of the supervisor in accordance with the schedule approved by the Division of Library and Information Services of the DOS.[24]

Federal law requires each election officer to retain and preserve all election materials for 22 months.[25]

Effect of Proposed Changes

To conform Florida law to federal requirements, Section 15 revises the state's required retention time period for election materials to specify that such materials must be maintained for a

[21] Chapter 2019-162, s. 11, L.O.F.; codified at s. 102.031(4)(a), F.S.
[22] Section 102.031(4)(b), F.S.
[23] Section 101.051(2), F.S.
[24] Section 101.545, F.S. The state retention schedule for election records is available at https://files.floridados.gov/media/693583/gs03.pdf (last viewed April 20, 2021).
[25] 52 U.S.C. 20701.

minimum of 22 months after an election in addition to in accordance with the regular retention schedule.

Certification of Voting Systems (Section 16)

Present Situation
Current law requires the Department of State to examine and certify a voting system before it can be used in an election. The Department of State has 90 days from the date of submission of a voting system to approve or disapprove it.[26]

Effect of Proposed Changes
Section 16 extends the deadline to 120 days from the date of submission.[27]

Voter Identification at the Polls (Section 12)

Present Situation
Current law specifies requirements for use of voter identification at the polls.[28] There appears to be a conflict regarding use of the identification to confirm the voter's address. Specifically, the law provides both that:

- The address appearing on the identification presented by the voter may not be used as the basis to confirm or otherwise challenge a voter's legal residence; and
- When the address on the identification presented by a voter matches the address in the supervisor's records, the voter may not be asked to provide additional information or to recite his or her home address. This implies that additional information could be required if the addresses do not match.

Effect of Proposed Changes
To resolve the conflict, Section 12 deletes the provision that implies additional information could be required if the address on the identification presented by the voter does not match the address in the supervisor's records.[29]

Request for Vote-by-Mail Ballot (Section 20)

Present Situation
Florida law allows an elector to request a 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.[30] In addition, a request for a VBM ballot can be made by the elector's legal guardian or, if directed by the

[26] Section 101.5605, F.S.
[27] This proposed change is part of the executive branch's 2021 legislative package.
[28] Section 101.043, F.S.
[29] This proposed change is included in the Florida supervisors of elections' (FSE's) 2021 legislative package.
[30] Sections 101.62(1)(a)-(b), F.S.

elector, a member of the elector's immediate family.[31] 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.[32]

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.[33]

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 designee[34] or to the post office or other carrier;
- 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.[35]

Effect of Proposed Changes

Section 20 requires one of the following additional identifiers for the elector when a written or telephonic request is made for a VBM ballot, when a request is made for a VBM ballot to be sent to an address not on file, or when a VBM ballot is requested by a designee:

- 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 20 also:

- Adds an identification card number or the last four digits of the requester's social security number to the types of acceptable identifiers for a requester.
- Adds "grandchild" to the definition of "immediate family."
- Adds to the types of information related to vote-by-mail ballots that supervisors must record to also include the identity of the voter's designee or the address to which the ballot was

[31] "Immediate family" is defined to mean a spouse, parent, child, grandparent, or sibling (s. 101.62(4)(c)4., F.S.).
[32] Section 101.62(1(b), F.S.
[33] Section 101.62(1)(b), F.S.
[34] 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.).
[35] Section 101.62(3), F.S.

mailed, and 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.[36]
- Prohibits a county, municipality, or state agency from mailing or otherwise providing a VBM ballot unless a request is made.

Delivery of Vote-by-Mail Ballot (Section 21)

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.[37]

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

Effect of Proposed Changes
Section 21 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 23 and 26)

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.[38] 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 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.[39]

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.[40]

Effect of Proposed Changes
Section 23 does the following related to drop boxes:

[36] 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.
[37] Section 101.64(1), F.S.
[38] Section 101.69(2), F.S.
[39] *Id*.
[40] 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.).

- Retains currently authorized locations for drop boxes, but limits their use to a county's early voting hours of operation and requires in-person monitoring by an employee of the supervisor.
- Eliminates sworn law enforcement officers from the categories of persons who may monitor drop boxes.
- Requires each supervisor to designate drop box sites at least 30 days before an election and prohibits a change of drop box locations once designated.
- Requires each drop box to be emptied at the end of early voting hours on each day of early voting and requires all ballots retrieved from the drop boxes to be returned to the supervisor's office.
- Requires employees of supervisors to comply with statutory requirements for chain of custody of ballots.
- Creates a civil penalty of $25,000 for a supervisor who leaves a drop box open outside of early voting hours.

Section 26 limits a person's lawful possession of a VBM ballot to his or her own, those of his or her immediate family, and two others. It also expands the definition of "immediate family" to include a grandchild.

Effective Period for Vote-by-Mail Ballot Request (Section 20)

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.[41] A primary election is held 11 weeks before each general election.[42] 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,[43] unless the elector indicates at the time of the request the elections for which he or she would like to receive a VBM ballot.[44] 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.[45]

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:

[41] 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.
[42] 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.
[43] 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.
[44] Section 101.62(1)(a), F.S.
[45] *Id*.

- All elections held within a calendar year;[46]
- All elections through the next regularly scheduled general election;[47]
- All elections through the next two regularly scheduled general elections;[48] and
- All elections through the end of the calendar year of the second ensuing regularly scheduled general election.[49]

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.[50] 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.[51] 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.[52] The guidance further recommends that eligible voters send in a new FPCA request every January and each time they move.[53]

Effect of Proposed Changes

Section 20 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.[54] It specifies that a request received after November 6, 2018, and before July 1, 2021, will still be deemed sufficient through the end of the calendar year of the *second* ensuing regularly scheduled general election.

Starting Date for Vote-by-Mail Canvassing Period (Section 22)

Present Situation

Florida law allows county canvassing boards55 to begin canvassing VBM ballots starting at 7 a.m. on the 22nd day before an election.56 In 2019, the Legislature extended this starting period from 15 days before an election to 22 days before an election.[57]

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[46] *See, e.g.*, the 2006 Florida Statutes.
[47] *See, e.g.*, ch. 2010-167, s. 7, L.O.F.
[48] *See, e.g.*, ch. 2007-30, s. 30, L.O.F.
[49] *See, e.g.*, ch. 2011-40, s. 37, L.O.F.
[50] 52 U.S.C. 203.
[51] 52 U.S.C. ss. 20301(b)(2) and 20302(a)(4).
[52] Federal Voting Assistance Program, *Frequently Asked Questions about Absentee Voting*, available at https://www.fvap.gov/guide/appendix/faq, last accessed February 17, 2021.
[53] *Id*.
[54] 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.
[55] 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.).
[56] Section 101.68(2)(a), F.S.
[57] Chapter 2019-162, s. 19, L.O.F.

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.[58] The L&A tests are designed to ensure the integrity and accuracy of the tabulators and voting machines.[59] Because the timing of these L&A tests is tied to the beginning of early voting in each county,[60] which varies from 10 to 15 days before an election,[61] 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.[62]

Effect of Proposed Changes

Section 22 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.

Duplication of VBM Ballots (Section 17)

Present Situation

Current law requires a duplicate to be made and substituted for any VBM ballot:

- That is physically damaged so that it cannot properly be tabulated by the voting system's automatic tabulating equipment;
- That contains an overvoted race; or
- In which every race is undervoted.[63]

[58] 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.
[59] Section 101.5612(2), F.S.
[60] Each supervisor must complete an L&A test on any day up to 25 days before the start of early voting (*id*.).
[61] *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).
[62] *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.
[63] Section 101.5614(4)(a), F.S.

The duplicate copies must be made in the presence of witnesses and include all valid votes as determined by the canvassing board based on rules adopted by the division. Upon request, a physically present candidate, a political party official, a political committee official, or an authorized designee thereof must be allowed to observe the duplicate of ballots.[64]

Effect of Proposed Changes
Section 17:

- Requires duplicates of ballots to be made in an open and accessible room.
- Provides that a duplicate may not include a vote if the voter's intent in such race or on such measure is not clear.
- Requires a designated observer to be allowed to stand in close enough proximity to observe the markings on each ballot and the duplication taking place.
- Creates a process for resolving a reasonable objection by an observer to a duplicate of a ballot.

Signature Verification (Sections 13 and 22)

Present Situation – VBM Ballots
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.[65]

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 affidavit[66] and instructions on the supervisor's website.[67] Along with the cure affidavit, the elector must submit a copy of one of a specified list of acceptable identifications.[68]

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;[69] or

[64] *Id*.
[65] Section 101.64(1), F.S.
[66] 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).
[67] Section 101.68(4)(a), F.S. The supervisor may make the notification via email, text message, or telephone.
[68] Section 101.68(4)(d)3., F.S.
[69] In the case of a cure affidavit, the supporting identification must also confirm the identity of the elector.

- 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"[70] that confirms the identity of the elector.[71]

Present Situation – Provisional Ballots

Current law entitles a voter whose eligibility cannot be determined to vote a provisional ballot.[72] A Provisional Ballot Voter's Certificate and Affirmation must be signed by the voter and accompany the provisional ballot.[73]

If it is determined that the voter was registered and entitled to vote at the precinct where the person cast a vote, the canvassing board must compare the signature on the voter's certificate or the cure affidavit with the signature on the voter's registration or precinct register. A provisional ballot may be counted only if:

- The signature on the voter's certificate or the cure affidavit matches the elector's signature in the registration books or the precinct register; 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"[74] that confirms the identity of the elector.[75]

If a provisional ballot 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 voter of the signature deficiency and direct the voter to the cure affidavit[76] and instructions on the supervisor's website.[77] Along with the cure affidavit, the elector must submit a copy of one of a specified list of acceptable identifications.[78]

Effect of Proposed Changes

Section 13 creates a new procedure for signature verification. Specifically, it:

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[70] "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.).

[71] Section 101.68(2)(c)1., F.S.

[72] Section 101.048(1), F.S.

[73] *See* ss. 101.048(2)-(3), F.S.

[74] "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. 101.048(6)(d)3.a., F.S.).

[75] Section 101.048(2)(b), F.S.

[76] The provisional ballot cure affidavit requires the elector to affirm with a signature that he or she voted the provisional ballot and has not and will not vote more than one ballot in the election (s. 101.048(5)(c), F.S).

[77] Section 101.048(6)(a), F.S. The supervisor may make the notification via email, text message, or telephone.

[78] Section 101.048(6)(d)3., F.S.

- Defines "wet signature" to mean a signature that a voter physically signed on paper with a pen or other writing utensil.
- Provides that when a signature is verified with the voter's signature in the registration records, the verifier shall only use a signature in the registration books or the precinct register from the preceding 4 years. If a wet signature is not available from the preceding 4 years, the verifier may use the most recent wet signature on record.

Section 22 provides that during the VBM ballot signature comparison process, the supervisor may not use any knowledge of the political affiliation of the voter whose signature is subject to verification.

Canvassing Boards (Section 25)

Present Situation
Current law provides that a county canvassing board is composed of the supervisor, a county court judge, and the chair of the board of county commissioners. Alternate canvassing board members may be appointed pursuant to statutory specifications.[79]

Current law requires public notice of the time and place at which a county canvassing board will meet to canvass absent electors' ballots and provisional ballots to be given at least 48 hours in advance by publication on the supervisor's website and in one or more newspapers of general circulation in the county.[80] The canvassing board shall meet in a building accessible to the public in the county where the election occurred.[81]

Effect of Proposed Changes
Section 25:
- Requires the names of canvassing board members to be posted on the supervisor's website before any VBM ballot is tabulated.
- Adds canvassing board members and alternates to the types of information that must be publicly noticed for canvassing board meetings.
- Specifies that during each meeting of a county canvassing board, each political party and candidate may have one watcher within a distance that allows him or her to directly observe ballots being examined for signature matching and other processes.

Post-Election Reports (Sections 18 and 19)

Present Situation
Current law requires the following post-election reports:
- *Audit Report* – Immediately after certification of each election, the county canvassing board must conduct an audit that must be completed no later than the seventh day following certification of the election. The county canvassing board must provide a report with the results of the audit to the DOS within 15 days after completion of the audit.[82]

[79] Section 102.141(1), F.S.
[80] Section 102.141(2)(b), F.S.
[81] Section 102.141(2)(a), F.S.
[82] Section 101.591, F.S.

- *Overvotes/Undervotes Report* – No later than December 15 of each general election year, each supervisor must report to the DOS the total number of overvotes[83] and undervotes[84] in specified races, along with related specified information. Upon receipt of the information, the DOS must prepare a public report on the performance of each type of voting system and submit the report to the Governor, Senate President, and House Speaker by January 31 of the following year.[85]

Effect of Proposed Changes

Sections 18 and 19 combine the audit report and the overvotes/undervotes report and require the combined report to be submitted to:

- The Department of State by December 15; and
- The Governor, Senate President, and House Speaker by February 15.

Effective Date of the Bill (Section 27)

Except as otherwise provided in the bill, 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 the requirements of Art. VII, section 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.

[83] "Overvote" means that the elector marks or designates more names than there are persons to be elected to an office or designates more than one answer to a ballot question, and the tabulator records no vote for the office or question (s. 97.021(26), F.S.).

[84] "Undervote" means that the elector does not properly designate any choice for an office or ballot question, and the tabulator records no vote for the office or question (s. 97.021(41), F.S.).

[85] Section 101.595, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The prohibition against mailing or otherwise providing a VBM ballot without a request may reduce supervisor costs to the extent that they are currently mailing ballots without request.

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.

The following provisions may increase the workload of supervisors by an indeterminate amount:

- Requiring supervisors to record additional information related to VBM ballot requests.
- Creating additional requirements for monitoring drop boxes and retrieving ballots from drop boxes.
- Requiring an additional identifier number for electors for a VBM ballot request or registration change.
- Requiring new, real-time election data reporting.

The combination of post-election reports and extension of the deadline to approve or disapprove a voting system may facilitate work of the DOS.

VI. Technical Deficiencies:

The Legislature may wish to revise Section 13 to make clear that electronic signatures may be used in signature verification, particularly when there are no wet signatures on file.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 97.052, 97.0525, 97.053, 97.057, 97.0575, 97.0585, 97.1031, 98.0981, 99.021, 99.061, 99.063, 101.043, 101.051, 101.545, 101.5605, 101.5614, 101.591, 101.595, 101.62, 101.64, 101.68, 101.69, 102.031, 102.141, and 104.0616.

The bill creates section 101.046, 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/CS by Rules on April 20, 2021:
The committee substitute adds the following new provisions to the bill:

- Returns to their pre-2019 form the statutory requirements for the felon declaration of voting eligibility on the uniform statewide voter registration application;
- Requires an additional identifier for an elector to request a change to his or her voter registration;
- Creates additional requirements related to identification of changes in residence address of a voter;
- Revises election data reporting requirements;
- Revises requirements for duplication of vote-by-mail ballots;
- Conforms distances in no-solicitation zones;
- Prohibits anyone other than an employee of or volunteer with a supervisor to give items to voters within the no-solicitation zone;
- Adds drop box locations to no-solicitation zones;
- Prohibits a supervisor from using any knowledge of the political affiliation of a voter whose signature is subject to verification;
- Creates new notice requirements related to canvassing board members;
- Revises provisions governing third-party voter registrations to comply with a federal injunction;
- Revises the retention period for election materials to comport with federal law; and
- Extends the deadline by which the Department of State must approve or disapprove a voting system.

The committee substitute revises previously included provisions related to:

- The effect on outstanding vote-by-mail ballot requests of the bill's change to the time frame for which one request is sufficient;
- Persons who may lawfully be in possession of a vote-by-mail ballot;
- Use of drop boxes;
- Providing a vote-by-mail ballot without a request;
- Signature matching; and
- Additional identifiers required to request a vote-by-mail ballot.

The committee substitute retains without revision previously included provisions related to:

- The time frame for which one vote-by-mail ballot request is sufficient;
- The starting time for canvassing vote-by-mail ballots; and
- Display of partisan information on the outside of vote-by-mail ballots or envelopes.

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	.	House
Comm: UNFAV	.	
04/20/2021	.	
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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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~~then such applicant shall not be eligible to vote in that election.~~

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

(5)

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

(6) A voter registration application may be accepted as valid only after the department has verified the authenticity or nonexistence of the driver license number, the Florida identification card number, or the last four digits of the 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.



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

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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 <u>or Last Four Digits of Social Security Number</u>)...
...(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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information is provided within a reasonable amount of time following an election; repealing s. 97.055, F.S., relating to the closure of registration books for an election; repealing s. 97.0555, F.S., relating to late registration to vote; creating s. 97.0556, F.S.; providing that a person who meets certain requirements may register to vote and cast a ballot on election day or at an early voting site; amending s. 97.057, F.S.; requiring the Department of Highway Safety and Motor Vehicles to provide the opportunity to preregister to vote to certain individuals; amending s. 97.0575, F.S.; revising penalties for third-party voter registration organizations collecting voter registration applications; amending s. 98.065, F.S.; providing additional requirements before a voter can be made inactive; amending s. 98.0981, F.S.; revising certain reports and data to conform with changes made by the act; amending s. 99.061, F.S.; authorizing a candidate to pay his or her qualifying fee with a cashier’s check; amending s. 100.371, F.S.; providing a requirement for the delivery of certain petitions; specifying that a digital signature that complies with the Electronic Signature Act of 1996 satisfies the requirement that a petition form must contain an original signature; creating s. 100.51, F.S.; designating General Election Day as a paid holiday; providing that any elector may absent himself or herself from service or employment at a specific time on a General Election Day and may not be penalized or

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have pay reduced for such absence; creating s. 101.016, F.S.; requiring the Division of Elections to maintain a strategic elections equipment reserve of voting systems and other equipment for specified purposes; requiring such reserve to include specified equipment; authorizing the division to contract with specified entities rather than physically maintain such reserve; amending s. 101.048, F.S.; providing that a person may cast a provisional ballot in the county in which the voter claims to be registered; amending s. 101.151, F.S.; revising the order in which office titles and names of candidates are placed on the ballot; amending s. 101.5612, F.S.; requiring the supervisor of elections to annually file a plan for operations under certain conditions; amending s. 101.62, F.S.; providing that a request for a vote-by-mail ballot is valid until the request is canceled; revising the deadline by which vote-by-mail ballots must be received by a supervisor of elections; revising the period during which a supervisor of elections may deliver certain ballots; providing for extension of deadlines under certain conditions; amending s. 101.64, F.S.; requiring the supervisor of elections to enclose a postage paid mailing envelope with each vote-by-mail ballot; providing that vote-by-mail ballot voter certificates may require a voter’s signature or the last four digits of the voter’s social security number; amending s. 101.65, F.S.; revising instructions that must be provided with a

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vote-by-mail ballot; amending s. 101.68, F.S.; requiring the supervisor of elections to compare the signature or partial social security number with the signature or partial social security number in the registration books or precinct register when canvassing a vote-by-mail ballot; authorizing the canvassing of vote-by-mail ballots upon the completion of the public preelection testing of automatic tabulating equipment; revising the timeframe during which an elector may cure a vote-by-mail ballot; amending s. 101.6952, F.S.; authorizing an absent voter to submit a federal write-in absentee ballot or vote-by-mail ballot; revising requirements for the canvassing of specified ballots; providing that a certain presumption applies to vote-by-mail ballots received from absent voters; requiring a vote-by-mail ballot from an absent voter which is postmarked by a certain date to be counted; amending s. 101.697, F.S.; requiring the Department of State to adopt rules to authorize a supervisor of elections to accept a voted ballot by secure electronic means under certain circumstances; amending s. 101.71, F.S.; prohibiting a polling place from being located within a gated community unless certain conditions are met; amending s. 102.031, F.S.; removing a provision prohibiting the restriction of solicitation by certain parties; prohibiting the use of devices that amplify sound in certain locations; amending s. 102.111, F.S.; revising the dates by which the Elections Canvassing Commission

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
	.	
	.	
	.	

The Committee on Rules (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (t) of subsection (2) of section 97.052, Florida Statutes, is amended to read:

97.052 Uniform statewide voter registration application.—

(2) The uniform statewide voter registration application must be designed to elicit the following information from the applicant:

(t)~~1.~~ Whether the applicant has ~~never~~ been convicted of a


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felony and, if convicted, has had his or her voting rights restored by including the statement "I affirm that I am not a convicted felon or, if I am, my right to vote has been restored ~~I have never been convicted of a felony~~." and providing a box for the applicant to check to affirm the statement.

~~2. Whether the applicant has been convicted of a felony, and if convicted, has had his or her civil rights restored through executive clemency, by including the statement "If I have been convicted of a felony, I affirm my voting rights have been restored by the Board of Executive Clemency." and providing a box for the applicant to check to affirm the statement.~~

~~3. Whether the applicant has been convicted of a felony and, if convicted, has had his or her voting rights restored pursuant s. 4, Art. VI of the State Constitution, by including the statement "If I have been convicted of a felony, I affirm my voting rights have been restored pursuant to s. 4, Art. VI of the State Constitution upon the completion of all terms of my sentence, including parole or probation." and providing a box for the applicant to check to affirm the statement.~~

Section 2. Effective July 1, 2022, subsections (1) and (2), paragraph (a) of subsection (3), and subsection (4) of section 97.0525, Florida Statutes, are amended to read:

97.0525 Online voter registration.—

(1) ~~Beginning October 1, 2017,~~ An applicant may submit an online voter registration application using the procedures set forth in this section.

(2) The division shall establish and maintain a secure ~~Internet~~ website that safeguards an applicant's information to ensure data integrity and permits an applicant to:



(a) Submit a voter registration application, including first-time voter registration applications and updates to current voter registration records.

(b) Submit information necessary to establish an applicant's eligibility to vote, pursuant to s. 97.041, which includes the information required for the uniform statewide voter registration application pursuant to s. 97.052(2).

(c) Swear to the oath required pursuant to s. 97.051.

(3)(a) The online voter registration system must ~~shall~~ comply with the information technology security provisions of s. 282.318 and must ~~shall~~ use a unique identifier for each applicant to prevent unauthorized persons from altering a voter's registration information. For an applicant to update his or her voter registration record, he or she must provide his or her date of birth and either his or her Florida driver license number or the identification number from a Florida identification card issued under s. 322.051 or the last four digits of the his or her social security number if the applicant has not been issued a Florida driver license or identification card.

(4)(a) In order to submit a voter registration application through the online voter registration system, an applicant must provide his or her Florida driver license number or the identification number from a Florida identification card issued under s. 322.051; or if an applicant has not been issued a Florida driver license or Florida identification card, he or she must provide the last four digits of the applicant's social security number.

(b)1. If the applicant has submitted his or her Florida


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driver license number or the identification number from a Florida identification card with a voter registration application, the online voter registration system shall compare the Florida driver license number or Florida identification number ~~submitted pursuant to s. 97.052(2)(n)~~ with information maintained by the Department of Highway Safety and Motor Vehicles to confirm that the name and date of birth on the application are consistent with the records of the Department of Highway Safety and Motor Vehicles.

2.~~(b)~~ If the applicant's name and date of birth are consistent with the records of the Department of Highway Safety and Motor Vehicles, the online voter registration system shall transmit, using the statewide voter registration system maintained pursuant to s. 98.035, the applicant's registration application, along with the digital signature of the applicant on file with the Department of Highway Safety and Motor Vehicles, to the supervisor of elections. The applicant's digital signature satisfies the signature requirement of s. 97.052(2)(q).

(c)1. If the applicant has submitted the last four digits of his or her social security number, the online voter registration system must verify the last four digits of the social security number in accordance with s. 97.053(6).

2. If the last four digits of the applicant's social security number are verified pursuant to s. 97.053(6), the online voter registration system shall transmit, using the statewide voter registration system maintained pursuant to s. 98.035, the applicant's registration application to the supervisor of elections.


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(d) If the applicant's name and date of birth cannot be verified by the records of the Department of Highway Safety and Motor Vehicles, or if the last four digits of the applicant's social security number cannot be verified ~~applicant indicated that he or she has not been issued a Florida driver license or Florida identification card~~, the online voter registration system shall populate the applicant's information into a printable voter registration application pursuant to s. 97.052(2) and direct the applicant to print, sign, and date the application and deliver the application to the supervisor of elections for disposition pursuant to s. 97.073.

Section 3. Paragraph (a) of subsection (5) and subsection (6) of section 97.053, Florida Statutes, are amended to read:

97.053 Acceptance of voter registration applications.—

(5)(a) A voter registration application is complete if it contains the following information necessary to establish the applicant's eligibility pursuant to s. 97.041, including:

1. The applicant's name.

2. The applicant's address of legal residence, including a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier, if appropriate. Failure to include a distinguishing apartment, suite, lot, room, or dormitory room or other identifier on a voter registration application does not impact a voter's eligibility to register to vote or cast a ballot, and such an omission may not serve as the basis for a challenge to a voter's eligibility or reason to not count a ballot.

3. The applicant's date of birth.

4. A mark in the checkbox affirming that the applicant is a



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citizen of the United States.

5.a. The applicant's current and valid Florida driver license number or the identification number from a Florida identification card issued under s. 322.051, or

b. If the applicant has not been issued a current and valid Florida driver license or a Florida identification card, the last four digits of the applicant's social security number.

In case an applicant has not been issued a current and valid Florida driver license, Florida identification card, or social security number, the applicant shall affirm this fact in the manner prescribed in the uniform statewide voter registration application.

6. A mark in the ~~applicable~~ checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, ~~has had his or her civil rights restored through executive clemency, or~~ has had his or her voting rights restored ~~pursuant to s. 4, Art. VI of the State Constitution~~.

7. A mark in the checkbox affirming that the applicant has not been adjudicated mentally incapacitated with respect to voting or that, if so adjudicated, has had his or her right to vote restored.

8. The original signature or a digital signature transmitted by the Department of Highway Safety and Motor Vehicles of the applicant swearing or affirming under the penalty for false swearing pursuant to s. 104.011 that the information contained in the registration application is true and subscribing to the oath required by s. 3, Art. VI of the State Constitution and s. 97.051.



(6) A voter registration application, including an application with a change in name, address, or party affiliation, may be accepted as valid only after the department has verified the authenticity or nonexistence of the driver license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant. If a completed 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 no later than 5 p.m. of the second day following the election.

Section 4. Subsection (13) is added to section 97.057,



Florida Statutes, to read:

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

(13) The Department of Highway Safety and Motor Vehicles must assist the Department of State in regularly identifying changes in residence address on the driver license or identification card of a voter. The Department of State must report each such change to the appropriate supervisor of elections, who must change the voter's registration records in accordance with s. 98.065(4).

Section 5. Paragraphs (c) and (d) of subsection (1), paragraph (a) of subsection (3), and subsection (5) of section 97.0575, Florida Statutes, are amended to read:

97.0575 Third-party voter registrations.—

(1) Before engaging in any voter registration activities, a third-party voter registration organization must register and provide to the division, in an electronic format, the following information:

(c) The names, permanent addresses, and temporary addresses, if any, of each registration agent registering persons to vote in this state on behalf of the organization. This paragraph does not apply to persons who only solicit applications and do not collect or handle voter registration applications.

~~(d) A sworn statement from each registration agent employed by or volunteering for the organization stating that the agent will obey all state laws and rules regarding the registration of voters. Such statement must be on a form containing notice of applicable penalties for false registration.~~


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(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, must ~~shall~~ be promptly delivered to the division or the supervisor of elections in the county in which the applicant resides within 14 days after the applicant completes it, but not after registration closes for the next ensuing election. A third-party voter registration organization must notify the applicant at the time the application is collected that the organization might not deliver the application to the division or the supervisor of elections in less than 14 days or before registration closes for the next ensuing election and must advise the applicant that he or she may deliver the application in person or by mail. The third-party voter registration organization must also inform the applicant how to register online with the division and how to determine whether the application has been delivered ~~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 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 in the county in which the applicant resides more than 14 days ~~48 hours~~ after the applicant delivered the completed voter registration application to the third-party voter registration organization


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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 in the county in which the applicant resides 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 in the county in which the applicant resides. 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.

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.

(5) The division shall adopt by rule a form to elicit


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specific information concerning the facts and circumstances from a person who claims to have been registered to vote by a third-party voter registration organization but who does not appear as an active voter on the voter registration rolls. The division shall also adopt rules to ensure the integrity of the registration process, including controls to ensure that all completed forms are promptly delivered to the division or an appropriate supervisor ~~rules requiring third-party voter registration organizations to account for all state and federal registration forms used by their registration agents. Such rules may require an organization to provide organization and form specific identification information on each form as determined by the department as needed to assist in the accounting of state and federal registration forms~~.

Section 6. Paragraphs (d), (e), and (f) of subsection (1) of section 97.0585, Florida Statutes, are amended to read:

97.0585 Public records exemption; information regarding voters and voter registration; confidentiality.—

(1) The following information held by an agency, as defined in s. 119.011, and obtained for the purpose of voter registration is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may be used only for purposes of voter registration:

(d) ~~Information related to a voter registration applicant's or voter's prior felony conviction and whether such person has had his or her voting rights restored by the Board of Executive Clemency or pursuant to s. 4, Art. VI of the State Constitution.~~

~~(e)~~ All information concerning preregistered voter registration applicants who are 16 or 17 years of age.


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(e) ~~(f)~~ Paragraph (d) is ~~Paragraphs (d) and (e) are~~ subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 7. Paragraph (b) of subsection (1) and subsection (2) of section 97.1031, Florida Statutes, are amended to read:

97.1031 Notice of change of residence, change of name, or change of party affiliation.—

(1)

(b) If the address change is within the state and notice is provided to the supervisor of elections of the county where the elector has moved, the elector may do so by:

1. Contacting the supervisor of elections via telephone or electronic means, in which case the elector must provide his or her date of birth and either his or her Florida driver license number or the identification number from a Florida identification card issued under s. 322.051 or the last four digits of the his or her social security number if the elector has not been issued a Florida driver license or identification card; or

2. Submitting the change on a voter registration application or other signed written notice.

(2) When an elector seeks to change party affiliation, the elector shall notify his or her supervisor of elections or other voter registration official by submitting a voter registration application or other ~~using a~~ signed written notice that contains the elector's date of birth or voter registration number and either his or her Florida driver license number or the



identification number from a Florida identification card issued under s. 322.051 or the last four digits of his or her social security number if the elector has not been issued a Florida driver license or identification card. When an elector changes his or her name by marriage or other legal process, the elector shall notify his or her supervisor of elections or other voter registration official by submitting a voter registration application or other ~~using a~~ signed written notice that contains the elector's date of birth or voter's registration number and either his or her Florida driver license number or the identification number from a Florida identification card issued under s. 322.051 or the last four digits of his or her social security number if the elector has not been issued a Florida driver license or identification card.

Section 8. Present subsections (4) and (5) of section 98.0981, Florida Statutes, are redesignated as subsections (5) and (6), respectively, a new subsection (4) is added to that section, and paragraph (a) of subsection (2) of that section is amended, to read:

98.0981 Reports; voting history; statewide voter registration system information; precinct-level election results; book closing statistics; live turnout data.—

(2) PRECINCT-LEVEL ELECTION RESULTS.—

(a) Within 30 days after certification by the Elections Canvassing Commission of a presidential preference primary election, special election, primary election, or general election, the supervisors of elections shall collect and submit to the department precinct-level election results for the election in a uniform electronic format specified by paragraph


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(c). The precinct-level election results shall be compiled separately for the primary or special primary election that preceded the general or special general election, respectively. The results shall specifically include for each precinct the total of all ballots cast for each candidate or nominee to fill a national, state, county, or district office or proposed constitutional amendment, with subtotals for each candidate and ballot type. However, ballot type or precinct subtotals in a race or question having fewer than 30 voters voting on the ballot type or in the precinct may not be reported in precinct results~~, unless fewer than 30 voters voted a ballot type~~. "All ballots cast" means ballots cast by voters who cast a ballot whether at a precinct location, by vote-by-mail ballot including overseas vote-by-mail ballots, during the early voting period, or by provisional ballot.

(4) LIVE TURNOUT DATA.—

(a) Supervisors of elections shall make live voter turnout data on election day available on their respective websites. At a minimum, a supervisor must post updated turnout data on their website at 8 a.m., 2 p.m., and 6 p.m. on election day. The supervisors shall transmit the turnout data to the division, which must create and maintain a real-time statewide turnout dashboard that is available for viewing by the public on its website as the data becomes available.

(b) For each election, supervisors of elections shall make available on their respective websites the number of vote-by-mail ballots requested, the number of completed vote-by-mail ballots received, and the number of vote-by-mail ballots not yet tabulated. Such information must be updated daily.



Section 9. Section 101.046, Florida Statutes, is created to read:

101.046 Signature verification procedure.—When a signature is verified with the voter's signature in the registration records, the verifier shall only use a signature in the registration books or the precinct register from the preceding 4 years. If a wet signature is not available from the preceding 4 years, the verifier may use the most recent wet signature on record. For purposes of this section, "wet signature" means a signature that a voter physically signed on paper with a pen or other writing utensil.

Section 10. Subsections (2) and (5) of section 101.051, Florida Statutes, are amended to read:

101.051 Electors seeking assistance in casting ballots; oath to be executed; forms to be furnished.—

(2) It is unlawful for any person to be in the voting booth with any elector except as provided in subsection (1). A person at a polling place, a drop box location, or an early voting site, or within 150 ~~100~~ feet of a drop box location or the entrance of a polling place or an early voting site, may not solicit any elector in an effort to provide assistance to vote pursuant to subsection (1). Any person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) If an elector needing assistance requests that a person other than an election official provide him or her with assistance in voting, the clerk or one of the inspectors shall require the person providing assistance to take the following oath:

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DECLARATION TO PROVIDE ASSISTANCE

State of Florida
County of ....
Date ....
Precinct ....

I, ...(Print name)..., have been requested by ...(print name of elector needing assistance)... to provide him or her with assistance to vote. I swear or affirm that I am not the employer, an agent of the employer, or an officer or agent of the union of the voter and that I have not solicited this voter at the polling place, drop box location, or early voting site or within 150 ~~100~~ feet of such locations in an effort to provide assistance.

...(Signature of assistor)...

Sworn and subscribed to before me this .... day of ...., ...(year)....

...(Signature of Official Administering Oath)...

Section 11. Section 101.545, Florida Statutes, is amended to read:

101.545 Retention and destruction of certain election materials.—All ballots, forms, and other election materials shall be retained in the custody of the supervisor of elections for a minimum of 22 months after an election and in accordance



with the schedule approved by the Division of Library and Information Services of the Department of State. All unused ballots, forms, and other election materials may, with the approval of the Department of State, be destroyed by the supervisor after the election for which such ballots, forms, or other election materials were to be used.

Section 12. Paragraph (d) of subsection (2) of section 101.5605, Florida Statutes, is amended to read:

101.5605 Examination and approval of equipment.—

(2)

(d) The Department of State shall approve or disapprove any voting system submitted to it within 120 ~~90~~ days after the date of its initial submission.

Section 13. Paragraph (a) of subsection (4) of section 101.5614, Florida Statutes, is amended to read:

101.5614 Canvass of returns.—

(4)(a) If any vote-by-mail ballot is physically damaged so that it cannot properly be counted by the voting system's automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in an open and accessible room in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a vote-by-mail ballot containing an overvoted race or a marked vote-by-mail ballot in which every race is undervoted which shall include all valid votes as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4). A duplicate may not include a vote if the voter's intent in such race or on such measure is not clear. Upon request, a physically present candidate, a political party official, a political committee


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official, or an authorized designee thereof, must be allowed to observe the duplication of ballots. The observer must be allowed to stand in close enough proximity to observe the duplication of ballots in such a way that the observer is able to see the markings on each ballot and the duplication taking place. All duplicate ballots must ~~shall~~ be clearly labeled "duplicate," bear a serial number which shall be recorded on the defective ballot, and be counted in lieu of the defective ballot. After a ballot has been duplicated, the defective ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied with the other ballots for that precinct. Upon reasonable objection by an observer to a duplicate of a ballot, the ballot must be presented to the canvassing board for a determination of the validity of the duplicate. The canvassing board must document the serial number of the ballot in the canvassing board's minutes. The canvassing board must decide whether the duplication is valid. If the duplicate ballot is determined to be valid, the duplicate ballot must be counted. If the duplicate ballot is determined to be invalid, the duplicate ballot must be rejected and a proper duplicate ballot must be made and counted in lieu of the original.

Section 14. Subsection (5) of section 101.591, Florida Statutes, is amended to read:

101.591 Voting system audit.—

(5) By December 15 of each general election year ~~Within 15 days after completion of the audit~~, the county canvassing board or the board responsible for certifying the election shall provide a report with the results of the audit to the Department



of State in a standard format as prescribed by the department. The report must be consolidated into one report with the overvote and undervote report required under s. 101.595(1). The report shall contain, but is not limited to, the following items:

(a) The overall accuracy of audit.

(b) A description of any problems or discrepancies encountered.

(c) The likely cause of such problems or discrepancies.

(d) Recommended corrective action with respect to avoiding or mitigating such circumstances in future elections.

Section 15. Subsections (1) and (3) of section 101.595, Florida Statutes, are amended to read:

101.595 Analysis and reports of voting problems.—

(1) No later than December 15 of each general election year, the supervisor of elections in each county shall report to the Department of State the total number of overvotes and undervotes in the "President and Vice President" or "Governor and Lieutenant Governor" race that appears first on the ballot or, if neither appears, the first race appearing on the ballot pursuant to s. 101.151(2), along with the likely reasons for such overvotes and undervotes and other information as may be useful in evaluating the performance of the voting system and identifying problems with ballot design and instructions which may have contributed to voter confusion. This report must be consolidated into one report with the audit report required under s. 101.591(5).

(3) The Department of State shall submit the report to the Governor, the President of the Senate, and the Speaker of the



House of Representatives by February 15 ~~January 31~~ of each year following a general election.

Section 16. Paragraphs (a) and (b) of subsection (1), subsection (3), 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 is ~~shall be~~ deemed sufficient to receive a vote-by-mail ballot for all elections through the end of the calendar year of the next ~~second ensuing~~ regularly scheduled general election, provided that a request received after November 6, 2018, and before July 1, 2021, is deemed sufficient 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.

(b) The supervisor may accept a written or telephonic request for a vote-by-mail ballot to be mailed to an elector's 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. For written or telephonic requests, the elector must provide either his or her Florida driver license number or Florida identification card number or the last four digits of his or her social security number.~~;~~ 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, and include either his or her Florida driver license number or Florida identification card number or the last four digits of his or her social security number. 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 or identification card number or the last four digits of the requester's social security number, if available.

8.~~7.~~ The requester's relationship to the elector.

9.~~8.~~ The requester's signature (written requests only).

(3) For each request for a vote-by-mail ballot received, the supervisor shall record the date the request was made;~~,~~ the


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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 identity of the voter's designee or the address to which the ballot was mailed; ~~,~~ the date the ballot was received by the supervisor; ~~,~~ the absence of the voter's signature on the voter's certificate, if applicable; whether the voter's certificate contains a signature that does not match the elector's signature in the registration books or precinct register; ~~,~~ and such other information he or she may deem necessary. This information shall be provided in electronic format as provided by division 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.

(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.



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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.

4. By delivery to a designee on election day or up to 9 days before ~~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, grandchild, 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 delivery of the vote-by-mail ballot. The department shall adopt a rule providing for the form of the affidavit.

(7) Except as expressly authorized for voters having a disability under s. 101.662, for overseas voters under s. 101.697, or for local referenda under ss. 101.6102 and 101.6103, a county, municipality, or state agency may not send a vote-by-mail ballot to a voter unless the voter has requested a vote-by-mail ballot in the manner authorized under this section.

Section 17. Subsection (6) is added to section 101.64, Florida Statutes, to read:

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

(6) The outside of the 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.

Section 18. Subsection (1) and paragraph (a) of subsection (2) 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

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supervisor shall compare the signature of the elector on the voter's certificate with the signature of the elector in the registration books or the precinct register to determine whether the elector is duly registered in the county and must ~~may~~ record on the elector's registration record ~~certificate~~ that the elector has voted. During the signature comparison process, the supervisor may not use any knowledge of the political affiliation of the voter whose signature is subject to verification. 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.

Section 19. Subsection (2) of section 101.69, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

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

(2)(a) The supervisor shall allow an elector who has received a vote-by-mail ballot to physically return a voted vote-by-mail ballot to the supervisor by placing the envelope containing his or her marked ballot in a secure drop box. Secure drop boxes shall be placed at the main office of the supervisor, at each branch office of the supervisor, and at each early voting site. Secure drop boxes may also be placed at any other site that would otherwise qualify as an early voting site under s. 101.657(1). A secure drop box may only be used~~; provided, however, that any such site must be staffed~~ during the county's early voting hours of operation and must be monitored in person by an employee of the supervisor's office ~~or a sworn law enforcement officer~~.

(b) A supervisor shall designate each drop box site at least 30 days before an election. After a drop box location has been designated, it may not be moved or changed.

(c) On each day of early voting, all drop boxes must be emptied at the end of early voting hours and all ballots retrieved from the drop boxes must be returned to the



supervisor's office. Employees of the supervisor must comply with procedures for the chain of custody of ballots as required by s. 101.015(4).

(3) If any drop box at an early voting site is left accessible for the return of ballots outside of early voting hours, the supervisor is subject to a civil penalty of $25,000. The division is authorized to enforce this provision.

Section 20. Paragraphs (a), (b), and (e) of subsection (4) of section 102.031, Florida Statutes, are amended 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)(a) No person, political committee, or other group or organization may solicit voters inside the polling place or within 150 feet of a drop box or the entrance to any polling place, a polling room where the polling place is also a polling room, an early voting site, or an office of the supervisor where vote-by-mail ballots are requested and printed on demand for the convenience of electors who appear in person to request them. Before the opening of a drop box location, a ~~the~~ polling place, or an early voting site, the clerk or supervisor shall designate the no-solicitation zone and mark the boundaries.

(b) For the purpose of this subsection, the terms "solicit" or "solicitation" shall include, but not be limited to, seeking or attempting to seek any vote, fact, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, or handout; conducting a poll except as specified in this paragraph; seeking or attempting to seek a signature on any petition; ~~and~~ selling or attempting to sell any



item; and giving or attempting to give any item to a voter. The terms "solicit" or "solicitation" may not be construed to prohibit an employee of, or a volunteer with, the supervisor from providing nonpartisan assistance to voters within the no-solicitation zone such as, but not limited to, giving items to voters, or to prohibit exit polling.

(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 by a candidate or a candidate's designee outside of the no-solicitation zone during polling hours.

Section 21. Subsection (1) and paragraphs (a) and (b) of subsection (2) of section 102.141, Florida Statutes, are amended to read:

102.141 County canvassing board; duties.—

(1) The county canvassing board shall be composed of the supervisor of elections; a county court judge, who shall act as chair; and the chair of the board of county commissioners. The names of the canvassing board members must be published on the supervisor's website before any vote-by-mail ballot is tabulated. Alternate canvassing board members must be appointed pursuant to paragraph (e). In the event any member of the county canvassing board is unable to serve, is a candidate who has opposition in the election being canvassed, or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed, such member shall be replaced as follows:

(a) If no county court judge is able to serve or if all are disqualified, the chief judge of the judicial circuit in which



the county is located shall appoint as a substitute member a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. In such event, the members of the county canvassing board shall meet and elect a chair.

(b) If the supervisor of elections is unable to serve or is disqualified, the chair of the board of county commissioners shall appoint as a substitute member a member of the board of county commissioners who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. The supervisor, however, shall act in an advisory capacity to the canvassing board.

(c) If the chair of the board of county commissioners is unable to serve or is disqualified, the board of county commissioners shall appoint as a substitute member one of its members who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.

(d) If a substitute member or alternate member cannot be appointed as provided elsewhere in this subsection, or in the event of a vacancy in such office, the chief judge of the judicial circuit in which the county is located shall appoint as a substitute member or alternate member a qualified elector of the county who is not a candidate with opposition in the



election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.

(e)1. The chief judge of the judicial circuit in which the county is located shall appoint a county court judge as an alternate member of the county canvassing board or, if each county court judge is unable to serve or is disqualified, shall appoint an alternate member who is qualified to serve as a substitute member under paragraph (a).

2. The chair of the board of county commissioners shall appoint a member of the board of county commissioners as an alternate member of the county canvassing board or, if each member of the board of county commissioners is unable to serve or is disqualified, shall appoint an alternate member who is qualified to serve as a substitute member under paragraph (d).

3. If a member of the county canvassing board is unable to participate in a meeting of the board, the chair of the county canvassing board or his or her designee shall designate which alternate member will serve as a member of the board in the place of the member who is unable to participate at that meeting.

4. If not serving as one of the three members of the county canvassing board, an alternate member may be present, observe, and communicate with the three members constituting the county canvassing board, but may not vote in the board’s decisions or determinations.

(2)(a) The county canvassing board shall meet in a building accessible to the public in the county where the election occurred at a time and place to be designated by the supervisor



to publicly canvass the absent electors' ballots as provided for in s. 101.68 and provisional ballots as provided by ss. 101.048, 101.049, and 101.6925. During each meeting of the county canvassing board, each political party and each candidate may have one watcher within a distance that allows him or her to directly observe ballots being examined for signature matching and other processes. Provisional ballots cast pursuant to s. 101.049 shall be canvassed in a manner that votes for candidates and issues on those ballots can be segregated from other votes. As soon as the absent electors' ballots and the provisional ballots are canvassed, the board shall proceed to publicly canvass the vote given each candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, as shown by the returns then on file in the office of the supervisor.

(b) Public notice of the canvassing board members, alternates, time, and place at which the county canvassing board shall meet to canvass the absent electors' ballots and provisional ballots must be given at least 48 hours prior thereto by publication on the supervisor's website and published in one or more newspapers of general circulation in the county or, if there is no newspaper of general circulation in the county, by posting such notice in at least four conspicuous places in the county. The time given in the notice as to the convening of the meeting of the county canvassing board must be specific and may not be a time period during which the board may meet.

Section 22. Section 104.0616, Florida Statutes, is amended to read:


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

(1) For purposes of this section, the term "immediate family" means a person's spouse or the parent, child, grandparent, grandchild, or sibling of the person or the person's spouse.

(2) Any person who distributes, orders, requests, collects, delivers ~~provides or offers to provide, and any person who accepts, a pecuniary or other benefit in exchange for distributing, ordering, requesting, collecting, delivering~~, or otherwise physically possesses ~~possessing~~ more than two vote-by-mail ballots per election in addition to his or her own ballot or a ballot belonging to an immediate family member, except as provided in ss. 101.6105-101.694, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or~~,~~ s. 775.083~~, or s. 775.084~~.

Section 23. Except as otherwise expressly provided in this act, 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 election administration; amending s. 97.052, F.S.; revising requirements for the uniform statewide voter registration application; amending s. 97.0525, F.S.; authorizing an applicant to submit an online voter registration application using the last four digits of the applicant's social security number;



prescribing procedures for applicants who submit an application using the last four digits of their social security numbers; amending s. 97.053, F.S.; revising requirements governing the acceptance of voter registration applications; amending s. 97.057, F.S.; requiring the Department of Highway Safety and Motor Vehicles to assist the Department of State in identifying certain residence address changes; requiring the Department of State to report such changes to supervisors of elections; amending s. 97.0575, F.S.; revising requirements for third-party voter registration organizations; providing applicability; revising circumstances under which a third-party voter registration organization is subject to fines for violations regarding the delivery of voter registration applications; revising requirements for Division of Elections rules governing third-party voter registration organizations; amending s. 97.0585, F.S.; deleting an exemption from public records requirements for information related to a voter registration applicant’s or voter’s prior felony conviction and his or her restoration of voting rights to conform to changes made by the act; amending s. 97.1031, F.S.; revising requirements for notifying the supervisor of address changes; modifying procedures for submitting changes of name or party affiliation to conform to changes made by the act; amending s. 98.0981, F.S.; providing that certain ballot types or precinct subtotals may not be reported in precinct-



level election results; requiring supervisors to post live turnout data for election day voting and vote-by-mail ballot statistics on their websites; requiring supervisors to transmit live turnout data to the Division of Elections; directing the division to create and maintain a statewide voter turnout dashboard on its website using such data; creating s. 101.046, F.S.; prescribing procedures and limitations governing signature verification; defining the term "wet signature"; amending s. 101.051, F.S.; prohibiting certain solicitation of voters at drop box locations; increasing the no-solicitation zone surrounding a drop box location or the entrance of a polling place or an early voting site wherein certain activities are prohibited; amending s. 101.545, F.S.; requiring ballots, forms, and election materials to be retained for a specified minimum timeframe following an election; amending s. 101.5605, F.S.; revising the timeframe within which the department must approve or disapprove a voting system submitted for certification; amending s. 101.5614, F.S.; revising requirements for making true duplicate copies of vote-by-mail ballots under certain circumstances; requiring that an observer of the duplication of ballots be provided certain allowances; requiring the canvassing board to take certain action in response to an objection to a ballot duplicate; amending s. 101.591, F.S.; revising the timeframe and requirements for the voting systems audit report submitted to the



department; amending s. 101.595, F.S.; requiring a specified report regarding overvotes and undervotes to be submitted with the voting systems audit report; revising the date by which the department must submit the report to the Governor and Legislature; amending s. 101.62, F.S.; 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; specifying applicability; requiring certain vote-by-mail ballot requests to include additional identifying information regarding the requesting elector; requiring supervisors of elections to record whether a voter's certificate on a vote-by-mail ballot has a mismatched signature; revising the definition of the term "immediate family" to conform to changes made by the act; prohibiting counties, municipalities, and state agencies from sending vote-by-mail ballots to voters absent a request; providing exceptions; amending s. 101.64, F.S.; 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; amending s. 101.68, F.S.; specifying that the supervisor may not use any knowledge of a voter's party affiliation during the signature comparison process; authorizing the canvassing of vote-by-mail ballots upon the completion of the public preelection testing of automatic tabulating equipment; amending s. 101.69, F.S.; revising requirements governing the



placement and supervision of secure drop boxes for the return of vote-by-mail ballots; requiring the supervisor to designate drop box locations in advance of an election; prohibiting changes in drop box locations for an election after their initial designation; specifying requirements regarding the retrieval of vote-by-mail ballots returned in a drop box; providing that the supervisor is subject to a civil penalty for certain violations regarding drop boxes; amending s. 102.031, F.S.; prohibiting certain solicitation activities within a specified area surrounding a drop box; revising the definition of "solicit" and "solicitation" to include the giving, or attempting to give, any item to a voter by certain persons; providing for construction; restricting certain persons from prohibiting the solicitation of voters by a candidate or a candidate's designee outside of the no-solicitation zone; amending s. 102.141, F.S.; requiring the names of canvassing board members be published on the supervisor's website before the tabulation of any vote-by-mail ballots in an election; authorizing each political party and candidate to have one watcher at canvassing board meetings within a distance that allows him or her to directly observe proceedings; requiring additional information be included in public notices of canvassing board meetings; amending s. 104.0616, F.S.; revising the definition of "immediate family"; prohibiting any person from distributing, ordering,



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requesting, collecting, delivering, or otherwise physically possessing more than two vote-by-mail ballots of other electors per election, not including immediate family members; providing exceptions; providing a penalty; providing effective dates.

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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/20/2021	.	
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The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (262784) (with title amendment)

Delete lines 58 - 344
and insert:
digits of his or her social security number.
(4)(a) In order to submit a voter registration application through the online voter registration system, an applicant must provide his or her Florida driver license number or the identification number from a Florida identification card issued under s. 322.051; or the last four digits of the applicant's


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social security number.

(b)1. If the applicant has submitted his or her Florida driver license number or the identification number from a Florida identification card with a voter registration application, the online voter registration system shall compare the Florida driver license number or Florida identification number ~~submitted pursuant to s. 97.052(2)(n)~~ with information maintained by the Department of Highway Safety and Motor Vehicles to confirm that the name and date of birth on the application are consistent with the records of the Department of Highway Safety and Motor Vehicles.

2.~~(b)~~ If the applicant's name and date of birth are consistent with the records of the Department of Highway Safety and Motor Vehicles, the online voter registration system shall transmit, using the statewide voter registration system maintained pursuant to s. 98.035, the applicant's registration application, along with the digital signature of the applicant on file with the Department of Highway Safety and Motor Vehicles, to the supervisor of elections. The applicant's digital signature satisfies the signature requirement of s. 97.052(2)(q).

(c)1. If the applicant has submitted the last four digits of his or her social security number, the online voter registration system must verify the last four digits of the social security number in accordance with s. 97.053(6).

2. If the last four digits of the applicant's social security number are verified pursuant to s. 97.053(6), the online voter registration system shall transmit, using the statewide voter registration system maintained pursuant to s.


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98.035, the applicant's registration application to the supervisor of elections.

(d) If the applicant's name and date of birth cannot be verified by the records of the Department of Highway Safety and Motor Vehicles, or if the last four digits of the applicant's social security number cannot be verified ~~applicant indicated that he or she has not been issued a Florida driver license or Florida identification card~~, the online voter registration system shall populate the applicant's information into a printable voter registration application pursuant to s. 97.052(2) and direct the applicant to print, sign, and date the application and deliver the application to the supervisor of elections for disposition pursuant to s. 97.073.

Section 3. Paragraph (a) of subsection (5) and subsection (6) of section 97.053, Florida Statutes, are amended to read:

97.053 Acceptance of voter registration applications.—

(5)(a) A voter registration application is complete if it contains the following information necessary to establish the applicant's eligibility pursuant to s. 97.041, including:

1. The applicant's name.

2. The applicant's address of legal residence, including a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier, if appropriate. Failure to include a distinguishing apartment, suite, lot, room, or dormitory room or other identifier on a voter registration application does not impact a voter's eligibility to register to vote or cast a ballot, and such an omission may not serve as the basis for a challenge to a voter's eligibility or reason to not count a ballot.


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3. The applicant’s date of birth.

4. A mark in the checkbox affirming that the applicant is a citizen of the United States.

5.a. The applicant’s current and valid Florida driver license number or the identification number from a Florida identification card issued under s. 322.051, or

b. If the applicant has not been issued a current and valid Florida driver license or a Florida identification card, the last four digits of the applicant’s social security number.

In case an applicant has not been issued a current and valid Florida driver license, Florida identification card, or social security number, the applicant shall affirm this fact in the manner prescribed in the uniform statewide voter registration application.

6. A mark in the ~~applicable~~ checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, ~~has had his or her civil rights restored through executive clemency, or~~ has had his or her voting rights restored ~~pursuant to s. 4, Art. VI of the State Constitution~~.

7. A mark in the checkbox affirming that the applicant has not been adjudicated mentally incapacitated with respect to voting or that, if so adjudicated, has had his or her right to vote restored.

8. The original signature or a digital signature transmitted by the Department of Highway Safety and Motor Vehicles of the applicant swearing or affirming under the penalty for false swearing pursuant to s. 104.011 that the information contained in the registration application is true



and subscribing to the oath required by s. 3, Art. VI of the State Constitution and s. 97.051.

(6) A voter registration application, including an application with a change in name, address, or party affiliation, may be accepted as valid only after the department has verified the authenticity or nonexistence of the driver license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant. If a completed 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 no later than 5 p.m. of the



second day following the election.

Section 4. Paragraphs (c) and (d) of subsection (1), paragraph (a) of subsection (3), and subsection (5) of section 97.0575, Florida Statutes, are amended to read:

97.0575 Third-party voter registrations.—

(1) Before engaging in any voter registration activities, a third-party voter registration organization must register and provide to the division, in an electronic format, the following information:

(c) The names, permanent addresses, and temporary addresses, if any, of each registration agent registering persons to vote in this state on behalf of the organization. This paragraph does not apply to persons who only solicit applications and do not collect or handle voter registration applications.

~~(d) A sworn statement from each registration agent employed by or volunteering for the organization stating that the agent will obey all state laws and rules regarding the registration of voters. Such statement must be on a form containing notice of applicable penalties for false registration.~~

(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, must ~~shall~~ be promptly delivered to the division or the supervisor of elections in the county in which the applicant resides within 14 days after the applicant completes it, but not after registration closes for the next ensuing election. A third-party voter registration



organization must notify the applicant at the time the application is collected that the organization might not deliver the application to the division or the supervisor of elections in less than 14 days or before registration closes for the next ensuing election and must advise the applicant that he or she may deliver the application in person or by mail. The third-party voter registration organization must also inform the applicant how to register online with the division and how to determine whether the application has been delivered ~~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 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 in the county in which the applicant resides more than 14 days ~~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


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received by the division or the supervisor of elections in the county in which the applicant resides 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 in the county in which the applicant resides. 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.

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.

(5) The division shall adopt by rule a form to elicit specific information concerning the facts and circumstances from a person who claims to have been registered to vote by a third-party voter registration organization but who does not appear as an active voter on the voter registration rolls. The division shall also adopt rules to ensure the integrity of the registration process, including controls to ensure that all completed forms are promptly delivered to the division or an appropriate supervisor ~~rules requiring third-party voter registration organizations to account for all state and federal~~


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~~registration forms used by their registration agents. Such rules may require an organization to provide organization and form specific identification information on each form as determined by the department as needed to assist in the accounting of state and federal registration forms~~.

Section 5. Paragraphs (d), (e), and (f) of subsection (1) of section 97.0585, Florida Statutes, are amended to read:

97.0585 Public records exemption; information regarding voters and voter registration; confidentiality.—

(1) The following information held by an agency, as defined in s. 119.011, and obtained for the purpose of voter registration is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may be used only for purposes of voter registration:

(d) ~~Information related to a voter registration applicant's or voter's prior felony conviction and whether such person has had his or her voting rights restored by the Board of Executive Clemency or pursuant to s. 4, Art. VI of the State Constitution.~~

~~(e)~~ All information concerning preregistered voter registration applicants who are 16 or 17 years of age.

(e)~~(f)~~ Paragraph (d) is ~~Paragraphs (d) and (e) are~~ subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 6. Paragraph (b) of subsection (1) and subsection (2) of section 97.1031, Florida Statutes, are amended to read:

97.1031 Notice of change of residence, change of name, or change of party affiliation.—



(1)

(b) If the address change is within the state and notice is provided to the supervisor of elections of the county where the elector has moved, the elector may do so by:

1. Contacting the supervisor of elections via telephone or electronic means, in which case the elector must provide his or her date of birth and either his or her Florida driver license number or the identification number from a Florida identification card issued under s. 322.051 or the last four digits of the his or her social security number; or

2. Submitting the change on a voter registration application or other signed written notice.

(2) When an elector seeks to change party affiliation, the elector shall notify his or her supervisor of elections or other voter registration official by submitting a voter registration application or other ~~using a~~ signed written notice that contains the elector's date of birth or voter registration number and either his or her Florida driver license number or the identification number from a Florida identification card issued under s. 322.051 or the last four digits of his or her social security number. When an elector changes his or her name by marriage or other legal process, the elector shall notify his or her supervisor of elections or other voter registration official by submitting a voter registration application or other ~~using a~~ signed written notice that contains the elector's date of birth or voter's registration number and either his or her Florida driver license number or the identification number from a Florida identification card issued under s. 322.051 or the last four digits of his or her social security number.



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273
274 ================ T I T L E A M E N D M E N T ================
275 And the title is amended as follows:
276 Delete lines 915 - 920
277 and insert:
278 registration applications; amending s.

524636

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Rules (Brandes) recommended the following:

Senate Amendment to Amendment (262784) (with directory and title amendments)

Between lines 60 and 61

insert:

(b) The division shall conduct a comprehensive risk assessment of the online voter registration system ~~before making the system publicly available and~~ every 2 years ~~thereafter~~. The comprehensive risk assessment must comply with the risk assessment methodology developed by the Department of Management Services for identifying security risks, determining the

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magnitude of such risks, and identifying areas that require safeguards. In addition, the comprehensive risk assessment must incorporate all of the following:

1. Load testing and stress testing to ensure that the online voter registration system has sufficient capacity to accommodate foreseeable use, including during periods of high volume of website users in the week immediately preceding the book-closing deadline for an election.

2. Screening of computers and networks used to support the online voter registration system for malware and other vulnerabilities.

3. Evaluation of database infrastructure, including software and operating systems, in order to fortify defenses against cyberattacks.

4. Identification of any anticipated threats to the security and integrity of data collected, maintained, received, or transmitted by the online voter registration system.

====== 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 31 - 32

and insert:

Section 2. Effective July 1, 2022, subsections (1) through (4) of section

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

And the title is amended as follows:

Delete line 913

and insert:

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security numbers; specifying additional requirements for comprehensive risk assessments of the online voter registration system; amending s. 97.053, F.S.; revising

105356

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/20/2021	.	
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The Committee on Rules (Thurston) recommended the following:

Senate Amendment to Amendment (262784) (with title amendment)

Delete lines 185 - 195
and insert:
Section 4. Section 97.057, Florida Statutes, is amended to read:
97.057 Voter registration by the Department of Highway Safety and Motor Vehicles.—
(1) Each of the following serves as an application ~~The Department of Highway Safety and Motor Vehicles shall provide~~


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~~the opportunity~~ to register to vote or to update a voter registration record when submitted to the Department of Highway Safety and Motor Vehicles ~~to each individual who comes to an office of that department to~~:

(a) An application ~~Apply~~ for a driver license or a renewal of ~~renew~~ a driver license;

(b) An application ~~Apply~~ for an identification card pursuant to chapter 322 or a renewal of ~~renew~~ an identification card ~~pursuant to chapter 322~~; or

(c) An application for a change of ~~an~~ address on an existing driver license or identification card.

Unless the applicant declines to register to vote or to update his or her voter registration record, he or she is deemed to have consented to the use of the signature from his or her driver license or identification card application for voter registration purposes.

(2) An application for a driver license or an identification card must include a voter registration component. The voter registration component must be approved by the Department of State. The voter registration component of a driver license or identification card application must contain:

(a) The minimum amount of information necessary to prevent duplicate voter registrations and preserve the ability of the department and supervisors of elections to assess the eligibility of the applicant and administer voter registration and other provisions of this code.

(b) A statement setting forth voting eligibility requirements.


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(c) An explanation that the applicant is consenting, for voter registration purposes, to the use of his or her signature from the applicant's driver license or identification card application. By consenting to the use of his or her signature, the applicant is deemed to have subscribed to the oath required by s. 3, Art. VI of the State Constitution and s. 97.051 and to have sworn and affirmed that the voter registration information contained in the application is true under penalty for false swearing pursuant to s. 104.011.

(d) An option that allows the applicant to choose or update a party affiliation; otherwise, an applicant who is initially registering to vote and does not exercise such option shall be registered without party affiliation in accordance with s. 97.053(5)(b).

(e) An option that allows the applicant to decline to register to vote or to decline to update his or her voter registration record. The Department of Highway Safety and Motor Vehicles shall note any such declination in its records and forward the declination to the Department of State. Any declination may be used only for voter registration purposes and is confidential and exempt from public records requirements as provided in s. 97.0585.

(3) The Department of Highway Safety and Motor Vehicles shall:

(a) Develop a voter registration component for applications which meets the requirements set forth in subsection (2). ~~Notify each individual, orally or in writing, that:~~

~~1. Information gathered for the completion of a driver license or identification card application, renewal, or change~~


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~~of address can be automatically transferred to a voter registration application;~~

~~2. If additional information and a signature are provided, the voter registration application will be completed and sent to the proper election authority;~~

~~3. Information provided can also be used to update a voter registration record;~~

~~4. All declinations will remain confidential and may be used only for voter registration purposes; and~~

~~5. The particular driver license office in which the person applies to register to vote or updates a voter registration record will remain confidential and may be used only for voter registration purposes.~~

~~(b) Require a driver license examiner to inquire orally or, if the applicant is hearing impaired, inquire in writing whether the applicant wishes to register to vote or update a voter registration record during the completion of a driver license or identification card application, renewal, or change of address.~~

~~1. If the applicant chooses to register to vote or to update a voter registration record:~~

~~a. All applicable information received by the Department of Highway Safety and Motor Vehicles in the course of filling out the forms necessary under subsection (1) must be transferred to a voter registration application.~~

~~b. The additional necessary information must be obtained by the driver license examiner and must not duplicate any information already obtained while completing the forms required under subsection (1).~~

~~c. A voter registration application with all of the~~


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~~applicant's voter registration information required to establish the applicant's eligibility pursuant to s. 97.041 must be presented to the applicant to review and verify the voter registration information received and provide an electronic signature affirming the accuracy of the information provided.~~

~~2. If the applicant declines to register to vote, update the applicant's voter registration record, or change the applicant's address by either orally declining or by failing to sign the voter registration application, the Department of Highway Safety and Motor Vehicles must note such declination on its records and shall forward the declination to the statewide voter registration system.~~

~~(3) For the purpose of this section, the Department of Highway Safety and Motor Vehicles, with the approval of the Department of State, shall prescribe:~~

~~(a) A voter registration application that is the same in content, format, and size as the uniform statewide voter registration application prescribed under s. 97.052; and~~

(b) ~~A form that will inform applicants under subsection (1) of the information contained in paragraph (2)(a).~~

~~(4) The Department of Highway Safety and Motor Vehicles must~~ Electronically transmit the voter registration component of an applicant's driver license or identification card application to the Department of State ~~completed voter registration applications~~ within 24 hours after receipt ~~to the statewide voter registration system~~. Upon receipt of the voter registration component, the Department of State shall provide the information to the supervisor of the county in which the applicant is registering ~~Completed paper voter registration~~


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~~applications received by the Department of Highway Safety and Motor Vehicles shall be forwarded within 5 days after receipt to the supervisor of the county where the office that processed or received that application is located~~.

~~(5) The Department of Highway Safety and Motor Vehicles must send, with each driver license renewal extension application authorized pursuant to s. 322.18(8), a uniform statewide voter registration application, the voter registration application prescribed under paragraph (3)(a), or a voter registration application developed especially for the purposes of this subsection by the Department of Highway Safety and Motor Vehicles, with the approval of the Department of State, which must meet the requirements of s. 97.052.~~

(4) ~~(6)~~ A person providing voter registration services for a driver license office may not:

(a) Seek to influence an applicant’s political preference or party registration;

(b) Display any political preference or party allegiance;

(c) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(d) Disclose any applicant’s voter registration information except as needed for the administration of voter registration.

(5) ~~(7)~~ The Department of Highway Safety and Motor Vehicles shall collect data determined necessary by the Department of State for program evaluation and reporting to the Election Assistance Commission pursuant to federal law.

(6) ~~(8)~~ The Department of Highway Safety and Motor Vehicles shall ~~must~~ ensure that all voter registration services provided


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by driver license offices are in compliance with the Voting Rights Act of 1965.

(7) ~~(9)~~ The Department of Highway Safety and Motor Vehicles shall retain complete records of voter registration information received, processed, and submitted to the Department of State ~~statewide voter registration system~~ by the Department of Highway Safety and Motor Vehicles. The maintenance of such ~~These~~ records is ~~shall be~~ for the explicit purpose of supporting audit and accounting controls established to ensure accurate and complete electronic transmission of records between the Department of State ~~statewide voter registration system~~ and the Department of Highway Safety and Motor Vehicles.

(8) ~~(10)~~ The Department of State shall provide the Department of Highway Safety and Motor Vehicles with an electronic database of street addresses valid for use as the address of legal residence as required in s. 97.053(5). The Department of Highway Safety and Motor Vehicles shall compare the address provided by the applicant against the database of valid street addresses. If the address provided by the applicant does not match a valid street address in the database, the applicant will be asked to verify the address provided. The Department of Highway Safety and Motor Vehicles may ~~shall~~ not reject any application for voter registration for which a valid match cannot be made.

(9) ~~(11)~~ The Department of Highway Safety and Motor Vehicles shall enter into an agreement with the Department of State to match information in the statewide voter registration system with information in the database of the Department of Highway Safety and Motor Vehicles to the extent required to verify the



accuracy of the driver license number, Florida identification number, or last four digits of the social security number provided on applications for voter registration as required in s. 97.053.

(10) ~~(12)~~ The Department of Highway Safety and Motor Vehicles shall enter into an agreement with the Commissioner of Social Security as required by the Help America Vote Act of 2002 to verify the last four digits of the social security number provided in applications for voter registration as required in s. 97.053.

(11) The Department of Highway Safety and Motor Vehicles must assist the Department of State in regularly identifying changes in residence address on the driver license or identification card of a voter. The Department of State must report each such change to the appropriate supervisor of elections, who must change the voter's registration records in accordance with s. 98.065(4).

Section 5. Paragraph (b) of subsection (4) of section 98.045, Florida Statutes, is amended to read:

98.045 Administration of voter registration.—

(4) STATEWIDE ELECTRONIC DATABASE OF VALID RESIDENTIAL STREET ADDRESSES.—

(b) The department shall make the statewide database of valid street addresses available to the Department of Highway Safety and Motor Vehicles as provided in s. 97.057(8) ~~s. 97.057(10)~~. The Department of Highway Safety and Motor Vehicles shall use the database for purposes of validating the legal residential addresses provided in voter registration applications received by the Department of Highway Safety and

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Motor Vehicles.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 916 - 920
and insert:
revising procedures governing voter registration by the Department of Highway Safety and Motor Vehicles; providing that driver license or identification card applications, driver license or identification card renewal applications, and applications for changes of address for existing driver licenses or identification cards submitted to the department serve as voter registration applications; specifying that an applicant is deemed to have consented to the use of his or her signature for voter registration purposes, unless a declination is made; requiring specified applications to include a voter registration component, subject to approval by the Department of State; specifying requirements for the voter registration component; providing for the transmittal of voter registration information to the Department of State and supervisors of elections; requiring the Department of Highway Safety and Motor Vehicles to assist the Department of State in identifying certain residence address changes; requiring the Department of State to report such changes to supervisors of elections; amending s. 98.045, F.S.; conforming a cross-reference; amending s.

139050

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/20/2021	.	
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The Committee on Rules (Brandes) recommended the following:

Senate Amendment to Amendment (262784) (with title amendment)

Delete lines 185 - 195
and insert:
Section 4. Effective July 1, 2022, present subsections (4) through (12) of section 97.057, Florida Statutes, are redesignated as subsections (5) through (13), respectively, a new subsection (4) and subsection (14) are added to that section, and subsections (1) and (2) of that section are amended, to read:

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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 register to vote ~~or to update a voter registration record~~ to each individual who is not registered to vote in this state 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.

(2) The Department of Highway Safety and Motor Vehicles shall:

(a) Notify each individual subject to subsection (1), orally or in writing, that:

1. Information gathered for the completion of a driver license or identification card application, renewal, or change of address can be automatically transferred to a voter registration application;

2. If additional information and a signature are provided, the voter registration application will be completed and sent to the proper election authority;

3. ~~Information provided can also be used to update a voter registration record;~~

~~4.~~ All declinations will remain confidential and may be used only for voter registration purposes; and

4.~~5.~~ The particular driver license office in which the person applies to register to vote ~~or updates a voter~~



~~registration record~~ will remain confidential and may be used only for voter registration purposes.

(b) Require a driver license examiner to inquire orally or, if the applicant is hearing impaired, inquire in writing whether the applicant wishes to register to vote ~~or update a voter registration record~~ during the completion of a driver license or identification card application, renewal, or change of address.

1. If the applicant chooses to register to vote ~~or to update a voter registration record~~:

a. All applicable information received by the Department of Highway Safety and Motor Vehicles in the course of filling out the forms necessary under subsection (1) must be transferred to a voter registration application.

b. The additional necessary information must be obtained by the driver license examiner and must not duplicate any information already obtained while completing the forms required under subsection (1).

c. A voter registration application with all of the applicant's voter registration information required to establish the applicant's eligibility pursuant to s. 97.041 must be presented to the applicant to review and verify the voter registration information received and provide an electronic signature affirming the accuracy of the information provided.

2. If the applicant declines to register to vote~~, update the applicant's voter registration record, or change the applicant's address~~ by either orally declining or by failing to sign the voter registration application, the Department of Highway Safety and Motor Vehicles must note such declination on its records and shall forward the declination to the statewide



voter registration system.

(4) If a registered or preregistered voter submits a change of address to the Department of Highway Safety and Motor Vehicles, or supplies an address of legal residence as part of a driver license or identification card application or renewal which differs from the address in the person's voter registration record, the Department of Highway Safety and Motor Vehicles must electronically transmit within 24 hours after receipt the information necessary to update the person's voter registration record to the statewide voter registration system. The person's voter registration shall be updated in accordance with s. 98.065(4)(a).

(14) The Department of Highway Safety and Motor Vehicles and the Department of State shall prescribe a method by which a driver license office, upon obtaining a person's full name, date of birth, driver license or state identification number, address of legal residence, and mailing address if different from the address of legal residence, may immediately use the information in the statewide voter registration system to determine whether the person is registered or preregistered to vote in this state and, if so, whether the person is registered or preregistered at the address of legal residence the person provided to the Department of Highway Safety and Motor Vehicles.

Section 5. Effective July 1, 2022, paragraph (b) of subsection (4) of section 98.045, Florida Statutes, is amended to read:

98.045 Administration of voter registration.—

(4) STATEWIDE ELECTRONIC DATABASE OF VALID RESIDENTIAL STREET ADDRESSES.—

139050

(b) The department shall make the statewide database of valid street addresses available to the Department of Highway Safety and Motor Vehicles as provided in s. 97.057(11) ~~s. 97.057(10)~~. The Department of Highway Safety and Motor Vehicles shall use the database for purposes of validating the legal residential addresses provided in voter registration applications received by the Department of Highway Safety and Motor Vehicles.

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

And the title is amended as follows:

Delete lines 916 - 920

and insert:

revising procedures governing voter registration by the Department of Highway Safety and Motor Vehicles; modifying procedures for updates to voter registration records; providing for the electronic transmittal of change of address information in accordance with specified requirements; requiring the Department of Highway Safety and Motor Vehicles and the Department of State to prescribe a method to verify the registration or preregistration status of certain individuals; amending s. 98.045, F.S.; conforming a cross-reference; amending s.

396232

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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	.	
	.	

The Committee on Rules (Farmer and Mayfield) recommended the following:

Senate Amendment to Amendment (262784) (with title amendment)

Between lines 388 and 389
insert:

Section 9. Present paragraph (c) of subsection (1) of section 99.021, Florida Statutes, is redesignated as paragraph (d), and a new paragraph (c) is added to that subsection, to read:

99.021 Form of candidate oath.—



(1)

(c) In addition, any person seeking to qualify for office as a candidate with no party affiliation shall, at the time of subscribing to the oath or affirmation, state in writing that he or she is registered without any party affiliation and that he or she has not been a registered member of any political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.

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 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 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


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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); or if the candidate is running without party affiliation for a partisan office, the written statement required by s. 99.021(1)(c).

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 of elections prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

Section 11. Paragraph (b) of subsection (2) of section 99.063, Florida Statutes, is amended to read:

99.063 Candidates for Governor and Lieutenant Governor.—

(2) No later than 5 p.m. of the 9th day following the primary election, each designated candidate for Lieutenant Governor shall file with the Department of State:

(b) If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1)(b); or if the office sought is without party affiliation, the written statement required by s. 99.021(1)(c).

396232

69
70 ================ T I T L E A M E N D M E N T ================
71 And the title is amended as follows:
72 Delete line 946
73 and insert:
74 dashboard on its website using such data; amending s.
75 99.021, F.S.; requiring a person seeking to qualify
76 for office as a candidate with no party affiliation to
77 subscribe to an oath or affirmation that he or she is
78 registered without party affiliation and has not been
79 a registered member of a political party for a
80 specified timeframe; amending ss. 99.061 and 99.063,
81 F.S.; conforming provisions to changes made by the
82 act; creating s.

112822

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment to Amendment (262784) (with title amendment)

Between lines 388 and 389
insert:

Section 9. Paragraphs (b) and (c) of subsection (1) of section 101.043, Florida Statutes, are amended to read:

101.043 Identification required at polls.—

(1)

(b) If the picture identification does not contain the signature of the elector, an additional identification that

112822

provides the elector's signature shall be required. The address appearing on the identification presented by the elector may not be used as the basis to ~~confirm an elector's legal residence or otherwise~~ challenge an elector's legal residence. The elector shall sign his or her name in the space provided on the precinct register or on an electronic device provided for recording the elector's signature. The clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided on the precinct register or on an electronic device provided for that purpose and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector.

~~(c) When an elector presents his or her picture identification to the clerk or inspector and the elector's address on the picture identification matches the elector's address in the supervisor's records, the elector may not be asked to provide additional information or to recite his or her home address.~~

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

And the title is amended as follows:

Delete line 946

and insert:

dashboard on its website using such data; amending s. 101.043, F.S.; deleting a provision that prohibits the use of an address appearing on identification presented by an elector at the polls as a basis to confirm an elector's legal residence; deleting a provision that prohibits a clerk or an inspector from


112822

asking an elector to provide additional identification information under specified circumstances; creating s.

525218

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/20/2021	.	
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The Committee on Rules (Brandes) recommended the following:

Senate Amendment to Amendment (262784) (with title amendment)

Delete lines 463 - 497

and insert:

(4)(a) If any vote-by-mail ballot is physically damaged so that it cannot properly be counted by the voting system's automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. ~~Likewise,~~ A duplicate ballot must also ~~shall~~ be made of ~~a vote-by-mail ballot containing an~~

525218

~~overvoted race or~~ a marked vote-by-mail ballot in which every race is undervoted, including ~~which shall include~~ all valid votes as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4). Upon request, a physically present candidate, a political party official, a political committee official, or an authorized designee thereof, must be allowed to observe the duplication of ballots. All duplicate ballots shall be clearly labeled "duplicate," bear a serial number that ~~which~~ shall be recorded on the defective ballot, and be counted in lieu of the defective ballot. After a ballot has been duplicated, the defective ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied with the other ballots for that precinct.

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

And the title is amended as follows:

Delete lines 962 - 966

and insert:

by-mail ballots under certain circumstances; amending s. 101.591,

284554

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/20/2021	.	
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The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (262784) (with directory and title amendments)

Delete lines 661 - 666.

====== 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 538 - 539
and insert:
101.62, Florida Statutes, are amended to read:

284554

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 984 - 987
and insert:
to changes made by the act; amending s. 101.64, F.S.;
prohibiting the

742050

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/20/2021	.	
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The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (262784) (with directory and title amendments)

Delete lines 759 - 771.

====== 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 744
and insert:
Section 20. Paragraphs (a) and (e) of subsection (4)



742050

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 1009 - 1012
and insert:
surrounding a drop box; restricting

153722

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/20/2021	.	
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	.	

The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (262784) (with directory and title amendments)

Delete lines 772 - 776.

====== 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 744
and insert:
Section 20. Paragraphs (a) and (b) of subsection (4)

153722

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 1012 - 1015
and insert:
persons; providing for construction; amending s.

522990

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/20/2021	.	
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The Committee on Rules (Brandes) recommended the following:

Senate Amendment to Amendment (262784) (with title amendment)

Between lines 896 and 897

insert:

Section 23. Subsection (11) is added to section 106.08, Florida Statutes, to read:

106.08 Contributions; limitations on.—

(11)(a) A county, a municipality, or any other local governmental entity is expressly preempted from enacting or adopting:

522990

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 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.

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

And the title is amended as follows:

Delete line 1031

and insert:

providing a penalty; amending s. 106.08, F.S.; 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; providing effective dates.

869832

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/20/2021	.	
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The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (t) of subsection (2) of section 97.052, Florida Statutes, is amended to read:

97.052 Uniform statewide voter registration application.—

(2) The uniform statewide voter registration application must be designed to elicit the following information from the applicant:

(t)~~1.~~ Whether the applicant has ~~never~~ been convicted of a

869832

felony and, if convicted, has had his or her voting rights restored by including the statement "I affirm I have never been convicted of a felony or, if I have been, my rights relating to voting have been restored." and providing a box for the applicant to check to affirm the statement.

~~2. Whether the applicant has been convicted of a felony, and if convicted, has had his or her civil rights restored through executive clemency, by including the statement "If I have been convicted of a felony, I affirm my voting rights have been restored by the Board of Executive Clemency." and providing a box for the applicant to check to affirm the statement.~~

~~3. Whether the applicant has been convicted of a felony and, if convicted, has had his or her voting rights restored pursuant s. 4, Art. VI of the State Constitution, by including the statement "If I have been convicted of a felony, I affirm my voting rights have been restored pursuant to s. 4, Art. VI of the State Constitution upon the completion of all terms of my sentence, including parole or probation." and providing a box for the applicant to check to affirm the statement.~~

Section 2. Effective July 1, 2022, section 97.0525, Florida Statutes, is amended to read:

97.0525 Online voter registration.—

(1) ~~Beginning October 1, 2017,~~ An applicant may submit an online voter registration application using the procedures set forth in this section.

(2) The division shall establish and maintain a secure ~~Internet~~ website that safeguards an applicant's information to ensure data integrity and permits an applicant to:

(a) Submit a voter registration application, including


869832

first-time voter registration applications and updates to current voter registration records.

(b) Submit information necessary to establish an applicant's eligibility to vote, pursuant to s. 97.041, which includes the information required for the uniform statewide voter registration application pursuant to s. 97.052(2).

(c) Swear to the oath required pursuant to s. 97.051.

(3)(a) The online voter registration system must ~~shall~~ comply with the information technology security provisions of s. 282.318 and must ~~shall~~ use a unique identifier for each applicant to prevent unauthorized persons from altering a voter's registration information. For an applicant to update his or her voter registration record, he or she must provide his or her date of birth and either his or her Florida driver license number or the identification number from a Florida identification card issued under s. 322.051 or the last four digits of the his or her social security number if the applicant has not been issued a Florida driver license or identification card.

(b) The division shall conduct a comprehensive risk assessment of the online voter registration system ~~before making the system publicly available and~~ every 2 years ~~thereafter~~. The comprehensive risk assessment must comply with the risk assessment methodology developed by the Department of Management Services for identifying security risks, determining the magnitude of such risks, and identifying areas that require safeguards. In addition, the comprehensive risk assessment must incorporate all of the following:

1. Load testing and stress testing to ensure that the


869832

online voter registration system has sufficient capacity to accommodate foreseeable use, including during periods of high volume of website users in the week immediately preceding the book-closing deadline for an election.

2. Screening of computers and networks used to support the online voter registration system for malware and other vulnerabilities.

3. Evaluation of database infrastructure, including software and operating systems, in order to fortify defenses against cyberattacks.

4. Identification of any anticipated threats to the security and integrity of data collected, maintained, received, or transmitted by the online voter registration system.

(4)(a) In order to submit a voter registration application through the online voter registration system, an applicant must provide his or her Florida driver license number or the identification number from a Florida identification card issued under s. 322.051; or if an applicant has not been issued a Florida driver license or Florida identification card, he or she must provide the last four digits of the applicant's social security number.

(b)1. If the applicant has submitted his or her Florida driver license number or the identification number from a Florida identification card with a voter registration application, the online voter registration system shall compare the Florida driver license number or Florida identification number ~~submitted pursuant to s. 97.052(2)(n)~~ with information maintained by the Department of Highway Safety and Motor Vehicles to confirm that the name and date of birth on the


869832

application are consistent with the records of the Department of Highway Safety and Motor Vehicles.

2.~~(b)~~ If the applicant's name and date of birth are consistent with the records of the Department of Highway Safety and Motor Vehicles, the online voter registration system shall transmit, using the statewide voter registration system maintained pursuant to s. 98.035, the applicant's registration application, along with the digital signature of the applicant on file with the Department of Highway Safety and Motor Vehicles, to the supervisor of elections. The applicant's digital signature satisfies the signature requirement of s. 97.052(2)(q).

(c)1. If the applicant has submitted the last four digits of his or her social security number, the online voter registration system must verify the last four digits of the social security number in accordance with s. 97.053(6). The applicant must also provide an electronic image of his or her signature. The division shall adopt rules to authorize a secure method for an applicant to upload or otherwise provide a high-quality electronic image of his or her signature through the online voter registration system.

2. If the last four digits of the applicant's social security number are verified pursuant to s. 97.053(6), the online voter registration system shall transmit, using the statewide voter registration system maintained pursuant to s. 98.035, the applicant's registration application, along with the electronic image of the applicant's signature provided pursuant to subparagraph 1., to the supervisor of elections. The electronic image of the applicant's signature satisfies the



signature requirement of s. 97.052(2)(q).

(d) If the applicant's name and date of birth cannot be verified by the records of the Department of Highway Safety and Motor Vehicles, or if the last four digits of the applicant's social security number cannot be verified ~~applicant indicated that he or she has not been issued a Florida driver license or Florida identification card~~, the online voter registration system shall populate the applicant's information into a printable voter registration application pursuant to s. 97.052(2) and direct the applicant to print, sign, and date the application and deliver the application to the supervisor of elections for disposition pursuant to s. 97.073.

(5) Upon submission of a completed online voter registration application, the website must generate an immediate electronic confirmation that the supervisor of elections has received the application and provide instructions regarding the ability of a registrant to check the status of the application thereafter.

(6) Except as otherwise provided in this section, the supervisor of elections shall process the application pursuant to s. 97.053.

(7) The division shall develop an application programming interface that allows approved and registered third-party voter registration organizations to securely collect and submit voter registration applications electronically through the organization's application or website.

(8) The online voter registration system must conform to nationally accepted standards for accessibility for individuals with disabilities, including s. 508 of the Rehabilitation Act of


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1973, s. 255 of the Telecommunications Act of 1996, and the Web Content Accessibility Guidelines of the World Wide Web Consortium, to ensure equal access for voters with disabilities.

(9) ~~(8)~~ A legal distinction may not be made between online voter registration under this section and voter registration in person, by mail, or by other methods provided by general law.

Section 3. Paragraph (a) of subsection (5) of section 97.053, Florida Statutes, is amended to read:

97.053 Acceptance of voter registration applications.—

(5)(a) A voter registration application is complete if it contains the following information necessary to establish the applicant’s eligibility pursuant to s. 97.041, including:

1. The applicant’s name.

2. The applicant’s address of legal residence, including a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier, if appropriate. Failure to include a distinguishing apartment, suite, lot, room, or dormitory room or other identifier on a voter registration application does not impact a voter’s eligibility to register to vote or cast a ballot, and such an omission may not serve as the basis for a challenge to a voter’s eligibility or reason to not count a ballot.

3. The applicant’s date of birth.

4. A mark in the checkbox affirming that the applicant is a citizen of the United States.

5.a. The applicant’s current and valid Florida driver license number or the identification number from a Florida identification card issued under s. 322.051, or

b. If the applicant has not been issued a current and valid


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Florida driver license or a Florida identification card, the last four digits of the applicant's social security number.

In case an applicant has not been issued a current and valid Florida driver license, Florida identification card, or social security number, the applicant shall affirm this fact in the manner prescribed in the uniform statewide voter registration application.

6. A mark in the ~~applicable~~ checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, ~~has had his or her civil rights restored through executive clemency, or~~ has had his or her voting rights restored ~~pursuant to s. 4, Art. VI of the State Constitution~~.

7. A mark in the checkbox affirming that the applicant has not been adjudicated mentally incapacitated with respect to voting or that, if so adjudicated, has had his or her right to vote restored.

8. The original signature, an electronic image of a signature transmitted pursuant to s. 97.0525(4)(c), or a digital signature transmitted by the Department of Highway Safety and Motor Vehicles of the applicant swearing or affirming under the penalty for false swearing pursuant to s. 104.011 that the information contained in the registration application is true and subscribing to the oath required by s. 3, Art. VI of the State Constitution and s. 97.051.

Section 4. Effective July 1, 2022, present subsections (4) through (12) of section 97.057, Florida Statutes, are redesignated as subsections (5) through (13), respectively, a new subsection (4) and subsection (14) are added to that



section, and subsections (1) and (2) of that section are 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 register to vote ~~or to update a voter registration record~~ to each individual who is not registered to vote in this state 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.

(2) The Department of Highway Safety and Motor Vehicles shall:

(a) Notify each individual subject to subsection (1), orally or in writing, that:

1. Information gathered for the completion of a driver license or identification card application, renewal, or change of address can be automatically transferred to a voter registration application;

2. If additional information and a signature are provided, the voter registration application will be completed and sent to the proper election authority;

3. ~~Information provided can also be used to update a voter registration record;~~

~~4.~~ All declinations will remain confidential and may be used only for voter registration purposes; and


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4.~~5.~~ The particular driver license office in which the person applies to register to vote ~~or updates a voter registration record~~ will remain confidential and may be used only for voter registration purposes.

(b) Require a driver license examiner to inquire orally or, if the applicant is hearing impaired, inquire in writing whether the applicant wishes to register to vote ~~or update a voter registration record~~ during the completion of a driver license or identification card application, renewal, or change of address.

1. If the applicant chooses to register to vote ~~or to update a voter registration record~~:

a. All applicable information received by the Department of Highway Safety and Motor Vehicles in the course of filling out the forms necessary under subsection (1) must be transferred to a voter registration application.

b. The additional necessary information must be obtained by the driver license examiner and must not duplicate any information already obtained while completing the forms required under subsection (1).

c. A voter registration application with all of the applicant’s voter registration information required to establish the applicant’s eligibility pursuant to s. 97.041 must be presented to the applicant to review and verify the voter registration information received and provide an electronic signature affirming the accuracy of the information provided.

2. If the applicant declines to register to vote~~, update the applicant’s voter registration record, or change the applicant’s address~~ by either orally declining or by failing to sign the voter registration application, the Department of

869832

Highway Safety and Motor Vehicles must note such declination on its records and shall forward the declination to the statewide voter registration system.

(4) If a registered or preregistered voter submits a change of address to the Department of Highway Safety and Motor Vehicles, or supplies an address of legal residence as part of a driver license or identification card application or renewal which differs from the address in the person's voter registration record, the Department of Highway Safety and Motor Vehicles must electronically transmit within 24 hours after receipt the information necessary to update the person's voter registration record to the statewide voter registration system. The person's voter registration shall be updated in accordance with s. 98.065(4)(a).

(14) The Department of Highway Safety and Motor Vehicles and the Department of State shall prescribe a method by which a driver license office, upon obtaining a person's full name, date of birth, driver license or state identification number, address of legal residence, and mailing address if different from the address of legal residence, may immediately use the information in the statewide voter registration system to determine whether the person is registered or preregistered to vote in this state and, if so, whether the person is registered or preregistered at the address of legal residence the person provided to the Department of Highway Safety and Motor Vehicles.

Section 5. Effective July 1, 2022, present subsections (3) through (7) of section 97.0575, Florida Statutes, are redesignated as subsections (4) through (8), respectively, a new subsection (3) is added to that section, and paragraph (b) of



present subsection (3) of that section is amended, to read:

97.0575 Third-party voter registrations.—

(3) Upon application by a registered third-party voter registration organization and approval by the Secretary of State, a third-party voter registration organization may use the application programming interface established pursuant to s. 97.0525(7) to securely collect and submit voter registration applications electronically through the organization's application or website. The division shall adopt rules governing testing requirements and security standards for application programming interfaces. A third-party voter registration organization's application or website may not be denied so long as it satisfies all testing requirements and security standards prescribed by rule.

(4) ~~(3)~~

(b) A showing by the third-party voter registration organization that the failure to deliver the voter registration application within the required timeframe is based upon force majeure, a network outage, or impossibility of performance shall be an affirmative defense to a violation of this subsection. The secretary may waive the fines described in this subsection upon a showing that the failure to deliver the voter registration application promptly is based upon force majeure, a network outage, or impossibility of performance.

Section 6. Paragraphs (d), (e), and (f) of subsection (1) of section 97.0585, Florida Statutes, are amended to read:

97.0585 Public records exemption; information regarding voters and voter registration; confidentiality.—

(1) The following information held by an agency, as defined


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in s. 119.011, and obtained for the purpose of voter registration is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may be used only for purposes of voter registration:

(d) ~~Information related to a voter registration applicant's or voter's prior felony conviction and whether such person has had his or her voting rights restored by the Board of Executive Clemency or pursuant to s. 4, Art. VI of the State Constitution.~~

~~(e)~~ All information concerning preregistered voter registration applicants who are 16 or 17 years of age.

(e)~~(f)~~ Paragraph (d) is ~~Paragraphs (d) and (e) are~~ subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 7. Effective July 1, 2022, paragraph (a) of subsection (1) of section 97.1031, Florida Statutes, is amended to read:

97.1031 Notice of change of residence, change of name, or change of party affiliation.—

(1)(a) Not including changes of address processed by the Department of Highway Safety and Motor Vehicles as provided in s. 97.057(4) ~~when an elector changes his or her residence address~~, the elector must notify the supervisor of elections when changing his or her residence address. Except as provided in paragraph (b) and s. 97.057(4), an address change must be submitted using a voter registration application.

Section 8. Effective July 1, 2022, paragraph (b) of subsection (4) of section 98.045, Florida Statutes, is amended


869832

to read:

98.045 Administration of voter registration.—

(4) STATEWIDE ELECTRONIC DATABASE OF VALID RESIDENTIAL STREET ADDRESSES.—

(b) The department shall make the statewide database of valid street addresses available to the Department of Highway Safety and Motor Vehicles as provided in s. 97.057(11) ~~s. 97.057(10)~~. The Department of Highway Safety and Motor Vehicles shall use the database for purposes of validating the legal residential addresses provided in voter registration applications received by the Department of Highway Safety and Motor Vehicles.

Section 9. Effective July 1, 2022, paragraph (a) of subsection (4) and subsection (5) of section 98.065, Florida Statutes, are amended to read:

98.065 Registration list maintenance programs.—

(4)(a) If the supervisor receives change-of-address information pursuant to the activities conducted in subsection (2), from jury notices signed by the voter and returned to the courts, from the Department of Highway Safety and Motor Vehicles pursuant to s. 97.057(4), or from other sources which indicates that a registered voter's legal residence might have changed to another location within the state, the supervisor must change the registration records to reflect the new address and must send the voter an address change notice as provided in s. 98.0655(2).

(5) Not including address changes processed in accordance with s. 97.057(4), a notice may not be issued pursuant to this section and a voter's name may not be removed from the statewide



voter registration system later than 90 days before ~~prior to~~ the date of a federal election. However, this section does not preclude the removal of the name of a voter from the statewide voter registration system at any time upon the voter's written request, by reason of the voter's death, or upon a determination of the voter's ineligibility as provided in s. 98.075(7).

Section 10. Effective July 1, 2022, subsection (2) of section 98.0655, Florida Statutes, is amended to read:

98.0655 Registration list maintenance forms.—The department shall prescribe registration list maintenance forms to be used by the supervisors which must include:

(2) An address change notice that must be sent to the newly recorded address of legal residence by forwardable mail, including a postage prepaid, preaddressed return form with which the voter may verify or correct the voter's new address information. If the voter returns the address change notice and indicates that the newly recorded address of legal residence is incorrect, the supervisor must correct the voter's address information in his or her voter registration record to reflect the correct address of legal residence.

Section 11. Present subsections (4) and (5) of section 98.0981, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and paragraph (d) is added to subsection (2) and a new subsection (4) is added to that section, to read:

98.0981 Reports; voting history; statewide voter registration system information; precinct-level election results; book closing statistics; live turnout data.—

(2) PRECINCT-LEVEL ELECTION RESULTS.—

(d) Supervisors of elections shall publish the precinct-


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level election results compiled pursuant to this subsection on their respective websites as the data becomes available. Supervisors must post the unofficial precinct-level results until the certified results are available. The webpage including the data must include a clear and conspicuous disclaimer in bold type stating at what time the precinct-level data was aggregated and that the data is subject to change.

(4) LIVE TURNOUT DATA.—Supervisors of elections shall make live voter turnout data on election day, updated in real time, available on their respective websites. The supervisors shall transmit the live turnout data to the division, which must create and maintain a real-time statewide turnout dashboard that is available for viewing by the public on its website as the data becomes available.

Section 12. Paragraphs (b) and (c) of subsection (1) of section 101.043, Florida Statutes, are amended to read:

101.043 Identification required at polls.—

(1)

(b) If the picture identification does not contain the signature of the elector, an additional identification that provides the elector’s signature shall be required. The address appearing on the identification presented by the elector may not be used as the basis to ~~confirm an elector’s legal residence or otherwise~~ challenge an elector’s legal residence. The elector shall sign his or her name in the space provided on the precinct register or on an electronic device provided for recording the elector’s signature. The clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided on


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the precinct register or on an electronic device provided for that purpose and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector.

~~(c) When an elector presents his or her picture identification to the clerk or inspector and the elector's address on the picture identification matches the elector's address in the supervisor's records, the elector may not be asked to provide additional information or to recite his or her home address.~~

Section 13. Subsections (2) and (5) of section 101.051, Florida Statutes, are amended to read:

101.051 Electors seeking assistance in casting ballots; oath to be executed; forms to be furnished.—

(2) It is unlawful for any person to be in the voting booth with any elector except as provided in subsection (1). A person at a polling place or an early voting site, or within 150 ~~100~~ feet of the entrance of a polling place or an early voting site, may not solicit any elector in an effort to provide assistance to vote pursuant to subsection (1). Any person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) If an elector needing assistance requests that a person other than an election official provide him or her with assistance in voting, the clerk or one of the inspectors shall require the person providing assistance to take the following oath:

DECLARATION TO PROVIDE ASSISTANCE

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State of Florida
County of ....
Date ....
Precinct ....

I, ...(Print name)..., have been requested by ...(print name of elector needing assistance)... to provide him or her with assistance to vote. I swear or affirm that I am not the employer, an agent of the employer, or an officer or agent of the union of the voter and that I have not solicited this voter at the polling place or early voting site or within 150 ~~100~~ feet of such locations in an effort to provide assistance.

...(Signature of assistor)...

Sworn and subscribed to before me this .... day of ...., ...(year)....

...(Signature of Official Administering Oath)...

Section 14. Subsections (1), (2), and (5) of section 101.131, Florida Statutes, are amended to read:

101.131 Watchers at polls.—

(1) Each political party and each candidate may have one watcher in each polling room or early voting area at any one time during the election. A political committee formed for the specific purpose of expressly advocating the passage or defeat of an issue on the ballot may have one watcher for each polling room or early voting area at any one time during the election. A


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~~No~~ watcher may not ~~shall be permitted to~~ come closer to the officials' table or the voting booths than is reasonably necessary to properly perform his or her functions, but is ~~each shall be~~ allowed within the polling room or early voting area to watch and observe the conduct of electors and officials. The poll watchers shall furnish their own materials and necessities and may ~~shall~~ not obstruct the orderly conduct of any election. The poll watchers shall pose any questions regarding polling place procedures directly to the clerk for resolution. They may not interact with voters in the polling place, polling room, early voting area, or no-solicitation zone prescribed in s. 102.031. Each poll watcher must either ~~shall~~ be a qualified and registered elector of the county in which he or she serves or a member in good standing of The Florida Bar and a qualified and registered elector of this state.

(2) Each party, each political committee, and each candidate requesting to have poll watchers shall designate, in writing to the supervisors of elections, on a form prescribed by the division, before noon of the second Tuesday preceding the election poll watchers for each polling room on election day. Designations of poll watchers for early voting areas must ~~shall~~ be submitted in writing to the supervisor ~~of elections~~, on a form prescribed by the division, before noon at least 14 days before early voting begins. If the deadline for submitting the designation form falls on a Saturday, Sunday, or holiday, the form must be submitted before noon on the next business day. The poll watchers for polling rooms must ~~shall~~ be approved by the supervisor ~~of elections~~ on or before the Tuesday before the election. Poll watchers for early voting areas must ~~shall~~ be


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approved by the supervisor ~~of elections~~ no later than 7 days before early voting begins. The supervisor shall furnish to each election board a list of the poll watchers designated and approved for such polling rooms or early voting areas. Designation of poll watchers shall be made by the chair of the county executive committee of a political party, the chair of a political committee, or the candidate requesting to have poll watchers.

(5) The supervisor ~~of elections~~ shall provide to each designated poll watcher an~~, no later than 7 days before early voting begins, a poll watcher~~ identification badge that identifies the poll watcher by name. Each poll watcher must wear his or her identification badge while in the polling room or early voting area.

Section 15. Paragraph (a) of subsection (4) of section 101.5614, Florida Statutes, is amended to read:

101.5614 Canvass of returns.—

(4)(a) If any vote-by-mail ballot is physically damaged so that it cannot properly be counted by the voting system's automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. ~~Likewise,~~ A duplicate ballot must also ~~shall~~ be made of ~~a vote-by-mail ballot containing an overvoted race or~~ a marked vote-by-mail ballot in which every race is undervoted, including ~~which shall include~~ all valid votes as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4). Upon request, a physically present candidate, a political party official, a political committee official, or an authorized designee thereof,


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must be allowed to observe the duplication of ballots. All duplicate ballots shall be clearly labeled "duplicate," bear a serial number that ~~which~~ shall be recorded on the defective ballot, and be counted in lieu of the defective ballot. After a ballot has been duplicated, the defective ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied with the other ballots for that precinct.

Section 16. Section 101.5617, Florida Statutes, is created to read:

101.5617 Electronic poll book approval.—

(1) Beginning with the 2022 primary election and each election thereafter, an electronic poll book may not be used as a precinct register unless it is approved for such use by the department.

(2) The department shall adopt rules for the approval of an electronic poll book which provide that the electronic poll book, at a minimum, must:

(a) Be secure from unauthorized intrusion.

(b) Contain all information required to be included in a precinct register under s. 98.461(2).

(c) Be compatible with the statewide voter registration system and securely transmit changes to a voter's voting history to the voter registration system.

(d) Be compatible with a form or device provided by the supervisor to capture an elector's signature in accordance with s. 101.5608(1).

Section 17. Subsection (1) of section 101.6103, Florida Statutes, is amended to read:

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101.6103 Mail ballot election procedure.—

(1) Except as otherwise provided in subsection (7), the supervisor of elections shall mail all official ballots with a secrecy envelope, a return mailing envelope, and instructions sufficient to describe the voting process to each elector entitled to vote in the election between ~~not sooner than~~ the 40th and 33rd days ~~20th day~~ before the election but no ~~and not~~ later than the 10th day before the date of the election. All such ballots shall be mailed by first-class mail. Ballots shall be addressed to each elector at the address appearing in the registration records and placed in an envelope that ~~which~~ is prominently marked "Do Not Forward."

Section 18. Paragraph (e) of subsection (4) of section 102.031, Florida Statutes, is amended 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 by any candidate or a candidate's designee outside of the no-solicitation zone during polling hours.

Section 19. Subsection (4) of section 103.091, Florida Statutes, is amended to read:

103.091 Political parties.—

(4) Any political party other than a minor political party may by rule provide for the membership of its state or county executive committee to be elected for 4-year terms at the


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primary election in each year a presidential election is held. The terms begin ~~shall commence~~ on the first day of the month following each presidential general election,~~;~~ but the names of candidates for political party offices may ~~shall~~ not be placed on the ballot at any other election. The results of such election shall be determined by a plurality of the votes cast. In such event, electors seeking to qualify for such office shall do so with the Department of State or supervisor of elections no ~~not~~ earlier than noon of the 71st day, or later than noon of the 67th day, preceding the primary election. Notwithstanding the qualifying period prescribed in this subsection, a qualifying office may accept and hold qualifying papers submitted no earlier than 14 days before the beginning of the qualifying period, to be processed and filed during the qualifying period. The outgoing chair of each county executive committee shall, within 30 days after the committee members take office, hold an organizational meeting of all newly elected members for the purpose of electing officers. The chair of each state executive committee shall, within 60 days after the committee members take office, hold an organizational meeting of all newly elected members for the purpose of electing officers.

Section 20. Paragraph (a) of subsection (1) of section 106.08, Florida Statutes, is amended, and subsection (11) is added to that section, to read:

106.08 Contributions; limitations on; preemption.—

(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

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a justice of the Supreme Court, $3,000. 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.

Effective January 1, 2025, and every 5 years thereafter, the division shall adjust the contribution limits established in subparagraphs 1. and 2. in an amount equal to the total of the annual increases for the preceding 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The division shall round each adjusted amount to the nearest hundredth. Following each adjustment, the division shall publish the revised contribution limits on its website.

(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 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


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enacted or adopted by a county, a municipality, or any other local governmental entity which is in conflict with this subsection is void.

Section 21. Except as otherwise expressly provided in this act, 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 elections; amending s. 97.052, F.S.; revising requirements for the uniform statewide voter registration application; amending s. 97.0525, F.S.; authorizing an applicant to submit an online voter registration application using the last four digits of the applicant's social security number; specifying additional requirements for comprehensive risk assessments of the online voter registration system; prescribing procedures for applicants who submit an application using the last four digits of their social security numbers; requiring the Division of Elections to adopt certain rules governing electronic images of applicants' signatures; requiring the online voter registration system to populate a printable application with an applicant's information if the last four digits of his or her social security number cannot be verified; requiring the division to develop an application programming interface for use


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by third-party voter registration organizations; amending s. 97.053, F.S.; revising requirements governing the acceptance of voter registration applications; amending s. 97.057, F.S.; revising procedures governing voter registration by the Department of Highway Safety and Motor Vehicles; modifying procedures for updates to voter registration records; providing for the electronic transmittal of change of address information in accordance with specified requirements; requiring the Department of Highway Safety and Motor Vehicles and the Department of State to prescribe a method to verify the registration or preregistration status of certain individuals; amending s. 97.0575, F.S.; authorizing third-party voter registration organizations to submit voter registration applications electronically; requiring the division to adopt rules governing testing and security requirements for application programming interfaces used by such organizations; prohibiting the denial of an organization’s application or website if testing and security requirements are met; entitling an organization to an affirmative defense for failure to timely deliver voter registration applications if a network outage occurs; amending s. 97.0585, F.S.; deleting an exemption from public records requirements for information related to a voter registration applicant’s or voter’s prior felony conviction and his or her restoration of voting rights to conform to



737 changes made by the act; amending ss. 97.1031, 98.045,
738 and 98.065, F.S.; conforming provisions and a cross-
739 reference to changes made by the act; amending s.
740 98.0655, F.S.; requiring the supervisor to update a
741 voter's voter registration record if a voter returns
742 an address change notice due to an incorrect newly
743 recorded address of legal residence; amending s.
744 98.0981, F.S.; requiring supervisors to post precinct-
745 level election results on their websites with a
746 specified disclaimer; requiring supervisors to post
747 live turnout data for election day voting on their
748 websites; requiring supervisors to transmit live
749 turnout data to the Division of Elections; directing
750 the division to create and maintain a statewide voter
751 turnout dashboard on its website using such data;
752 amending s. 101.043, F.S.; deleting a provision that
753 prohibits the use of an address appearing on
754 identification presented by an elector at the polls as
755 a basis to confirm an elector's legal residence;
756 deleting a provision that prohibits a clerk or an
757 inspector from asking an elector to provide additional
758 identification information under specified
759 circumstances; amending s. 101.051, F.S.; increasing
760 the no-solicitation zone surrounding the entrance of a
761 polling place or an early voting site wherein certain
762 activities are prohibited; conforming a provision;
763 amending s. 101.131, F.S.; modifying restrictions
764 governing poll watcher interaction with voters;
765 revising requirements for eligibility to serve as a


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poll watcher; revising certain deadlines for the submission of poll watcher designation forms; removing the requirement that the supervisor of elections provide poll watcher identification badges in advance of the election; amending s. 101.5614, F.S.; removing the requirement that duplicate ballots be made of vote-by-mail ballots containing overvoted races; creating s. 101.5617, F.S.; prohibiting the use of electronic poll books that are not approved by the Department of State, beginning with the 2022 primary election; requiring the department to adopt rules that meet certain minimum criteria; amending s. 101.6103, F.S.; revising the timeframe in which the supervisor of elections must mail ballots in elections conducted under the Mail Ballot Election Act; amending s. 102.031, F.S.; prohibiting owners, operators, or lessees of property on which polling places or early voting sites are located from prohibiting the solicitation of voters by a candidate or a candidate's designee outside the no-solicitation zone during polling hours; amending s. 103.091, F.S.; authorizing a qualifying office to accept and hold qualifying papers for candidates for political party executive committees before the beginning of the qualifying period; amending s. 106.08, F.S.; requiring the Division of Elections to periodically adjust campaign contribution limits for inflation; requiring the division to publish the adjusted limits on its website; preempting counties, municipalities, and



795 other local governmental entities from enacting or
796 adopting any limitation or restriction involving
797 certain contributions and expenditures, or
798 establishing contribution limits different than those
799 established in the Florida Election Code; providing
800 applicability; providing effective dates.

539276

LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Thurston) recommended the following:

Senate Amendment (with title amendment)

Before line 42

insert:

Section 1. Section 97.057, Florida Statutes, is amended to read:

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

(1) Each of the following serves as an application ~~The Department of Highway Safety and Motor Vehicles shall provide the opportunity~~ to register to vote or to update a voter

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registration record when submitted to the Department of Highway Safety and Motor Vehicles ~~to each individual who comes to an office of that department to~~:

(a) An application ~~Apply~~ for a driver license or a renewal of ~~renew~~ a driver license;

(b) An application ~~Apply~~ for an identification card pursuant to chapter 322 or a renewal of ~~renew~~ an identification card ~~pursuant to chapter 322~~; or

(c) An application for a change of ~~an~~ address on an existing driver license or identification card.

Unless the applicant declines to register to vote or to update his or her voter registration record, he or she is deemed to have consented to the use of the signature from his or her driver license or identification card application for voter registration purposes.

(2) An application for a driver license or an identification card must include a voter registration component. The voter registration component must be approved by the Department of State. The voter registration component of a driver license or identification card application must contain:

(a) The minimum amount of information necessary to prevent duplicate voter registrations and preserve the ability of the department and supervisors of elections to assess the eligibility of the applicant and administer voter registration and other provisions of this code.

(b) A statement setting forth voting eligibility requirements.

(c) An explanation that the applicant is consenting, for


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voter registration purposes, to the use of his or her signature from the applicant's driver license or identification card application. By consenting to the use of his or her signature, the applicant is deemed to have subscribed to the oath required by s. 3, Art. VI of the State Constitution and s. 97.051 and to have sworn and affirmed that the voter registration information contained in the application is true under penalty for false swearing pursuant to s. 104.011.

(d) An option that allows the applicant to choose or update a party affiliation; otherwise, an applicant who is initially registering to vote and does not exercise such option shall be registered without party affiliation in accordance with s. 97.053(5)(b).

(e) An option that allows the applicant to decline to register to vote or to decline to update his or her voter registration record. The Department of Highway Safety and Motor Vehicles shall note any such declination in its records and forward the declination to the Department of State. Any declination may be used only for voter registration purposes and is confidential and exempt from public records requirements as provided in s. 97.0585.

(3) The Department of Highway Safety and Motor Vehicles shall:

(a) Develop a voter registration component for applications which meets the requirements set forth in subsection (2). ~~Notify each individual, orally or in writing, that:~~

~~1. Information gathered for the completion of a driver license or identification card application, renewal, or change of address can be automatically transferred to a voter~~


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~~registration application;~~

~~2. If additional information and a signature are provided, the voter registration application will be completed and sent to the proper election authority;~~

~~3. Information provided can also be used to update a voter registration record;~~

~~4. All declinations will remain confidential and may be used only for voter registration purposes; and~~

~~5. The particular driver license office in which the person applies to register to vote or updates a voter registration record will remain confidential and may be used only for voter registration purposes.~~

~~(b) Require a driver license examiner to inquire orally or, if the applicant is hearing impaired, inquire in writing whether the applicant wishes to register to vote or update a voter registration record during the completion of a driver license or identification card application, renewal, or change of address.~~

~~1. If the applicant chooses to register to vote or to update a voter registration record:~~

~~a. All applicable information received by the Department of Highway Safety and Motor Vehicles in the course of filling out the forms necessary under subsection (1) must be transferred to a voter registration application.~~

~~b. The additional necessary information must be obtained by the driver license examiner and must not duplicate any information already obtained while completing the forms required under subsection (1).~~

~~c. A voter registration application with all of the applicant's voter registration information required to establish~~


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~~the applicant's eligibility pursuant to s. 97.041 must be presented to the applicant to review and verify the voter registration information received and provide an electronic signature affirming the accuracy of the information provided.~~

~~2. If the applicant declines to register to vote, update the applicant's voter registration record, or change the applicant's address by either orally declining or by failing to sign the voter registration application, the Department of Highway Safety and Motor Vehicles must note such declination on its records and shall forward the declination to the statewide voter registration system.~~

~~(3) For the purpose of this section, the Department of Highway Safety and Motor Vehicles, with the approval of the Department of State, shall prescribe:~~

~~(a) A voter registration application that is the same in content, format, and size as the uniform statewide voter registration application prescribed under s. 97.052; and~~

(b) ~~A form that will inform applicants under subsection (1) of the information contained in paragraph (2)(a).~~

~~(4) The Department of Highway Safety and Motor Vehicles must~~ Electronically transmit the voter registration component of an applicant's driver license or identification card application to the Department of State ~~completed voter registration applications~~ within 24 hours after receipt ~~to the statewide voter registration system~~. Upon receipt of the voter registration component, the Department of State shall provide the information to the supervisor of the county in which the applicant is registering ~~Completed paper voter registration applications received by the Department of Highway Safety and~~



~~Motor Vehicles shall be forwarded within 5 days after receipt to the supervisor of the county where the office that processed or received that application is located~~.

~~(5) The Department of Highway Safety and Motor Vehicles must send, with each driver license renewal extension application authorized pursuant to s. 322.18(8), a uniform statewide voter registration application, the voter registration application prescribed under paragraph (3)(a), or a voter registration application developed especially for the purposes of this subsection by the Department of Highway Safety and Motor Vehicles, with the approval of the Department of State, which must meet the requirements of s. 97.052.~~

(4)~~(6)~~ A person providing voter registration services for a driver license office may not:

(a) Seek to influence an applicant's political preference or party registration;

(b) Display any political preference or party allegiance;

(c) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(d) Disclose any applicant's voter registration information except as needed for the administration of voter registration.

(5)~~(7)~~ The Department of Highway Safety and Motor Vehicles shall collect data determined necessary by the Department of State for program evaluation and reporting to the Election Assistance Commission pursuant to federal law.

(6)~~(8)~~ The Department of Highway Safety and Motor Vehicles shall ~~must~~ ensure that all voter registration services provided by driver license offices are in compliance with the Voting



Rights Act of 1965.

(7)~~(9)~~ The Department of Highway Safety and Motor Vehicles shall retain complete records of voter registration information received, processed, and submitted to the Department of State ~~statewide voter registration system~~ by the Department of Highway Safety and Motor Vehicles. The maintenance of such ~~These~~ records is ~~shall be~~ for the explicit purpose of supporting audit and accounting controls established to ensure accurate and complete electronic transmission of records between the Department of State ~~statewide voter registration system~~ and the Department of Highway Safety and Motor Vehicles.

(8)~~(10)~~ The Department of State shall provide the Department of Highway Safety and Motor Vehicles with an electronic database of street addresses valid for use as the address of legal residence as required in s. 97.053(5). The Department of Highway Safety and Motor Vehicles shall compare the address provided by the applicant against the database of valid street addresses. If the address provided by the applicant does not match a valid street address in the database, the applicant will be asked to verify the address provided. The Department of Highway Safety and Motor Vehicles may ~~shall~~ not reject any application for voter registration for which a valid match cannot be made.

(9)~~(11)~~ The Department of Highway Safety and Motor Vehicles shall enter into an agreement with the Department of State to match information in the statewide voter registration system with information in the database of the Department of Highway Safety and Motor Vehicles to the extent required to verify the accuracy of the driver license number, Florida identification



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number, or last four digits of the social security number provided on applications for voter registration as required in s. 97.053.

(10)~~(12)~~ The Department of Highway Safety and Motor Vehicles shall enter into an agreement with the Commissioner of Social Security as required by the Help America Vote Act of 2002 to verify the last four digits of the social security number provided in applications for voter registration as required in s. 97.053.

Section 2. Paragraph (b) of subsection (4) of section 98.045, Florida Statutes, is amended to read:

98.045 Administration of voter registration.—

(4) STATEWIDE ELECTRONIC DATABASE OF VALID RESIDENTIAL STREET ADDRESSES.—

(b) The department shall make the statewide database of valid street addresses available to the Department of Highway Safety and Motor Vehicles as provided in s. 97.057(8) ~~s. 97.057(10)~~. The Department of Highway Safety and Motor Vehicles shall use the database for purposes of validating the legal residential addresses provided in voter registration applications received by the Department of Highway Safety and Motor Vehicles.

========== 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:

s. 97.057, F.S.; revising procedures governing voter registration by the Department of Highway Safety and


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Motor Vehicles; providing that driver license or identification card applications, driver license or identification card renewal applications, and applications for changes of address for existing driver licenses or identification cards submitted to the department serve as voter registration applications; specifying that an applicant is deemed to have consented to the use of his or her signature for voter registration purposes, unless a declination is made; requiring specified applications to include a voter registration component, subject to approval by the Department of State; specifying requirements for the voter registration component; providing for the transmittal of voter registration information to the Department of State and supervisors of elections; amending s. 98.045, F.S.; conforming a cross-reference; amending

143600

LEGISLATIVE ACTION

Senate . House

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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

And the title is amended as follows:

Delete lines 6 - 8

and insert:

general election; prohibiting the

237818

LEGISLATIVE ACTION

Senate . 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

And the title is amended as follows:

Delete lines 8 - 12

and insert:

regarding the requesting elector; requiring supervisors of elections to

955778

LEGISLATIVE ACTION

Senate . 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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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 of the elector on the voter's certificate or on the vote-by-mail ballot cure affidavit as provided in subsection (4) with the most recent signature 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 on the voter's certificate or the cure affidavit matches the elector's signature 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 that does not match the elector's signature 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 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 . House

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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 . 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

585-02681-21 202190c2

A bill to be entitled

An act relating to election administration; amending s. 101.62, F.S.; 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 supervisor from mailing, delivering, or otherwise providing vote-by-mail ballots to an elector, or a designee thereof, unless a request has been made for such ballot; requiring supervisors of elections to record whether a voter's certificate on a vote-by-mail ballot has a mismatched signature; restricting who an elector may designate to pick up a vote-by-mail ballot to conform to changes made by the act; amending s. 101.64, F.S.; 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; amending s. 101.65, F.S.; revising instructions to absent electors to conform to changes made by the act; 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. 101.69, F.S.; prohibiting the use of drop boxes for

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585-02681-21 202190c2

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

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

Section 1. Paragraphs (a) and (b) of subsection (1), subsection (3), and paragraph (c) of subsection (4) of section 101.62, Florida Statutes, are amended, and paragraph (d) is added to subsection (1) of 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 is ~~shall be~~ deemed sufficient to receive a vote-by-mail ballot for all elections through the end of the calendar year of the next ~~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.

(b) The supervisor may accept a written or telephonic 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

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 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 date the ballot was received by the supervisor~~;~~ 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

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

(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.

4. By delivery to a designee on election day or up to 9 days before ~~prior to~~ the day of an election. Any elector may designate in writing an immediate family member ~~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 elector's ~~designee's~~ spouse or the parent, child, grandparent, or sibling of the elector ~~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 that ~~shall indicate if~~ the elector is a member of the designee's immediate family and indicate~~, 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 delivery of the vote-by-mail ballot. The department shall adopt a rule providing for the form of the affidavit.

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

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

(6) The outside of the 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.

Section 3. 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 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 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 on the line above (Voter's Signature). A vote-by-mail ballot will be considered illegal and not be counted if the signature on the voter's certificate does not match the signature on record. The signature on 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 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 4. 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 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 of the elector on the

voter's certificate or on the vote-by-mail ballot cure affidavit as provided in subsection (4) with the most recent signature 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 on the voter's certificate or the cure affidavit matches the elector's signature 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 that does not match the elector's signature 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 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 illegal." The cure affidavit, if applicable, the envelope, and the ballot therein shall be preserved in the manner that official ballots are preserved.

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

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

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

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

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

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

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

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

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

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DENNIS BAXLEY
12th District

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*

March 10, 2021

The Honorable Chair Kathleen Passidomo
400 Senate Office Building
Tallahassee, FL 32399

Dear Chair Passidomo,

I would like to request that CS/CS/SB 90 Election Administration be heard in the next Rules Committee meeting.

CS/CS/SB 90 includes provisions expanding the timeframe for canvassing vote-by-mail ballots and providing that one vote-by-mail ballot request is good for all elections through the next regularly scheduled general election.

The bill also improves the security and integrity of election administration by prohibiting ballot harvesting, use of drop boxes, providing a vote-by-mail ballot without a request, and display of partisan information on the outside of vote-by-mail ballots and envelopes.

CS/CS/SB 90 requires a voter's signature on a voter's certificate or ballot cure affidavit to match the most recent one on file. The bill also requires an additional identifier number when a written or telephonic request is made for a vote-by-mail ballot, and it requires supervisors of elections to record instances in which a signature received on a completed ballot does not match the one on file.

Thank you for your favorable consideration.

Onward & Upward,

Senator Dennis Baxley
Senate District 12

DKB/dd

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

By the Committee on Community Affairs; and Senator Burgess

578-03605-21 2021102c1

A bill to be entitled

An act relating to matters of great governmental concern; creating s. 16.65, F.S.; providing legislative findings; defining terms; authorizing the Legislature to declare, by concurrent resolution, that a circumstance or conduct that has caused substantial economic loss or other similar harm to governmental entities in at least a specified number of counties is a matter of great governmental concern; providing that the Attorney General has the sole authority to file certain civil proceedings; authorizing the Attorney General to investigate certain matters; authorizing the Attorney General to institute or intervene in certain civil proceedings; authorizing the Attorney General to take certain actions in certain civil proceedings; providing that any award, excluding attorney fees, are subject to full appropriation by the Legislature; prohibiting such award to be appropriated, expended, or encumbered by the Attorney General or any settlement agreement; providing that a declaration by the Legislature that a matter is a matter of great governmental concern abates or stays certain civil proceedings; providing for the tolling of certain statutes of limitations; requiring certain entities to provide notice to the Attorney General; providing that certain settlements and resolutions are void; providing that the Department of Legal Affairs is exempt from certain requirements related to protests to contract solicitation or award;

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578-03605-21 2021102c1

authorizing a governmental entity or its attorneys to apply to a court for recovery of attorney fees and costs; requiring a court to consider certain factors in calculating the amount of attorney fees; providing an effective date.

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

Section 1. Section 16.65, Florida Statutes, is created to read:

16.65 Matters of great governmental concern.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Several events have led to extensive litigation by multiple governmental entities in this state arising from the same facts, circumstances, or conduct or similar causes of action. This litigation has been difficult to resolve in a timely and expeditious manner because of the number and different types of governmental entities involved.

(b) It is in the interest of this state that a single official represent governmental entities in civil proceedings in matters of great governmental concern to maximize recoveries and minimize costs.

(c) The Attorney General is the state's chief legal officer and is the official who should be responsible for the prosecution, management, and coordination of any civil proceedings brought by governmental entities in matters of great governmental concern.

(d) The failure to have a single official responsible in matters of great governmental concern undermines fairness and

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efficiency and risks inconsistent or incongruent results, which will delay recovery and undermine governmental entities' ability to respond to such matters of great governmental concern.

(2) DEFINITIONS.—As used in this section, unless the context otherwise requires, the term:

(a) "Governmental entity" means the state and any department, agency, political subdivision, unit of government, or school district thereof.

(b) "Matter of great governmental concern" means any fact, circumstance, or conduct that has caused substantial economic loss or other harm of a similar nature to governmental entities in 15 or more counties in this state.

(3) AUTHORITY.—

(a) The Legislature by concurrent resolution may declare a matter to be a matter of great governmental concern. Upon such declaration, the Attorney General has the sole authority to file a civil proceeding on behalf of the affected governmental entities in this state until the Legislature by concurrent resolution invalidates, rescinds, or amends that declaration.

(b) The Attorney General may investigate a matter before and after the Legislature declares that the matter is a matter of great governmental concern. In any investigation and civil proceeding commenced pursuant to this section, it is the duty of all public officers and their deputies, assistants, clerks, subordinates, and employees to render and furnish to the Attorney General, when so requested, assistance and all information available in their official capacity.

(c) The Attorney General may institute or intervene in any civil proceeding in state or federal court, including any

pending appeal, on behalf of a governmental entity to seek any relief afforded at law or in equity, under state or federal law, pertaining to a matter of great governmental concern.

(d) The Attorney General may consolidate, dismiss, release, settle, or take action that he or she believes to be in the public interest in any civil proceeding in state or federal court pertaining to a matter of great governmental concern, provided that such action is not inconsistent with the terms or provisions of the Legislature's resolution declaring the matter to be a matter of great governmental concern.

(e) Any award for damages or monetary payment arising from a civil proceeding, compromise, or settlement of any claim or litigation pertaining to a matter of great governmental concern, excluding attorney fees described in subsection (4), is subject to full appropriation by the Legislature and may not be appropriated, expended, or encumbered by the Attorney General or the terms or provisions of any settlement agreement.

(f) A declaration by the Legislature that a matter is a matter of great governmental concern operates to abate or stay any civil proceeding in state or federal court pertaining to the matter of great governmental concern filed by a governmental entity until the Attorney General takes an action in such proceeding.

(g) Any statute of limitations under the laws of this state affecting a claim by a governmental entity is tolled for the pendency of a declaration that a matter is a matter of great governmental concern or for 1 year, whichever is earlier.

(h) Upon learning of a declaration that a matter is a matter of great governmental concern, all governmental entities

then a party to any affected civil proceeding shall provide notice to the Attorney General of the existence of any such civil proceeding, including the style of the action, the case number, and the court where such proceeding is pending. Any settlement or resolution of the civil proceeding by a governmental entity taken after a declaration without the consent of the Attorney General is void.

(i) For purposes of this subsection, the Department of Legal Affairs is exempt from s. 120.57(3).

(4) ATTORNEY FEES.—

(a) If a governmental entity retains attorneys to represent it before a matter is declared to be a matter of great governmental concern, the governmental entity or its attorneys may apply to the court where the civil proceeding is being prosecuted by the Attorney General or, if no such proceeding exists, in the circuit court in and for Leon County to receive from any recovery its reasonable attorney fees and costs incurred in connection with such representation.

(b) In calculating the amount of any reasonable attorney fees, the court shall consider all of the following factors:

1. The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.

2. The likelihood, if apparent, that the acceptance of the particular employment will preclude other employment by the attorney.

3. The fee customarily charged in the locality for similar legal services.

4. The amount involved and the results obtained.

5. The time limitation imposed by the governmental entity or the circumstances.

6. The nature and length of the professional relationship with the governmental entity.

7. The experience, reputation, and ability of the attorney performing the legal services.

8. Whether the fee is fixed or contingent.

Section 2. 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 220
INTRODUCER:	Governmental Oversight and Accountability Committee and Senators Brandes and Rodrigues
SUBJECT:	Public Records and Public Meetings
DATE:	April 12, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Westmark	Bouck	ED	**Favorable**
2.	Candelaria	McVaney	GO	**Fav/CS**
3.	Westmark	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 220 makes confidential and exempt from public disclosure requirements any personal identifying information of an applicant for the position of president of a state university or Florida College System (FCS) institution held by a state university or a FSC institution.

The bill provides that the personal identifying information of an applicant included in a final group of applicants for president is no longer confidential and exempt from public records requirements beginning at the earlier of the date the final group of applicants to be considered for president is established or at least 21 days before either an interview of an applicant or final action on the offer of employment.

The bill also exempts from public meeting requirements any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or FCS institution, including any portion of a meeting that would disclose personal identifying information of such applicants. The bill provides that a complete recording must be made of any portion of a closed meeting, and any closed portion of such meeting may not be held off the record. The recording is also exempt from public disclosure requirements.

The bill specifies that the meeting exemption does not apply to any portion of a meeting held for the purpose of establishing qualifications for the position or establishing any compensation

framework to be offered to an applicant. Additionally, any meeting held after a final group of applicants has been established must be open to the public.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to become a law.

The bill provides that the exemption is subject to the Open Government Sunshine Review Act, and is repealed on October 2, 2026, unless saved from repeal by the Legislature.

The bill has no significant fiscal impact on state universities and FCS institutions.

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]

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[1] Art. I, s. 24(a), Fla. Const.
[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* (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."

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 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]

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[6] Section 119.011(12), F.S., defines "public records" 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] Art. I, s. 24(c), Fla. Const.

[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).

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.[16] Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.[17] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.[18]

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law,"[19] or the "Sunshine Law,"[20] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.[21] The board or commission must provide the public reasonable notice of such meetings.[22] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[23] Minutes of a public meeting must be promptly recorded and open to public inspection.[24] Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.[25] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[26]

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of each house of the Legislature.[27] The exemption must explicitly lay out the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[28] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[29]

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[16] Art. I, s. 24(b), Fla. Const.
[17] *Id*.
[18] *Id.* Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."
[19] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).
[20] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).
[21] Section 286.011(1)-(2), F.S.
[22] *Id.*
[23] Section 286.011(6), F.S.
[24] Section 286.011(2), F.S.
[25] Section 286.011(1), F.S.
[26] Section 286.011(3), F.S.
[27] Art. I, s. 24(c), Fla. Const.
[28] *Id*.
[29] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found 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. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

The Open Government Sunset Review Act (Act) prescribes a legislative review process for newly created or substantially amended public records exemptions,[30] with specified exceptions.[31] 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.[32] The Act provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[33]

Open Government Sunset Review Act

The Open Government Sunset Review Act[34] (Act) prescribes a legislative review process for newly created or substantially amended[35] public records or open meetings exemptions, with specified exceptions.[36] 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.[37]

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.[38] 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;[39]
- 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;[40] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[41]

[30] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).
[31] 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.
[32] Section 119.15(3), F.S.
[33] Section 119.15(6)(b), F.S.
[34] Section 119.15, F.S.
[35] 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.
[36] 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.
[37] Section 119.15(3), F.S.
[38] Section 119.15(6)(b), F.S.
[39] Section 119.15(6)(b)1., F.S.
[40] Section 119.15(6)(b)2., F.S.
[41] Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.[42] 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.[43] 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.[44]

State University System and Florida College System Governance

The State University System is composed of all public state universities.[45] The Board of Governors (BOG) is required to operate, regulate, control, and be fully responsible for the management of the whole university system.[46] Each state university is governed by a local board of trustees, which is subject to public record and open meetings laws.[47] The BOG establishes the powers and duties of the boards of trustees and may delegate its constitutional or statutory powers and duties to the boards of trustees as its designee.[48] The BOG establishes the personnel system for all state university employees and confirms the selection and reappointment of presidents by state university boards of trustees.[49]

The Florida College System (FCS) is composed of public community and state colleges.[50] FCS institutions are supervised by the State Board of Education (SBE),[51] which establishes standards and guidelines for the FCS institutions.[52] A local board of trustees governs each FCS institution.[53]

[42] 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?

[43] *See generally* s. 119.15, F.S.
[44] Section 119.15(7), F.S.
[45] Art. IX, s. 7(b), Fla. Const. The State University System is made up of 12 state universities, specified in s. 1000.21(6), F.S.
[46] Art. IX, s. 7(d), Fla. Const. *See also* ss. 20.155(4)(a), 1001.70(3), 1001.705(2), and 1001.706(2)(a), F.S.
[47] Art. IX, s. 7(b)-(c), Fla. Const. *See also* s. 1001.71(1), F.S.
[48] Art. IX, s. 7(c), Fla. Const. *See also* s. 1001.706(2)(b), F.S.
[49] Sections 1001.705(2)(k) and 1001.706(6)(a), F.S.
[50] Art. IX, s. 8(b), Fla. Const. The Florida College System is made up of 28 community and state colleges specified in s. 1000.21(3), F.S. Such institutions constitute political subdivisions of the state operated by boards of trustees. *See* s. 1004.67 and ss. 1001.61-1001.64, F.S.
[51] Art. IX, s. 8(d), Fla. Const.
[52] Section 20.15(1), (2), and (5); *see also* s. 1001.02(1) and (6), F.S.
[53] Art. IX, s. 8(b), Fla. Const. *See also* ss. 1001.60(3) and 1001.64(2), F.S.

State University System and Florida College System Presidential Searches

Each state university board of trustees selects its university president, subject to confirmation of the candidate by the BOG and in accordance with BOG regulations. To locate qualified applicants, a presidential search committee is appointed to make recommendations to the full university board of trustees.[54]

BOG regulation specifies criteria to ensure that the search process is transparent, robust, and designed to attract highly qualified individuals.[55] Criteria include requirements that a search firm or consultant a search committee retains must be familiar, or demonstrate its ability to become familiar, with Florida's Sunshine laws,[56] and that the search committee maintain for purposes of transparency a webpage that includes search committee notices, agendas, and meetings; applicant lists; and means to provide input.[57]

Each FCS institution board of trustees is authorized to appoint the president of the FCS institution.[58] The board of trustees is authorized to appoint a search committee to assist in the process.[59] Each board of trustees is required to notify the SBE of the appointment of a president immediately upon such action.[60]

Information obtained by a search committee or consultant, including applications and other information gathered by a committee or consultant regarding applicants, must be made available for copying and inspection upon request. In addition, any meetings associated with the search process are open to the public.[61]

The consultants assist by identifying and recruiting highly-talented individuals, as well as responding to all nominations, applications, and inquiries for the position. The consultants develop selection criteria and conduct preliminary screening interviews with each candidate who meets the stated criteria. The consultants provide the search committee with information gathered during the interviews, along with background investigations concluded by the search firm. The search committee will identify semi-finalists, and finalists for the position.

III. Effect of Proposed Changes:

Section 1 creates s. 1004.098, F.S., to establish an exemption from public records and public meetings requirements for applicants for president of a state university of FCS institution.

[54] Board of Governors (BOG) Regulation 1.001(5)(c).
[55] BOG Regulation 1.002(1).
[56] BOG Regulation 1.002(1)(b)ii.
[57] BOG Regulation 1.002(1)(c)i.
[58] Section 1001.61 F.S.
[59] Section 1001.64(19), F.S.
[60] Rule 6A-14.026, F.A.C.
[61] FCS institutions and state universities are considered state agencies, subject to public records and public meetings laws. See *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983) (holding that a University of Florida screening committee was subject to Florida's Sunshine Law); *Rhea v. District Bd. Of Trustees of Santa Fe College*, 109 So. 3d. 851 at 855, n. 1 (Fla. 1st DCA 2013) (noting that Santa Fe College, as part of the Florida College System, is a state agency having a duty to provide access to public records).

The bill specifies that any personal identifying information of an applicant for president of a state university or FCS institution held by a state university or a FCS institution is confidential and exempt from public records requirements.

The bill provides that the personal identifying information of an applicant included in a final group of applicants for president of a state university or FCS institution is no longer confidential and exempt beginning at the earlier of the date the final group of applicants to be considered for president is established or at least 21 days before the date of a meeting at which an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of the employment of an applicant as president.

The bill exempts from public meetings requirements any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or FCS institution, including any portion of a meeting that would disclose personal identifying information of such applicants. The bill provides that a complete recording must be made of any portion of a meeting that is closed and any closed portion of such meeting may not be held off the record. The recording of the closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution.

The bill specifies that the public meeting exemption does not apply to:
- Any portion of a meeting held for the purpose of establishing qualifications for the position or establishing any compensation framework to be offered to an applicant for president of a state university or FCS institution.
- Any meeting held after a final group of applicants for president of a state university or FCS institution has been established.

The exemption from public records and public meetings established in the bill 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.

Section 2 sets forth the public necessity justifying the exemptions.[62] The bill asserts that applicants for president who are currently employed could jeopardize their current positions if it were known that they were seeking employment elsewhere. Further, the bill specifies that an exemption is necessary to allow a presidential search committee to access the most experienced and desirable pool of qualified applicants from which to fill the position of president.

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 action requiring the expenditure of funds, reduce the authority that counties or municipalities

[62] Art. I, s. 24(c), Fla. Const.

have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or 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 or to the public meetings requirements. This bill enacts a new exemption for personal identifying information about applicants for the position of president at a state university or Florida College System (FCS) institution and a new exemption for certain portions of meetings that may discuss applicants for the position, 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 two of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Public Records 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 personal identifying information of applicants for the position of president of a state university or FCS institution. This bill exempts from inspection and copying only personal identifying information of such individuals unless the applicant makes the list of finalists. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

Public Meetings Exemption
Article I, s. 24(c) of the State Constitution also requires an exemption to the public meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. Like the public records exemption, the stated purpose of the law is to protect personal identifying information of applicants for the position of president of a state university or FCS institution prior to the selection of the final group. The bill appears to only exempt the portion of the meeting held for the purpose of identifying or vetting applicants, including any portion of a meeting which would disclose personal identifying 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector may continue to be subject to the costs associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

State universities and FCS institutions may incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1004.098 of the Florida Statutes.

This bill creates an unnumbered section of law.

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 February 17, 2021:

- Limits the exemption to personal identifying information of applicants for president held by a university or FCS institution.
- Establishes that the public meetings exemption does not apply to any meeting held after the final group of applicants have been recognized.

- Adds that the personal identifying information of an applicant included in the final group of applicants is no longer confidential and exempt beginning at the earlier of the date the final group of applicants to be considered for president is established.

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 Senators Brandes and Rodrigues

585-02179-21 2021220c1

A bill to be entitled

An act relating to public records and public meetings; creating s. 1004.098, F.S.; providing an exemption from public records requirements for any personal identifying information of an applicant for president of a state university or a Florida College System institution held by a state university or a Florida College System institution; specifying when the personal identifying information of applicants who are in the final group of applicants is no longer confidential and exempt; providing an exemption from public meeting requirements for any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or a Florida College System institution, including any portion of a meeting which would disclose certain personal identifying information of such applicants; requiring that a recording be made of any portion of a closed meeting which would disclose personal identifying information of such applicants; providing that no portion of a closed meeting may be held off the record; providing that the recording of any closed portion of a meeting is exempt from public records requirements; specifying that certain meetings are not exempt from public meeting requirements; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

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585-02179-21 2021220c1

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

Section 1. Section 1004.098, Florida Statutes, is created to read:

1004.098 Applicants for president of a state university or Florida College System institution; public records exemption; public meetings exemption.—

(1)(a) Any personal identifying information of an applicant for president of a state university or a Florida College System institution held by a state university or a Florida College System institution is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Notwithstanding paragraph (a), the personal identifying information of an applicant included in the final group of applicants for president of a state university or a Florida College System institution is no longer confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution beginning at the earlier of the date the final group of applicants to be considered for president is established or 21 days before the date of a meeting at which an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of the employment of an applicant as president.

(2)(a) Any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or a Florida College System institution, including any portion of a meeting which would disclose personal identifying information of such applicants which is otherwise confidential and exempt under subsection (1), is exempt from s.

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

286.011 and s. 24(b), Art. I of the State Constitution.

(b) A complete recording must be made of any portion of a meeting which is closed pursuant to paragraph (a), and any closed portion of such meeting may not be held off the record. The recording of the closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) The public meeting exemption provided in paragraph (a) does not apply to:

1. Any portion of a meeting held for the purpose of establishing qualifications for the position or establishing any compensation framework to be offered to an applicant for president of a state university or a Florida College System institution.

2. Any meeting that is held after a final group of applicants for president of a state university or a Florida College System institution has been established.

(3) 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 any personal identifying information of an applicant for president of a state university or a Florida College System institution held by a state university or a Florida College System institution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature also finds that it is a public necessity that any portion of a meeting held for the purpose of identifying or vetting applicants for

president of a state university or a Florida College System institution, including any portion of a meeting which would disclose personal identifying information of such applicants, be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution, and that the recording of such meeting be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The task of filling the position of president of a state university or a Florida College System institution is often conducted by an executive search committee. Many, if not most, applicants for such a position are currently employed at another job at the time they apply and could jeopardize their current positions if it were to become known that they were seeking employment elsewhere. These exemptions from public records and public meeting requirements are needed to ensure that such a search committee can avail itself of the most experienced and desirable pool of qualified applicants from which to fill the position of president of a state university or a Florida College System institution. If potential applicants fear the possibility of losing their current jobs as a consequence of attempting to progress along their chosen career path or simply seeking different and more rewarding employment, failure to have these safeguards in place could have a chilling effect on the number and quality of applicants available to fill the position of president of a state university or a Florida College System institution.

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 23, 2021

I respectfully request that **Senate Bill # 220**, relating to Public Records and Public Meetings be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

SB 220
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 220 Public Records & Public Meetings

Name Kristin Crawford Whitaker

Job Title Assistant Vice Chancellor

Address 325 W. Gaines St.
Street

Tallahassee FL 32309
City *State* *Zip*

Phone 566-5217

Email Kristin.Whitaker@flbog.edu

Speaking: ☐ For ☐ Against ☐ Information

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

Representing State University System 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.

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

4/20/21
Meeting Date

SB 220
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB220

Name Benjamin Serber

Job Title President

Address 1925 Nega Hills Dr.
Street

Tallahassee FL 32304
City *State* *Zip*

Phone 2015865421

Email mentalengineer@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FSU Graduate Assistants United

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)

4/20/21
Meeting Date

220
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Krystal Williams

Job Title _____

Address 1575 Paul Russell Rd
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850.345.9866

Email N/A

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

Duplicate

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/20/21
Meeting Date

228
Bill Number (if applicable)

Topic Presidential Searches

Amendment Barcode (if applicable)

Name Dr. Karen Morian

Job Title President

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing United Faculty 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.

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

S-001 (10/14/14)

Duplicate

DO NOT PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

4-20-21
Meeting Date

SB220
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Vincenza Berardo

Job Title Graduate Assisstant

Address 803 Timberview Drive
Street

Phone 407-766-9049

Tallahassee FL 32308
City *State* *Zip*

Email vberardo21@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

4/20/21
Meeting Date

SB 220
Bill Number (if applicable)

Topic Presidential Searches SB 220

Amendment Barcode (if applicable)

Name Jeremy Bullian

Job Title Librarian

Address 321 Saint Augustine Ave
Street

Phone 813-802-8718

Temple Terrace FL 33617
City *State* *Zip*

Email victornil@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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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)

4/20/21
Meeting Date

SB220
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 220

Name INDRANI SINDHWANI

Job Title PROFESSOR

Address _____ Phone _____
Street

_____ Email _____
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

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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)

4-20-21
Meeting Date

220
Bill Number (if applicable)

Topic University Presidents

Amendment Barcode (if applicable)

Name James Ingle

Job Title Electrician

Address 3509 NW 22nd dr
Street

Gainesville FL 32605
City *State* *Zip*

Phone 901-453-4800

Email JmclrIng@yahoo.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

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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)

4/20	SB 220
Meeting Date	*Bill Number (if applicable)*

Topic Public Records

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Job Title

Address 135 S. Monroe Phone

Street

Tallahassee FL 32301 Email

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

4/20/2021
Meeting Date

220
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic UNIVERSITY PRESIDENT RECRUITING

Name STEVEN KIRN, Ph.D

Job Title U. of FLORIDA FACULTY - RETIRED

Address 5125 NW 62nd TERR.
Street

Phone 847 528 8282

GAINESVILLE FL 32653
City *State* *Zip*

Email skirn@mac.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing UNITED FACULTY of FLORIDA

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)

4/20/2021
Meeting Date

SB220
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Sunshine Presidential Search

Name Lakey Love

Job Title

Address 1571 Melvin Street
Street

Phone 850-345-0018

Tallahassee FL 32301
City *State* *Zip*

Email lakey@loveyourstwork.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/21/20
Meeting Date

SB 2020
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic UNIVERSITY SEARCH

Name REV DR RUSSELL MEYER

Job Title EXEC DIR

Address 1308 WINDSOR PLACE
Street

Phone 813 763 3610

JAX FL 32205
City *State* *Zip*

Email rmeyer@floridachurches.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA COUNCIL OF CHURCHES

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/HB 259
INTRODUCER:	Judiciary Committee; Education and Employment Committee; and Representatives Williamson, Byrd, and others
SUBJECT:	Safety of Religious Institutions
DATE:	April 13, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Phelps	RC	**Favorable**

I. Summary:

CS/CS/HB 259 addresses the possession of a concealed weapon or firearm for defensive purposes on property used by religious institutions that are co-located with schools. Under existing law, a person who has a concealed weapon or firearm license may legally carry a firearm inside a church, synagogue, or other religious institution. However, the person is generally prohibited from carrying a firearm on property that is located in an area where firearms are prohibited, such as a school. Under the bill, a person who has a concealed weapon or firearm license may carry a concealed weapon or firearm on the property of a religious institution regardless of whether the property is also used as a school.

The bill expressly states that it "does not limit the private property rights of a church, synagogue, or other religious institution to exercise control over property that the church, synagogue, or other religious institution owns, rents, leases, borrows, or lawfully uses." Accordingly, religious institutions and owners of property borrowed or used by a religious institution may continue to regulate and prohibit firearms on their own property.

The bill becomes effective upon becoming law.

II. Present Situation:

Concealed Weapon and Firearm Licenses

Florida is known as a "shall issue"[1] state for applications for concealed weapon and firearm licenses.[2] The Department of Agriculture and Consumer Services (department) must review and either issue or deny a license within 90 days after receiving an application.[3] As of February 28, 2021, there were 2,515,678 concealed weapon or firearm licensees in Florida.[4]

Denial of a license must occur if an applicant:

- Is not a citizen of the United States, permanent resident alien, or consular security official of a foreign government;
- Is not 21 years of age or older;
- Suffers from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Has been convicted of a felony;
- Has been found guilty of a controlled substances crime within the previous 3 years;
- Has been committed for the abuse of a controlled substance;[5]
- Suffers from chronical and habitual use of alcohol or other substances to the extent that their normal faculties are impaired;[6]
- Does not intend to carry a concealed weapon or firearm for lawful self-defense;
- Fails to demonstrate competency with a firearm;[7]
- Has been adjudicated as an incapacitated person;
- Has been committed to a mental institution;[8]

---

[1] Generally, states issue a permit, or license, to carry a concealed weapon such as a firearm on either a "shall issue," or "may issue" basis. The key difference is that shall issue states must issue the permit or license if the applicant meets the requirements; whereas, may issue states have much more discretion to deny an application even if the applicant meets the requirements under the law. New York may deny a license, for example, if the applicant fails to demonstrate "proper cause" or lacks "good moral character" as determined by a judge reviewing the application. N.Y. Penal Law s. 400.00.

[2] Section 790.06(2), F.S.

[3] Section 790.06(6)(c), F.S.

[4] Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licenses by Type*, January 31, 2021, available at https://www.fdacs.gov/content/download/82618/file/Number_of_Licensees_By_Type.pdf (last visited March 4, 2021).

[5] An applicant granted relief of firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., after having been adjudicated mentally defective or committed to a mental institution is deemed not to be committed for the abuse of a controlled substance.

[6] The law presumes that a person chronically and habitually uses alcoholic beverages or other substances to the point of impairment if the applicant has been convicted of using a firearm while under the influence of alcoholic beverages, chemical substances, or controlled substances or has been deemed a habitual offender of disorderly intoxication under s. 856.011(3), F.S., or has had two or more convictions of driving under the influence within a 3-year period preceding the date which the application is submitted.

[7] There are several methods of demonstrating competency with a firearm, including completion of a hunter education or safety course approved by the Fish and Wildlife Conservation Commission, completion of any law enforcement firearms safety or training course, or completion of firearms training safety courses using instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department of Agriculture and Consumer Services.

[8] An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., after having been adjudicated mentally defective or committed to a mental institution is deemed not to have been committed in a mental institution.

- Has had an adjudication of guilt withheld or a suspended sentence for a felony unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been expunged;
- Has had an adjudication of guilt withheld or an imposition of sentence suspended on a misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been expunged;
- Has been issued an injunction that is currently in force and effect that restrains that applicant from committing acts of domestic violence or acts of repeat violence; or
- Is prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.[9]

Additionally, the department must suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license until final disposition of the case.[10] The department is also required to suspend a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.[11]

Once obtained, the licensee must carry the license with valid identification at all times when the licensee is in actual possession of a concealed weapon or firearm.[12] According to s. 790.06(12)(a), F.S, the license, however, "does not authorize any person to carry a concealed weapon or firearm into:"

- Any place of nuisance;[13]
- Any police, sheriff, or highway patrol station;
- Any detention facility, prison, or jail;
- Any courthouse;
- Any courtroom;[14]
- Any polling place;
- Any meeting of the governing body of a county, public school district, municipality, or special district;
- Any meeting of the Legislature or a committee thereof;
- Any school, college, or professional athletic event not related to firearms;
- Any elementary or secondary school facility or administration building;
- Any career center;
- Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- Any college or university facility;[15]

[9] Section 790.01(2), F.S.
[10] Section 790.06(3), F.S.
[11] *Id.*
[12] Section 790.06(1), F.S.
[13] *See* s. 823.05, F.S., for an extensive description of places of nuisance.
[14] However, Judges may carry a concealed weapon and allow others to do so within their courtroom. Section 790.06(12)(a)5., F.S.
[15] However, a "student, employee, or faculty member" may carry a stun gun or nonlethal electric weapon designed for defensive purposes as long as the weapon does not fire a dart or projectile.

- The inside of the passenger terminal and sterile area of any airport; or
- Any place where the carrying of firearms is prohibited by federal law.[16]

While a concealed weapon or firearm license is generally needed when carrying a concealed firearm, there are instances where an individual may legally possess or carry a firearm without a license, so long as they are not a prohibited firearm possessor.[17] These instances include an individual:

- Fishing, camping, or hunting or going to or returning from fishing, camping, or hunting;
- Who is in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business;
- Firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place;
- Traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession; or
- At his or her home or place of business.[18]

Firearms Prohibited on School Property

A person may not possess any firearm on the property of any school except as authorized in support of school activities.[19]

There are five exceptions to this general rule. A person may carry a firearm on school property:

- In a case to a firearms program, class, or function which has been approved in advance by the principal or chief administrative officer of the school as a program or class to which firearms could be carried;
- In a case to a career center having a firearms training range;
- In a vehicle pursuant to s. 790.25(5), F.S.; except that school districts may adopt written and published policies that waive this exception for purposes of student and campus parking privileges, thereby not allowing students to have firearms in their vehicles on campus;[20]
- If he or she is a law enforcement officer; [21] or
- If he or she is a school guardian acting under the Coach Aaron Feis Guardian Program.[22]

[16] Section 790.06(12)(a)1.-15., F.S.
[17] Those prohibited from possessing a firearm include convicted felons whose civil rights have not been restored. Section 790.23, F.S.
[18] Section 790.25(3), F.S. This authority to carry a concealed firearm without a license applies to where "business is transacted." *State v. Little*, 104 So. 3d 1263, 1266 (Fla. 4th DCA 2013) (Finding that a labor union official could not be charged with carrying a concealed firearm while at the union hall because the union hall was his place of business).
[19] Section 790.115(2)(a), F.S.
[20] Section 790.115(2)(a)1.-3., F.S. Note that the ability to adopt written and published policies waiving the exception for student and campus parking does not extend to institutions of higher learning, i.e. colleges and universities. *Florida Carry v. University of North Florida*, 133 So.3d 966 (Fla.1st DCA 2013).
[21] Section 790.115(3), F.S.
[22] Section 1006.12, F.S.

"School" means any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.[23]

Firearms and Religious Institutions

In response to violent incidents targeting religious institutions,[24] some churches in other states have opted to form "security teams" for the purpose of keeping their congregation safe during services.[25] These security teams are often comprised of individuals having concealed weapons licenses who carry concealed firearms during service on a voluntary basis.[26]

Florida law does not prohibit a licensee from carrying a concealed firearm inside a church or other religious institution. However, some churches are co-located with a school where concealed firearms are expressly prohibited.[27] The firearm prohibition makes it more difficult for co-located religious institutions to implement a security team because the religious institution would be limited to using individuals who are authorized to carry a concealed firearm on school properties, such as law enforcements officers.[28]

III. Effect of Proposed Changes:

Under the bill, a person who has a concealed weapons license may carry a concealed weapon or firearm on the property of a religious institution, such as a church or a synagogue, which is co-located with a school. The bill provides that notwithstanding any other law, for purposes of safety, security, personal protection, or any other lawful purpose, a person with a concealed weapons license may carry a concealed weapon or firearm on property owned; rented; leased; borrowed; or lawfully used by a church, synagogue, or other religious institution.[29]

The bill expressly states that it "does not limit the private property rights of a church, synagogue, or other religious institution to exercise control over property that the church, synagogue, or other religious institution owns, rents, leases, borrows, or lawfully uses."

The bill takes effect upon becoming law.

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[23] Section 790.115(2)(a), F.S.
[24] Section 199.183(2)(a), F.S., defines "religious institutions" as churches and ecclesiastical or denominational organizations having established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted, as well as church cemeteries.
[25] Nichole Manna, *After shooting, how can Texas churches keep members safe and still welcome all people?*, FORT WORTH STAR TELEGRAM (December 31, 2019), https://www.star-telegram.com/news/state/texas/article238834258.html (last visited February 24, 2021). Texas revised its law in 2019, following a church shooting, to clarify that persons could carry firearms in churches unless given notice to the contrary. *See* S.B. 535, Senator Campbell, effective September 1, 2019, available at https://capitol.texas.gov/tlodocs/86R/billtext/pdf/SB00535F.pdf (last visited March 2, 2021). *See also* Hon. Ken Paxton, Attorney General of Texas, Opinion No. KP-0176, December 21, 2017, available at https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2017/kp0176.pdf (last visited March 2, 2021).
[26] *Id*.
[27] Sections 790.115(2)(a) and 790.06(12)(a), F.S.
[28] Section 790.115(3), F.S.
[29] The terms church, synagogue, and religious institution are not defined in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may reduce security costs for religious institutions. Churches co-located with schools, for example, may use volunteers having concealed weapons licenses in lieu of hiring off-duty law enforcement officers to provide security.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.06, 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.

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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/20/2021	.	
	.	
	.	
	.	

The Committee on Rules (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete lines 12 - 26
and insert:
Section 1. Subsection (12) of section 790.06, Florida Statutes, is amended to read:
790.06 License to carry concealed weapon or firearm.—
(12)(a) A license issued under this section does not authorize any person to openly carry a handgun or carry a concealed weapon or firearm into:
1. Any place of nuisance as defined in s. 823.05;

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2. Any police, sheriff, or highway patrol station;

3. Any detention facility, prison, or jail;

4. Any courthouse;

5. Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;

6. Any polling place;

7. Any meeting of the governing body of a county, public school district, municipality, or special district;

8. Any meeting of the Legislature or a committee thereof;

9. Any school, college, or professional athletic event not related to firearms;

10. Any elementary or secondary school facility or administration building;

11. Any career center;

12. Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;

13. Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;

14. The inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or

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15. Any place where the carrying of firearms is prohibited by federal law.

(b) A person licensed under this section may ~~shall~~ not be prohibited from carrying or storing a firearm in a vehicle for lawful purposes.

(c)1. Subject to the prohibitions contained in this subsection or s. 790.115, a church, a synagogue, or any other religious institution as defined in s. 496.404 may authorize a person licensed under this section to carry a concealed firearm in an established physical place of worship at which religious services are regularly conducted, provided that:

a. If such property is not owned by the religious institution, the religious institution receives the permission of the property owner or administrator; and

b. If the religious institution is using property that is an elementary or a secondary school facility, a career center, or is located on the property of a school as defined in s. 790.115, the person may not carry a concealed firearm on school property during school hours or during any time when curricular or extracurricular school-sponsored activities are taking place on the property.

2. This paragraph does not authorize the carrying of a firearm in any place or in any manner prohibited by federal law or on the property of a public or private college, university, or other postsecondary educational institution.

(d) ~~(c)~~ This section does not modify the terms or conditions of s. 790.251(7).

(e) ~~(d)~~ Any person who knowingly and willfully violates ~~any provision of~~ this subsection commits a misdemeanor of the second

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degree, punishable as provided in s. 775.082 or s. 775.083.

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

And the title is amended as follows:

Delete lines 3 - 7

and insert:

institutions; amending s. 790.06, F.S.; authorizing a church, a synagogue, or any other religious institution to allow a concealed weapon or firearm licensee to carry a concealed firearm in certain places of worship under specified circumstances; providing applicability;

A bill to be entitled

An act relating to the safety of religious institutions; amending s. 790.06, F.S.; authorizing, for specified purposes, a concealed weapons or firearms licensee to carry a concealed weapon or firearm on certain property of a church, synagogue, or other religious institution; providing applicability; providing an effective date.

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

Section 1. Subsections (13) through (17) of section 790.06, Florida Statutes, are renumbered as subsections (14) through (18), respectively, and a new subsection (13) is added to that section to read:

790.06 License to carry concealed weapon or firearm.—

(13) Notwithstanding any other law, for the purposes of safety, security, personal protection, or any other lawful purpose, a person licensed under this section may carry a concealed weapon or firearm on property owned, rented, leased, borrowed, or lawfully used by a church, synagogue, or other religious institution. This subsection does not limit the private property rights of a church, synagogue, or other religious institution to exercise control over property that the church, synagogue, or other religious institution owns, rents, leases, borrows, or lawfully uses.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

259
Bill Number (if applicable)

THURSTON AMENDMENT
Amendment Barcode (if applicable)

706888

Topic RELIGIOUS INS GUNS

Name REV DR RUSSELL MEYER

Job Title EXEC DIR

Address 13008 WINDSOR PL
Street

Phone 813 763 3610

JAX FL 32205
City *State* *Zip*

Email rmeyer@floridachurches.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FLORIDA COUNCIL OF CHURCHES

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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Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

April 20, 2021
Meeting Date

259
Bill Number (if applicable)

706888
Amendment Barcode (if applicable)

Topic _____

Name Michael Sheedy

Job Title Executive Director

Address 201 W. Park Ave.
Street

Phone 850-222-3803

Tallahassee FL 32301
City *State* *Zip*

Email _____

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Conference of 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.

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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)

4/20/21
Meeting Date

259
Bill Number (if applicable)

706888
Amendment Barcode (if applicable)

Topic Safety of Religious Institutions

Name Angie Gallo

Job Title Co-Chair

Address _____ Phone _____
Street

Orlando FL 32806 Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Coalition to Prevent Gun Violence

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

4/20/2021
Meeting Date

HB 259
Bill Number (if applicable)

706888
Amendment Barcode (if applicable)

Topic Safety of Religious Institutions

Name Khanh-Lien Banko ("Con Lynn")

Job Title

Address 1747 Orlando Central Parkway
Street

Orlando FL 32809
City *State* *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.

This information was not read into the record by the Chair

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/20/2021
Meeting Date

259
Bill Number (if applicable)

Topic Safety of Religious Institutions

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.
Street

Phone 850-321-9386

Tallahassee — Fl — 32301
City — *State* — *Zip*

Email fcfep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fl Center for Fiscal and Economic Policy

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

20
4/19/2021
Meeting Date

HB259
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Safety of Religeous Institutions

Name Lane Watkins

Job Title Retired

Address 6087 Bud Moulton Road
Street

Phone 904 673 0788

Crestview FL 32536
City *State* *Zip*

Email h25pfd@yahoo.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

HB 259
Bill Number (if applicable)

Topic Guns in Church

Amendment Barcode (if applicable)

Name Jon Harris Maurer

Job Title Public Policy Dir.

Address 201 E. Park Ave., Ste. 200A
Street

Phone 850-681-0988

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Equality Florida

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

4/20/21
Meeting Date

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

259
Bill Number (if applicable)

Topic Safety Of Religious Institutions

Amendment Barcode (if applicable)

Name Angie Gallo

Job Title Advocate - Co-Chair

Address _____ Phone _____

Street

Orlando FL 32826 Email _____

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Coalition to Prevent Gun Violence

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)

4/20/21
Meeting Date

259
Bill Number (if applicable)

Topic Couns Dn Religious Dist.

Amendment Barcode (if applicable)

Name Carrie Boyd

Job Title Policy Counsel

Address P.O. Box 10788
Street

Phone 850-570-9560

Tallahassee FL 32303
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.

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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)

4-20-21
Meeting Date

259
Bill Number (if applicable)

Topic Safety & Religious Institutions

Amendment Barcode (if applicable)

Name Barbara A. DeVane

Job Title

Address 625 E. Brevard St
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 251-4280

Email barbaradevane1@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)

4/20/24
Meeting Date

259
Bill Number (if applicable)

Topic GUNS RELIGIOUS INST

Amendment Barcode (if applicable)

Name REV DR RUSSELL MEYER

Job Title EXEC DIR

Address 1308 WINDSOR PLACE
Street

Phone 813 763 3610

JAX FL 32205
City *State* *Zip*

Email rmeyer@floridachurches.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FLORIDA COUNCIL OF CHURCHES

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)

Duplicate

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THE FLORIDA SENATE

APPEARANCE RECORD

4/20/21
Meeting Date

259
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Heidi Daniels

Job Title _____

Address 3278 Lord Murphy Trl
Street

Phone 9044723283

Tall. FL 32309
City *State* *Zip*

Email _____

Speaking: ☑ For ☐ Against ☐ Information

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

Representing PL 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)

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THE FLORIDA SENATE

APPEARANCE RECORD

April 20, 2021
Meeting Date

259
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Leighanne Boone

Job Title _____

Address 300 S. Duval St.
Street
Tallahassee FL 32301
City *State* *Zip*

Phone _____

Email Leighanne.Boone@gmail.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)

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THE FLORIDA SENATE

APPEARANCE RECORD

April 20, 2021
Meeting Date

259
Bill Number (if applicable)

Topic _____
Amendment Barcode (if applicable)

Name Michael Sheedy

Job Title Executive Director

Address 201 W. Park Ave.
Street

Phone 850-222-2802

Tallahassee FL 32301
City *State* *Zip*

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of 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.

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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)

4/20/21
Meeting Date

259
Bill Number (if applicable)

Topic Safety of Religious Institutions

Amendment Barcode (if applicable)

Name Terry Kemple

Job Title President

Address 3433 Lithia Pinecrest Rd #142
Street

Phone 813 381 4881

Valrico FL 33596
City *State* *Zip*

Email tkemple@pacp.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Protect Our Children Project

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)

4/20/2021
Meeting Date

259
Bill Number (if applicable)

Topic ~~SAFETY~~ SAFETY OF RELIGIOUS INSTITUTIONS

Amendment Barcode (if applicable)

Name JONATHAN WEBER

Job Title ~~N/A~~

Address 2032 WAKULLA AVE
Street

Phone 954-593-9999

TALLAHASSEE FL 32301
City *State* *Zip*

Email JONWEBER@ME.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing HIMSELF

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)

4/20/21
Meeting Date

359
Bill Number (if applicable)

Topic Safety of Religious Institutions

Amendment Barcode (if applicable)

Name Karen Jaroch

Job Title Regional Coordinator

Address 16501 E. Course Dr
Street

Phone 813-318-2344

Tampa FL 33624
City *State* *Zip*

Email Karen.Jaroch@hotmail.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

APPEARANCE RECORD

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

4/20/21
Meeting Date

HB 259
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Gun Violence Bill

Name Ash Soto

Job Title Student

Address 228 Dixie Dr.
Street

Phone (954) 643-0903

Tallahassee FL 32304
City *State* *Zip*

Email as19cn@my.fsu.edu

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/20/2021
Meeting Date

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

HB 259
Bill Number (if applicable)

Topic Guns in Religious Institutions

Amendment Barcode (if applicable)

Name Isabel Ruano

Job Title

Address 2631 Yarmouth Lane
Street

Phone

Tallahassee FL 32309
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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This information was not read into the record by the Chair

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)

4.20.21
Meeting Date

HB 259
Bill Number (if applicable)

Topic Guns in Religious Institutions

Amendment Barcode (if applicable)

Name Sush Brown

Job Title Community & State Organizer

Address 1316 Levy Ave
Street
Tallahassee FL 32310
City *State* *Zip*

Phone (850) 688-7153

Email PowerToPeople4us@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tallahassee Community Action Committee

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)

4-20-21
Meeting Date

HB259
Bill Number (if applicable)

Topic Guns in religious institutes

Amendment Barcode (if applicable)

Name Amanda Weems

Job Title

Address 3404 Cedarwood Trail
Street
Tallahassee FL 32312
City *State* *Zip*

Phone 850-590-7154

Email amandaw1048@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tallahassee Community Action Committee

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

4/20/2021
Meeting Date

HB 259
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Safety of Religious Institutions

Name Khanh-Lien ("Lan Lynn") Banko

Job Title

Address 1747 Orlando Central Parkway
Street

Orlando FL 32809
City *State* *Zip*

Phone 407-855-7607

Email treasurer@flpta.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.

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)

4/20/21
Meeting Date

259
Bill Number (if applicable)

Topic Safety of Religious Institutions

Amendment Barcode (if applicable)

Name Shirley Kemple

Job Title Board Member

Address 3433 La Mira Pinecrest Rd #142
Street

Phone 8133814881

Valrico FL 33596
City *State* *Zip*

Email info@pacp.org

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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This information was not read 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:	CS/SB 334
INTRODUCER:	Environment and Natural Resources Committee and Senator Gruters and others
SUBJECT:	Regulation of Smoking in Public Places
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Favorable**
2.	Schreiber	Rogers	EN	**Fav/CS**
3.	Paglialonga	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 334 amends the "Florida Clean Indoor Air Act" in part II of ch. 386, F.S., which regulates vaping and tobacco smoking in Florida. The bill allows counties and municipalities to restrict smoking, except for smoking cigars and pipe tobacco, within the boundaries of any of the public beaches and public parks they own. Currently, the regulation of smoking is preempted to the state, and counties and municipalities are prohibited from regulating smoking. "Smoking" is defined in ch. 386, F.S., as "inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product."

The bill also prohibits smoking, except for smoking cigars and pipe tobacco, within the boundaries of a state park and changes the title of the "Florida Clean Indoor Air Act" to the "Florida Clean Air Act" to account for the broader application of the act proposed in the bill. The bill takes effect on July 1, 2021.

II. Present Situation:

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates vaping and tobacco smoking in Florida. The legislative purpose of the act is to protect the public from the health

hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution.[1]

Florida Constitution

Tobacco Smoking

On November 5, 2002, the voters of Florida approved Amendment 6 to the State Constitution, which prohibits tobacco smoking in enclosed indoor workplaces. Codified as s. 20, Art. X, Florida Constitution, the amendment defines an "enclosed indoor workplace," in part, as "any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers … without regard to whether work is occurring at any given time." The amendment defines "work" as "any persons providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not." The amendment provides limited exceptions for private residences "whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof," retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars.

The constitutional amendment directed the Legislature to implement the amendment "in a manner consistent with its broad purpose and stated terms." The amendment required that implementing legislation have an effective date of no later than July 1, 2003, and required that implementing legislation provide civil penalties for violations, provide for administrative enforcement, and require and authorize agency rules for implementation and enforcement. The amendment further provided that the Legislature may enact legislation constituting or allowing a more restrictive regulation of tobacco smoking than is provided in the Florida Constitution.

Vaping

On November 6, 2018, the voters of Florida approved Amendment 9 to the Florida Constitution, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces.[2] The use of e-cigarettes is commonly referred to as vaping.

Amendment 9 added vapor-generating electronic devices to the existing prohibition against tobacco smoking in enclosed indoor workplaces. The amendment makes exceptions for the same enclosed indoor workplace locations where tobacco smoking is permitted and further permits tobacco smoking and the use of vapor-generating electronic devices in a "vapor-generating electronic device retailer."

The amendment defines a "vapor-generating electronic device retailer" to mean "any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental."

[1] Section 386.202, F.S.
[2] Amendment 9 also bans offshore oil and natural gas drilling on lands beneath state waters. *See* FLA. CONST. art II, s. 7.

A vapor-generating electronic device is defined as "any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance." The definition includes electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, and other similar devices or products, replacement cartridges for such devices, and other containers of a solution or other substance intended to be used with or within the devices.

Section 20, Art. X, Florida Constitution, as amended, directed the Legislature to implement the amendment "in a manner consistent with its broad purpose and stated terms." The implementing legislation must have an effective date of no later than July 1 of the year following approval (July 1, 2019). The implementing legislation must also provide civil penalties for violations; provide for administrative enforcement; and require and authorize agency rules for implementation and enforcement. The Legislature may enact legislation constituting or allowing more restrictive regulation of tobacco smoking or vaping than is provided in the State Constitution.

Under the amendment, local governments may adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

Florida's Clean Indoor Air Act

The Legislature implemented the smoking ban by enacting ch. 2003-398, Laws of Fla., which amended part II of ch. 386, F.S., and created s. 561.695, F.S., of the Beverage Law. The act, as amended, implements the constitutional amendment's prohibition. Specifically, s. 386.204, F.S., prohibits smoking in an enclosed indoor workplace unless the act provides an exception. The act adopts and implements the amendment's definitions and adopts the amendment's exceptions for private residences whenever not being used for certain commercial purposes;[3] stand-alone bars;[4] designated smoking rooms in hotels and other public lodging establishments;[5] and retail tobacco shops, including businesses that manufacture, import, or distribute tobacco products and tobacco loose leaf dealers.[6]

Section 386.207, F.S., provides for enforcement of the act by the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) within each department's specific areas of regulatory authority. Sections 386.207(1) and 386.2125, F.S., grant rulemaking authority to the DOH and the DBPR and require that the departments consult with the State Fire Marshal during the rulemaking process.

Section 386.207(3), F.S., provides penalties for violations of the act by proprietors or persons in charge of an enclosed indoor workplace.[7] The penalty for a first violation is a fine of not less than $250 and not more than $750. The act provides fines for subsequent violations in the amount of not less than $500 and not more than $2,000. Penalties for individuals who violate the

[3] Section 386.2045(1), F.S. *See also* definition of the term "private residence" in s. 386.203(1), F.S.
[4] Section 386.2045(5), F.S. *See also* definition of the term "stand-alone bar" in s. 386.203(12), F.S.
[5] Section 386.2045(4), F.S. *See also* definition of the term "designated guest rooms at public lodging establishments" in s. 386.203(4), F.S.
[6] Section 386.2045(2), F.S. *See also* definition of the term "retail tobacco shop" in s. 386.203(9), F.S.
[7] The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(7), F.S.

act are provided in s. 386.208, F.S., which provides for a fine of not more than $100 for a first violation and not more than $500 for a subsequent violation. The penalty range for an individual violation is identical to the penalties for violations of the act before the implementation of the constitutional smoking prohibition.

During the 2019 Regular Session, the Legislature amended part II of ch. 386, F.S., to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces.[8]

Smoking Prohibited Near School Property

Section 386.212(1), F.S., prohibits smoking by any person under 18 years of age in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. The prohibition does not apply to any person occupying a moving vehicle or within a private residence.

Enforcement

Section 386.212(2), F.S., authorizes law enforcement officers to issue citations in the form as prescribed by a county or municipality to any person violating the provisions of ch. 386, F.S., and prescribes the information that must be included in the citation.

The issuance of a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty not to exceed $25 or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco or anti-vaping "alternative to suspension" program.[9]

If a person fails to comply with the directions on the citation, the person will waive his or her right to contest the citation, and the court may issue an order to show cause.[10]

Regulation of Smoking Preempted to State

Section 386.209, F.S., provides that the act expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

As an exception to the state's preemption of smoking regulation, s. 386.209, F.S., permits school districts to further restrict smoking by persons on school district property.

Section 386.209, F.S., adopts and implements the Florida Constitution's grant of authority to local governments to adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

Regarding the issue of preemption, a Florida Attorney General Opinion concluded that the St. Johns Water Management District could not adopt a regulation prohibiting smoking by all

[8] *See* ch. 2019-14, Laws of Fla.
[9] Section 386.212(3), F.S.
[10] Section 386.212(4), F.S.

persons on district property.[11] The Attorney General reasoned that s. 386.209, F.S., represents a clear expression of the legislative intent that the act preempts the field of smoking regulation for indoor and outdoor smoking. The Attorney General noted that the 2011 amendment of s. 386.209, F.S.,[12] authorizes school districts to prohibit smoking on school district property and concluded that further legislative authorization would be required for the water management district to regulate smoking on its property.

Public Parks Owned by Counties and Municipalities

In Florida, there are 67 separate county park systems and more than 400 separate municipal park systems.[13] For example, Orange County Florida maintains and operates 118 county-owned parks, which consist of a wide array of available activities and facilities.[14] Parks provide a variety of activities to the public, including nature trails, bird watching, youth and adult athletics, bike paths, horse trails, boat ramps, fishing piers, metal detecting locations, outdoor gyms, and outdoor pavilions.[15]Additionally, municipalities within Orange County also own and operate parks and outdoor recreational facilities. For example, the City of Winter Park, within Orange County, owns and operates 11 city parks, which offer similar recreational activities.[16]

The Division of Recreation and Parks within the Florida Department of Environmental Protection maintains a comprehensive inventory of the existing park facilities and outdoor resources in Florida. The inventory provides details about the parks and recreation areas in the state and consists of over 13,000 separate records, the majority of which are county and municipal parks.[17]

Florida's State Parks

Florida's award-winning state park system contains 175 state parks, including nearly 800,000 acres of state lands and 100 miles of sandy beaches.[18] Florida's state parks include all real property in the state of Florida under the jurisdiction of the Department of Environmental Protection's (DEP) Division of Recreation and Parks (division) or real property that may come under the division's jurisdiction regardless of its designation.[19] There are numerous designations in Florida's state park system, and examples include state park, state preserve, historic site, archaeological site, botanical site, museum, and culture center.[20] The statutory law governing Florida's state parks is primarily contained in ch. 258, F.S., State Parks and Preserves.

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[11] Op. Att'y Gen. Fla. 2011-15 (July 21, 2011). *See also*, Op. Att'y Gen. Fla. 2005-63 (Nov. 21, 2005), which opined that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.
[12] Chapter 2011-108, L.O.F.
[13] Florida Division of Recreation and Parks, *Frequently Asked Questions, available at:* http://prodenv.dep.state.fl.us/DrpOrpcr/StaticFiles/FAQ.pdf (last visited Jan. 13, 2021).
[14] Orange County Government Florida, *Parks, available at:* http://www.orangecountyfl.net/CultureParks/Parks.aspx?m=lstaz#.Xcwjw8GP6Uk (last visited Jan. 13, 2021).
[15] *Id.*
[16]City of Winter Park, *Parks, available at:* https://cityofwinterpark.org/departments/parks-recreation/parks-playgrounds/parks/ (last visited Jan. 13, 2021).
[17] Florida Division of Recreation and Parks, *Florida Outdoor Recreation Inventory, available at:* https://floridadep.gov/parks/florida-outdoor-recreation-inventory (last visited Jan. 13, 2021).
[18] DEP, *Division of Recreation and Parks, available at:* https://floridadep.gov/parks (last visited Jan. 13, 2021).
[19] Fla. Admin. Code R. 62D-2.013(1).
[20] *Id.*

Requirements and prohibitions under ch. 258, F.S., are enforced by DEP and the Fish and Wildlife Conservation Commission's Division of Law Enforcement.[21] State rules prohibit disposing of smoking materials within any park except in designated receptacles.[22]

Laws in Other States

In 2009, Maine passed a law prohibiting "[smoking] tobacco or any other substance in, on or within 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site."[23] In 2015, Hawaii passed a law prohibiting smoking within its state park system.[24] In 2018, New Jersey banned smoking at public parks and beaches.[25] New Jersey's legislature found that "[t]he prohibition of smoking at public parks and beaches would better preserve and maintain the natural assets of this State by reducing litter and increasing fire safety in those areas, while lessening exposure to secondhand tobacco smoke and providing for a more pleasant park or beach experience for the public[.]"[26]

Alaska law prohibits individuals from smoking outdoors "within 10 feet of playground equipment located at a public or private school or a state or municipal park while children are present."[27] Puerto Rico prohibits smoking in "public or private recreational installations."[28] The definition of public or private recreational installations under Puerto Rico law includes parks.[29] Oklahoma law designates all buildings and other properties owned or operated by the state as nonsmoking, effectively prohibiting smoking at state parks in Oklahoma, except for at any designated outdoor smoking areas.[30]

Oregon's Parks and Recreation Department prohibits smoking tobacco products at park properties but provides exceptions, including smoking in vehicles and at designated campsites.[31]

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[21] Section 258.601, F.S.
[22] Fla. Admin. Code R. 62D-2.013(3); National Fire Protection Association, Public Education, *Smoking*, *available at:* https://www.nfpa.org/Public-Education/By-topic/Top-causes-of-fire/Smoking (last visited Jan. 13, 2021). The term "smoking materials" is commonly used to refer to cigarettes, pipes, and cigars.
[23] Me. Rev. Stat. tit. 22, ss. 1580-E(2) and 1541(6). Under Maine law, "'Smoking' includes carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. 'Smoking' includes the use of an electronic smoking device."
[24] Haw. Rev. Stat. Ann. § 184-4.5. "Smoking" is defined in the statute as "inhaling or exhaling upon, burning, or carrying any lit cigarette, cigar, or pipe or the use of an electronic smoking device."
[25] 2018 NJ Sess. Law Serv. Ch. 64, S. 2534 (2018), *available at:* https://www.njleg.state.nj.us/2018/Bills/PL18/64_.PDF (last visited Jan. 13, 2021). The law defines "smoking" as "the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked, or the inhaling or exhaling of smoke or vapor from an electronic smoking device."
[26] N.J. Stat. Ann. § 26:3D-56(e).
[27] Alaska Stat. Ann. ss. 18.35.301(c)(1) and 18.35.399(12). Alaska law defines "smoking" as "using an e-cigarette or other oral smoking device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette, pipe, or tobacco or plant product intended for inhalation."
[28] 24 L.P.R.A. ss. 891 and 892. "Smoking" is defined as "the activity of inhaling and exhaling smoke from [tobacco] and other substances that are lit in cigars, cigarettes, and pipes, and to possess or transport cigars, cigarettes, pipes, and smoking articles while lit and it shall also include the use of the so-called electronic cigarette."
[29] 24 L.P.R.A. § 891.
[30] Okla. Stat. Ann. tit. 21, § 1247(B).
[31] Or. Admin. R. 736-010-0040(8)(j).

Outside of Florida, many local governments in the United States have restricted or prohibited smoking in public parks.[32]

Health and Environmental Concerns

In 2020, an estimated 15 percent of the adults in Florida were tobacco smokers.[33] Tobacco smoke contains over 7,000 chemicals, including hundreds that are toxic and up to 69 that are known to cause cancer.[34] Exposure to secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases.[35] Secondhand smoke is generally defined as smoke from burning tobacco products or smoke that is exhaled by a tobacco smoker.[36] Studies suggest that secondhand smoke in crowded outdoor areas can cause concentrations of air contaminants comparable to those caused by indoor smoking.[37]

Another significant issue with tobacco smoking in natural areas is litter consisting of used cigarette filters, commonly known as cigarette butts. Cigarette butts are typically comprised mainly of cellulose acetate, a plastic-like material that can take years to decompose.[38] It is estimated that, of the roughly 6 trillion cigarettes smoked annually worldwide, up to two-thirds

[32] American Nonsmokers' Rights Foundation, *Municipalities with Smokefree Park Laws* (2017), *available at:* https://no-smoke.org/wp-content/uploads/pdf/SmokefreeParks.pdf (last visited Jan. 13, 2021). This document lists local governments in the U.S. that have created laws that restrict or prohibit smoking in public parks within their jurisdiction.
[33] United Health Foundation, America's Health Rankings, *Annual Report*, *available at:* https://www.americashealthrankings.org/explore/annual/measure/Smoking/state/FL (last visited Jan. 13, 2021).
[34] *Id*.; U.S. Department of Health and Human Services, *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 148 (2014), *available at:* https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf (last visited Jan. 13, 2021).
[35] U.S. Department of Health and Human Services, *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 7 (2014); Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, *available at:* https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm (last visited Jan. 13, 2021).
[36] Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, *available at:* https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm (last visited Jan. 13, 2021).
[37] Nipapun Kungskulniti et al., *Secondhand Smoke Point-Source Exposures Assessed By Particulate Matter At Two Popular Public Beaches in Thailand*, 40 J. PUBLIC HEALTH 3, 527–532 (2017), *available at:* https://academic.oup.com/jpubhealth/article/40/3/527/4110319?guestAccessKey=5947c328-fd75-4b6c-acfe-28f989c4c639 (last visited Jan. 13, 2021); James Repace, *Benefits of Smoke-free Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios and in Motor Vehicles*, 34 WM MITCHELL L. REV. 1621, 1622–1624, 1638 (2008), *available at:* https://open.mitchellhamline.edu/wmlr/vol34/iss4/15/ (last visited Feb. 28, 2021).
[38] NOAA, National Ocean Service, *What Is the Most Common Form of Ocean Litter? available at:* https://oceanservice.noaa.gov/facts/most-common-ocean-litter.html (last visited Jan. 13, 2021); Bonanomi, Giuliano et al., *Cigarette Butt Decomposition and Associated Chemical Changes Assessed by 13C CPMAS NMR*, 10 PLOS ONE 1 e0117393, 2 (2015), *available at:* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4307979/pdf/pone.0117393.pdf (last visited Jan. 13, 2021).

of the cigarette butts are discarded as litter.[39] Furthermore, cigarette butts contain hazardous substances, and studies have shown these substances to be potentially toxic to animals.[40]

Under Florida law, it is illegal to discard any tobacco product as litter.[41] Discarding a cigarette butt as litter is a noncriminal infraction, punishable by a penalty of $100 in addition to any court-ordered litter pickup or other commensurate labor.[42]

Fires are another significant issue regarding smoking tobacco in public parks. The Legislature has found that cigarettes are the leading cause of fire deaths in Florida and the nation.[43] Florida law requires that cigarettes sold in the state meet standards for reduced ignition propensity.[44] In addition to the risk of fires in buildings, Florida generally has a year-round risk of wildfire.[45] Cigarettes or other smoking materials can cause wildfires when discarded as litter. Data from the United States Forest Service shows that a significant number of wildfires were started by "smoking" between 1992 and 2015.[46] The Florida Forest Service reported an increased risk of wildfires for areas of northwest Florida in the aftermath of Hurricane Michael, due to factors such as increased fuel loadings and reduced access for fire mitigation equipment.[47]

III. Effect of Proposed Changes:

Section 1 changes the title of part II of ch. 386, F.S., from "Indoor Air: Smoking and Vaping" to "Smoking and Vaping."

Section 2 amends s. 386.201, F.S., to provide that the short title of part II of ch. 386, F.S., may be cited as the "Florida Clean Air Act," removing the reference to indoor air.

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[39] World Health Organization, *Tobacco and Its Environmental Impact: An Overview*, 20, 24 (2017) *available at:* https://apps.who.int/iris/bitstream/handle/10665/255574/9789241512497-eng.pdf;jsessionid=8E8DFDA81D9C76448B2C9EAD445BC784?sequence=1 (last visited Jan. 13, 2021); Thomas E. Novotny and Elli Slaughter, *Tobacco Product Waste: An Environmental Approach to Reduce Tobacco Waste*, 1 CURR. ENVIRON. HEALTH REP. 3: 208–216, 208 (2014), *available at:* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4129234/ (last visited Jan. 13, 2021).

[40] Wenjau Lee and Chih Chun Lee, *Developmental Toxicity of Cigarette Butts - An Underdeveloped Issue*, 113 ECOTOXICOLOGY AND ENVIRON. SAFETY 362-368, 362–363, 367 (2015), *available at:* http://tweb.cjcu.edu.tw/journal/2015_03_04_11_23_24.114.pdf (last visited Jan. 13, 2021); Stephanie L. Wright, *Bioaccumulation and Biological Effects of Cigarette Litter in Marine Worms*, 2015 SCI. REP. 5: 14119, 1 (2015), *available at:* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4569891/ (last visited Jan. 13, 2021).

[41] Section 403.413(2)(d) and (f), (4), F.S.

[42] Section 403.413(6)(a), F.S. Littering is a noncriminal infraction if the litter does not exceed 15 pounds in weight or 27 cubic feet in volume.

[43] Section 633.142(2)(a), F.S.

[44] Section 633.142, F.S.

[45] Florida Department of Agriculture and Consumer Services, *Wildland Fire, Prevention, available at:* https://www.fdacs.gov/Forest-Wildfire/Wildland-Fire (last visited Jan. 13, 2021).

[46] Karen C. Short, *Spatial Wildfire Occurrence Data For the United States, 1992-2015* (2017), *available at:* https://www.fs.usda.gov/rds/archive/Product/RDS-2013-0009.4/ (last visited Jan. 13, 2021). The data can be viewed by clicking on the file labeled "RDS-2013-0009.4_ACCDB.zip," and viewing the column labeled "STAT_CAUSE_DESCR."

[47] Jim Karels, Director, Florida Forest Service, Presentation to the Florida Senate Environment and Natural Resources Committee, January 8, 2019, *Hurricane Michael Impacts, Actions and Needs*, slides 14-16, 18 (2019) available at https://www.flsenate.gov/Committees/Show/EN/Meeting%20Packet/4316 (last visited Feb. 28, 2021).

Section 3 amends s. 386.209, F.S., to provide counties and municipalities the authority to further restrict smoking, except for smoking cigars and pipe tobacco, within the boundaries of any public beaches and public parks they own. Given the existing definition of "smoking" in ch. 386, F.S., counties and municipalities may restrict the ability of any person to inhale, exhale, burn, carry, or possess cigarettes or any other lighted tobacco product that is not a cigar or pipe tobacco within parks and beaches owned by the county or municipality. The bill allows municipalities to further restrict smoking, except for smoking cigars and pipe tobacco, within county-owned beaches and parks located within the municipality's jurisdiction if doing so would not conflict with a county ordinance.

This bill specifically relates to certain forms of "smoking," counties and municipalities are currently allowed to impose more restrictive regulation on the use of vapor-generating devices under s. 386.209, F.S.

Section 4 creates s. 386.2095, F.S., which prohibits smoking within the boundaries of a state park. The bill states that this prohibition does not apply to smoking cigars or pipe tobacco.

Section 5 amends s. 381.84, F.S., to conform the reference to the short title of part II of ch. 386, F.S., to changes made by the bill.

Section 6 amends s. 386.211, F.S., to conform the reference to the short title of part II of ch. 386, F.S., to changes made by the bill. The bill changes the requirements for public announcements in mass transportation terminals, requiring announcements to include a statement to the effect that Florida is a clean air state, instead of a clean indoor air state.

Section 7 provides an effective date of 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:

Visitors to county and municipal beaches and parks, or to state parks, who violate smoking restrictions imposed by a local or state government entity may be subject to the applicable fines or civil penalties for such violations.

C. Government Sector Impact:

Counties and municipalities that opt to restrict smoking within the boundaries of public beaches or parks may incur indeterminate expenses related to enacting and enforcing such restrictions.

To the extent any imposed smoking restrictions deter or encourage visitation of county and municipal beaches and parks, local governments may experience fluctuation in revenues generated by any fees for beach and park admittance.

State parks may see an increase in the number of fines that are assessed for violations of the smoking prohibition. Pursuant to s. 258.008(1), F.S., such fines are paid to the Fish and Wildlife Conservation Commission (FWC) and deposited in the State Game Trust Fund, or paid to the Department of Environmental Protection (DEP) and deposited in the State Park Trust Fun, as applicable. Thus, the bill may increase revenue for the FWC's State Game Trust Fund or the DEP's State Park Trust Fund.

The DEP may incur costs to adopt rules and implement the prohibition of smoking in state parks. The DEP and the FWC's Division of Law Enforcement may incur additional costs to enforce the prohibition of smoking in state parks.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 386.201, 386.209, 381.84, and 386.211.

This bill creates section 386.2095 of the Florida Statutes.

IX. Additional Information:

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

CS by Environment and Natural Resources Committee on March 15, 2021:

- Removes the smoking of cigars and pipe tobacco from the authorization for counties and municipalities to further restrict smoking at public beaches and parks that they own.
- Removes the smoking of cigars and pipe tobacco from the prohibition of smoking in state parks.

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 Environment and Natural Resources; and
Senators Gruters, Hutson, Perry, and Harrell

A bill to be entitled

An act relating to regulation of smoking in public places; revising the title of part II of ch. 386, F.S.; amending s. 386.201, F.S.; revising a short title; amending s. 386.209, F.S.; authorizing counties and municipalities to further restrict smoking, except for smoking cigars or pipe tobacco, within the boundaries of public beaches and public parks under certain circumstances; creating s. 386.2095, F.S.; prohibiting smoking within the boundaries of a state park; providing an exception; amending ss. 381.84 and 386.211, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Part II of chapter 386, Florida Statutes, entitled "INDOOR AIR: SMOKING AND VAPING," is renamed "SMOKING AND VAPING."

Section 2. Section 386.201, Florida Statutes, is amended to read:

386.201 Short title ~~Popular name~~.—This part may be cited as ~~by the popular name~~ the "Florida Clean ~~Indoor~~ Air Act."

Section 3. Section 386.209, Florida Statutes, is amended to read:

386.209 Regulation of smoking preempted to state.—This part expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject; however, counties and municipalities may further restrict

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

smoking, except for smoking cigars or pipe tobacco, within the boundaries of any public beaches and public parks that they own. Municipalities may further restrict smoking, except for smoking cigars or pipe tobacco, within the boundaries of public beaches and public parks that are within their jurisdiction but are owned by the county if doing so would not conflict with a county ordinance. School districts may further restrict smoking by persons on school district property. This section does not preclude the adoption of municipal or county ordinances that impose more restrictive regulation on the use of vapor-generating devices than is provided in this part.

Section 4. Section 386.2095, Florida Statutes, is created to read:

386.2095 Smoking prohibited in state parks.—A person may not smoke within the boundaries of a state park. This prohibition does not apply to smoking cigars or pipe tobacco.

Section 5. Paragraph (h) of subsection (3) of section 381.84, Florida Statutes, is amended to read:

381.84 Comprehensive Statewide Tobacco Education and Use Prevention Program.—

(3) PROGRAM COMPONENTS AND REQUIREMENTS.—The department shall conduct a comprehensive, statewide tobacco education and use prevention program consistent with the recommendations for effective program components contained in the 1999 Best Practices for Comprehensive Tobacco Control Programs of the CDC, as amended by the CDC. The program shall include the following components, each of which shall focus on educating people, particularly youth and their parents, about the health hazards of tobacco and discouraging the use of tobacco:

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

(h) *Enforcement and awareness of related laws.*—In coordination with the Department of Business and Professional Regulation, the program shall monitor the enforcement of laws, rules, and policies prohibiting the sale or other provision of tobacco to minors, as well as the continued enforcement of the Florida Clean ~~Indoor~~ Air Act prescribed in chapter 386. The advertisements produced in accordance with paragraph (a) may also include information designed to make the public aware of these related laws and rules. The departments may enter into interagency agreements to carry out this program component.

Section 6. Section 386.211, Florida Statutes, is amended to read:

386.211 Public announcements in mass transportation terminals.—Announcements about the Florida Clean ~~Indoor~~ Air Act shall be made regularly over public address systems in terminals of public transportation carriers located in metropolitan statistical areas with populations over 230,000 according to the latest census. These announcements shall be made at least every 30 minutes and shall be made in appropriate languages. Each announcement must include a statement to the effect that Florida is a clean ~~indoor~~ air state and that smoking and vaping are prohibited except as provided in this part.

Section 7. This act shall take effect July 1, 2021.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 410
INTRODUCER:	Criminal Justice Committee and Senator Rodriguez
SUBJECT:	Reproductive Health and Disease Education
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	**Fav/CS**
2.	Stokes	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 410 amends s. 1002.20, F.S., providing that each school district must notify parents of the right to make a written request to exempt his or her child from the teaching of reproductive health or any disease, including HIV/AIDS. This notification must be through publication on the district website of the curriculum and the process for a parent to exercise this right.

The bill amends s. 1003.42, F.S., providing that the curriculum of any teaching of reproductive health or any disease, including HIV/AIDS, and its symptoms, development, and treatment, as part of a required course must be annually approved by a district school board in an open, noticed public meeting.

The bill is effective July 1, 2021.

II. Present Situation:

K-12 Student and Parent Rights

Parents of public school students are required by law to receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child succeed in school.[1] K-12 students and their parents are afforded numerous statutory rights pertaining to student education, including reproductive health and disease education.[2]

[1] Section 1002.20, F.S.
[2] *See* s. 1002.20, F.S.

Florida law requires district school boards to provide comprehensive health education that among other issues addresses community health, family life (including awareness of the benefits of sexual abstinence as the expected standard and the consequences of teenage pregnancy), personal health, and the prevention and control of disease.[3] One right a parent of a public school student has is to make a written request to the school principal to exempt his or her student from reproductive health and disease instruction, including instruction relating to HIV/AIDS. If such a request is made the student must be exempt from such instruction and may not be penalized.[4]

Health education is included in the required instruction to ensure that students meet Florida State Board of Education (SBE) standards.[5] Course curriculum refers to the lessons and academic content taught in a school or specific course. It may include but is not limited to a course syllabus and standards, instructional materials, or other resources an instructor may use in the class.[6] Standards and instructional materials are subject to specific selection, adoption, and review processes.[7]

Instructional Materials

Each district school board has the constitutional duty and responsibility to select and provide adequate instructional materials[8] to each student for core courses in mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12.[9] School districts may purchase instructional materials from a list of state-reviewed and adopted instructional materials[10] or establish their own review and adoption program.[11] District school boards receive state funding for instructional materials through the instructional materials allocation.[12]

Each district school board is responsible for the content of all instructional materials and any other materials used in the classroom, made available in a school library, or included on a reading list.[13] Each district school board must maintain on its website a current list of instructional materials, purchased by the district, separated by grade level.[14] Florida law establishes that the parent of a public school student has the right to receive effective

[3] Section 1003.42(2)(n), F.S.
[4] Section 1002.20(3)(d), F.S.
[5] *See* CPALMS, *Browse and Search Standards*, available at https://www.cpalms.org/Public/search/Standard (last visited March 24, 2021) (Select "Subject" and filter by "Health Education").
[6] *See* The Glossary of Education Reform, *Curriculum*, available at https://www.edglossary.org/curriculum/ (last visited March 24, 2021).
[7] *See* ss. 1003.41 and 1006.28, F.S. *See also* text accompanying notes 14-19.
[8] "Instructional materials" are items with 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. *See* ss. 1006.28(1) and 1006.29(2), F.S.
[9] *See* s. 1006.40(2) and (4), F.S.
[10] *See* Florida Department of Education, *Instructional Materials*, available at http://www.fldoe.org/academics/standards/instructional-materials/ (last visited March 24, 2021).
[11] *See* ss. 1006.283 and 1006.40, F.S.
[12] *See* s. 1006.40, F.S. *See also* Florida Department of Education, *2020-21 Funding for Florida School Districts*, at 20, available at http://www.fldoe.org/core/fileparse.php/7507/urlt/fefpdist.pdf (last visited March 24, 2021).
[13] Section 1006.28(2)(a)1., F.S.
[14] Section 1006.28(2)(a)1., F.S.

communication from the school principal about the manner in which instructional materials are used to implement curricular objectives.[15]

District school boards are required to adopt a policy for objections by a parent or resident of the county to the use of a specific instructional material.[16] The policy must clearly describe a process, in which the objector has the opportunity to provide specific evidence[17] to the district school board, and provide for resolution.[18]

III. Effect of Proposed Changes:

This bill amends s. 1002.20, F.S., providing that each school district must notify parents of the right to make a written request to exempt his or her child from the teaching of reproductive health or any disease, including HIV/AIDS. This notification must be through publication on the district website of the curriculum and the process for a parent to exercise this right.

The bill amends s. 1003.42, F.S., providing that the curriculum of any teaching of reproductive health or any disease, including HIV/AIDS, and its symptoms, development, and treatment, as part of a required course must be annually approved by a district school board in an open, noticed public meeting.

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.

[15] Section 1002.20(19)(b), F.S.
[16] Section 1006.28(2)(a)2., F.S.
[17] The parent or resident may present evidence to show that the material does not meet the criteria or requirements of the instructional material selection or adoption process. The parent or resident may also present evidence that the instructional material contains pornographic or prohibited content, as described by s. 847.012, F.S., is not suited to student needs and comprehension of the materials presented, or is inappropriate for the grade level and age group. Section 1006.28(2)(a)2.a.-b., F.S.
[18] *Id.*

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:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.20 and 1003.42.

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 30, 2021:
The committee substitute provides that:

- Each school district must notify parents of the right to exempt his or her child from the teaching of reproductive health or any disease including HIV/AIDS. This notification must be through publication on the district's website of the curriculum and the process of how parents can exercise such right.
- The curriculum of any teaching of reproductive health or any disease, including HIV/AIDS, its symptoms, development, and treatment, as part of a required course must be annually approved by a district school board in an open noticed public meeting.

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 Criminal Justice; and Senator Rodriguez

591-03565-21 2021410c1

A bill to be entitled

An act relating to reproductive health and disease education; amending s. 1002.20, F.S.; requiring each school district to publish specified materials on the district website to notify parents of their right to exempt their student from reproductive health and disease education; amending s. 1003.42, F.S.; requiring district school boards to annually approve curriculum relating to reproductive health and disease education in an open, noticed public meeting; requiring each school district to publish specified materials on the district website to notify parents of their right to exempt their student from reproductive health and disease education; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) of section 1002.20, Florida Statutes, is amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(3) HEALTH ISSUES.—

(d) *Reproductive health and disease education.*—A public school student whose parent makes written request to the school

591-03565-21 2021410c1

principal shall be exempted from the teaching of reproductive health or any disease, including HIV/AIDS, in accordance with ~~the provisions of~~ s. 1003.42(3). Each school district shall notify parents of this right through publication on the district website of the curriculum, including the process for a parent to exercise this right.

Section 2. Subsections (1) and (3) of section 1003.42, Florida Statutes, are amended to read:

1003.42 Required instruction.—

(1)(a) Each district school board shall provide all courses required for middle grades promotion, high school graduation, and appropriate instruction designed to ensure that students meet State Board of Education adopted standards in the following subject areas: reading and other language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts. The state board must remove a middle grades course in the Course Code Directory that does not fully integrate all appropriate curricular content required by s. 1003.41 and may approve a new course only if it meets the required curricular content.

(b) The curriculum of any teaching of reproductive health or any disease, including HIV/AIDS, its symptoms, development, and treatment, as part of the courses required by paragraph (a) must be annually approved by a district school board in an open, noticed public meeting.

(3) Any student whose parent makes written request to the school principal shall be exempted from the teaching of reproductive health or any disease, including HIV/AIDS, its symptoms, development, and treatment. A student so exempted may

not be penalized by reason of that exemption. Course descriptions for comprehensive health education shall not interfere with the local determination of appropriate curriculum which reflects local values and concerns. Each school district shall notify parents of this right through publication on the district website of the curriculum, including the process for a parent to exercise this right.

Section 3. This act shall take effect July 1, 2021.

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: April 6, 2021

I respectfully request that **Senate Bill #410**, relating to Materials Harmful to Minors, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

This bill requires each school district to publish specified materials on the district website to notify parents of their right to exempt their student from reproductive health and disease education, it also requires district school boards to annually approve curriculum relating to reproductive health and disease education in an open, noticed public meeting.

Senator Ana Maria Rodriguez
Florida Senate, District 39

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

410
Bill Number (if applicable)

Topic Harmful Materials to Minors

Amendment Barcode (if applicable)

Name Marilyn Riddleberger

Job Title —

Address 10200 122nd Ave Apt 3801 Phone 727-251-5857
Street

Largo FL 33773 Email unkamama2@gmail.com
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Christian Family Coalition - Pinellas

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)

Tuesday, April 20, 2021
Meeting Date

CS/SB 410
Bill Number (if applicable)

Topic Materials Harmful to Minors

Amendment Barcode (if applicable)

Name Debra Gunnoe

Job Title Retired USAF Lt Col

Address 2143 Chatsworth Drive
Street

Navarre FL 32566
City *State* *Zip*

Phone (334) 328-1060

Email debbie.gunnoe@putgodfirst.co

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-26-21
Meeting Date

410
Bill Number (if applicable)

Topic HARMFUL MATERIALS FOR MINORS

Amendment Barcode (if applicable)

Name WINK DANIEL

Job Title RETIRED TEACHER/COACH

Address 2336 DAYHURST LANE
Street

Phone 352-753-8569

THE VILLAGES FL 32162
City *State* *Zip*

Email WINKANDPAT@YAHOO.COM

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

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

Representing CHRISTIAN COALITION

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

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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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 30, 2021
Meeting Date

410
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Harmful Materials for Minors

Name Peggy Joseph

Job Title unemployed teacher

Address 621 First Ave
Street

Phone 919 671 8993

Lady Lake FL 32159
City *State* *Zip*

Email peggyruthjoseph@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing me

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)

4-20-2021
Meeting Date

SB 410
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Harmful Materials

Name Bev Kilmer

Job Title President

Address 3849 Appalachee Trl
Street

Marianna FL 32446
City *State* *Zip*

Phone 850-933-6476

Email bev@bevkilmer.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Freedom Speaks

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)

7/20/2021
Meeting Date

SB-510
Bill Number (if applicable)

Topic Harmful Materials For Minors

Amendment Barcode (if applicable)

Name Cynthia Sheckley

Job Title CFC

Address 2423 Canary Place
Street

Phone 423-384-3373

The Villages, FL 32163
City *State* *Zip*

Email cynsheckley@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing CFC

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

4/20/21
Meeting Date

410
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Heidi Daniels

Job Title _____

Address 3278 Lord Murphy Rd
Street

Phone 9044723278

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.

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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)

4/20/21
Meeting Date

SB 410
Bill Number (if applicable)

Topic Harmful Materials for Minors

Amendment Barcode (if applicable)

Name Anthony Verdugo

Job Title Ex. Director

Address P.O. Box 650216 Phone 786 447-6431
Street

Miami FL 33265 Email averdugo@cfloridanet
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Christian Family Coalition 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)

April 20, 2021
Meeting Date

SB 410
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Harmful materials for Minors

Name Armando V. Pomar

Job Title President.

Address 770 Abbott Ave
Street

Phone 786-285-4090

Miami Beach Fl. 33141
City *State* *Zip*

Email armandovpomar@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Hispanic American Rabbis Foundation Corp (HARDF)

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)

4/20/26
Meeting Date

SB 410
Bill Number (if applicable)

Topic Harmful material for minors

Amendment Barcode (if applicable)

Name Israel Hall

Job Title Worship Pastor

Address 101 Olanta DR
Street

Phone 406-314-1767

The Villages FL 32162
City *State* *Zip*

Email israeldavidhall@icloud.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Christian family Coalition

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)

04/20/2021
Meeting Date

SB-410
Bill Number (if applicable)

Topic HARMFUL MATERIALS FOR MINORS

Amendment Barcode (if applicable)

Name MARCIA JEWELL

Job Title PHOTOGRAPHY

Address 40158 OAKRIDGE DR.
Street

LADY LAKE FL. 32159
City *State* *Zip*

Phone 352-638-3881

Email momofpootie@msn.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing CHRISTIAN FAMILY COALTION

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)

4/20/21
Meeting Date

410
Bill Number (if applicable)

Topic Harmful Materials For Minors

Amendment Barcode (if applicable)

Name Lynette Gee

Job Title

Address 1447 Pelican Path
Street

Phone (424) 229-4926

The Villages FL 32162
City *State* *Zip*

Email Lynettejet@icloud.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing CFC

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

The following Appearance Records were not read into the record by the Chair

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

SB 410
Bill Number (if applicable)

Topic Sex. Ed

Amendment Barcode (if applicable)

Name Mara Cooper

Job Title

Address 201 E. Park Ave, Ste. 200A
Street

Phone 850-681-0980

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

410
Bill Number (if applicable)

Topic Materials Harmful to Minors

Amendment Barcode (if applicable)

Name Shirley Kemple

Job Title Board Member

Address 3433 Lithia Pinecrest Rd #142
Street

Phone 813 381 4881

Valrico FL 33596
City *State* *Zip*

Email info@pocp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Protect Our Children Project

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)

4-20-21
Meeting Date

SB 410
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Sex adopt in

Name Yvonne Isacke

Job Title Realtor

Address 425 Germain Ave. Phone

Street

Naples FL 34108 Email yisacke@gmail.com

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/20/2021
Meeting Date

410
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Materials Harmful to Minors

Name Michael Barrett

Job Title Associate for Education

Address 201 W. Park Ave
Street

Phone (850) 205-6823

Tallahassee — *City* | FL — *State* | 32301 — *Zip*

Email mbarrett@flaccb.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of 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.

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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)

04/20/21
Meeting Date

SB 410
Bill Number (if applicable)

Topic HARMFUL MATERIAL FOR MINOR

Amendment Barcode (if applicable)

Name Dolory Boston-Clarke

Job Title RETIRED

Address 4038 UMATILLA
Street

Phone 813-230-4779

THE VILLAGES FL. 32163
City *State* *Zip*

Email dboston clarke5@hotmail.com

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

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

Representing CHRISTIAN COAL.

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

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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)

4/27/21
Meeting Date

SB 410
Bill Number (if applicable)

Topic HARMFUL MATERIAL FOR MINORS

Amendment Barcode (if applicable)

Name NANCY FORMISANO

Job Title Retired

Address 1058 SE 115TH TERR RD
Street

Phone 352-208-1769

Summerfield, FL
City *State* *Zip*

Email comfsitesm@gmail.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

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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)

4/20/21
Meeting Date

SB 410
Bill Number (if applicable)

Topic Harmful materials for minors

Amendment Barcode (if applicable)

Name Debra A Garcia & Antonio M Garcia

Job Title Retired

Address 1622 Snelling Ave
Street
The Villages FL 32162
City *State* *Zip*

Phone 352-410-3002

Email 2fdolphin@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Christian Family 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)

4/20/21
Meeting Date

SB 410
Bill Number (if applicable)

Topic Materials Harmful to Minors

Amendment Barcode (if applicable)

Name Yvette Benarroch

Job Title 2nd Vice Chair Republican National Hispanic Assembly of FL

Address _____ Phone 239-253-8507
Street

Naples Island FL 34145 Email Yvette@RNHAFL.org
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Republican National Hispanic Assembly of FL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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)

Meeting Date	Bill Number (if applicable)
	410

Amendment Barcode (if applicable)

Topic Parental Rights Bill

Name Lenora Penney

Job Title Human Resource Mgmt retired

Address 2962 ~~Bryn~~ Byington Circle Phone 850-933-4073
Street

Tallahassee Fla 32303 Email lenorapenney@centurytel.net
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Freedom Speaks

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 506
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Garcia
SUBJECT:	Transparency in Government Spending
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Candelaria	McVaney	GO	**Fav/CS**
2.	Davis	Sadberry	AP	**Favorable**
3.	Candelaria	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 506 requires a nongovernmental entity that receives at least 50 percent of its annual revenue from state funds or that receives $750,000 or more from state funds in a fiscal year to submit a report to the Department of Management Services (DMS) by January 15 of each year that includes the name, position, and total annual compensation of, including bonuses, exit bonuses, accrued paid time off, severance payments, and incentive payments paid to, each director, board member, chief executive officer, chief financial officer, chief operating officer, or any other person performing equivalent functions. The report must be verified by a director, board member, chief executive officer, chief financial officer, or chief operating officer of the nongovernmental entity.

The bill provides definitions for the terms "nongovernmental entity" and "state funds."

The bill requires the DMS to include on its Florida Has a Right to Know website the information reported by the nongovernmental entities beginning February 1, 2022, and annually thereafter.

The bill requires a nongovernmental entity to post the reported information on its own website, if the nongovernmental entity maintains a website.

The bill provides that, before receiving funds from a governmental entity, a nongovernmental entity that received state funds in the previous year must submit to the governmental entity an attestation verifying that the nongovernmental entity has submitted the required report. A

nongovernmental entity that did *not* receive state funds in the previous year must submit, before receiving funds from a governmental entity, to the governmental entity an attestation verifying that the nongovernmental entity did not receive funding in the previous year.

The bill establishes that, beginning January 15, 2022, a governmental entity may not expend, transfer, or distribute funds to a nongovernmental entity until the nongovernmental entity has complied with the reporting and posting requirements. This prohibition is applicable to payments associated with contracts executed, amended, extended, or renewed on or after July 1, 2021, and any transfers or distributions authorized on or after July 1, 2021.

The bill will have an indeterminate negative fiscal impact. *See* Part V, Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

Transparency Florida Act

Section 215.985, F.S., is referred to as the Transparency Government Act (the act). The act mandates the Executive Office of the Governor, in consultation with the appropriations committees of the Senate and the House of Representatives, to establish and maintain a single website that provides access to all other websites required under s. 215.985, F.S. The single website, and other websites must:

- Be constructed for usability and provide an intuitive user experience.
- Provide a consistent visual design, interaction or navigation design, and information or data presentation.
- Be deployed in compliance with the Americans with Disabilities Act.
- Be compatible with all major web browsers.

The outcome of this requirement has been the single webpage known as "Transparency Florida,"[1] an initiative to ensure accountability in how the state spends its money. The Transparency Florida website allows for Florida citizens to view state budgets, payments, and contracts in order to hold state government accountable. The website provides links to:

- State Financials (budget, spending, and related information);
- State Payments;
- Florida State Contract Search (FACTS);
- State Contract Audits;
- State Economic Incentives Program;
- Quasi Government Spending;
- Estimated state taxes paid based on income;
- State Financial Reports;
- Local Government Financial Reporting; and
- State Employee Data (Florida Has a Right to Know).

[1] Department of Financial Services, *Transparency Florida, available at* https://www.myfloridacfo.com/Transparency/ (last visited Apr. 5, 2021).

Florida Fiscal Portal

Section 215.985(5), F.S., requires the Executive Office of the Governor to establish and maintain a website that provides information relating to fiscal planning for the state.[2] This website is known as the "Florida Fiscal Portal" and houses a collection of documents that detail the fiscal status of the state. The website includes agency legislative budget requests, the long-range financial outlook, the Governor's budget recommendation, and other fiscal publications.[3] The Office of Policy and Budget in the Executive Office of the Governor ensures all data added to the website remains accessible to the public for 10 years.

Florida Has a Right to Know Website

The DMS is required to maintain a website that provides current information regarding each employee or officer of a state agency, a state university, a Florida College System institution, or the State Board of Administration, regardless of the appropriation category.[4] This website, known as "Florida Has a Right to Know," provides current information relating to each employee or officer including the:

- Name;
- Salary or hourly rate of pay;
- Position number, class code, and class title; and
- Employing agency and budget entity.[5]

The information must be searchable by state agency, state university, Florida College System institution, and State Board Administration, and by employee name, salary range, or class code, and must be downloadable in a format that allows offline analysis.[6]

Florida Accountability Contract Tracking System

The Chief Financial Officer (CFO) is required to establish and maintain a secure contract tracking system available for viewing and downloading by the public through a secure website.[7] The Department of Financial Services (DFS) maintains and updates the contract tracking system. The tracking system contains contracts, grant awards, and amendments to contracts.

Within 30 days after executing a contract, each state entity is required to post the following information relating to the contract on the contract tracking system:

- The names of the contracting entities;
- The procurement method;
- The contract beginning and ending dates;
- The nature or type of commodities or services purchased;
- Applicable contract unit prices and deliverables;
- Total compensation to be paid or received under the contract;
- All payments made to the contractor to date;

[2] Section 215.985(5), F.S.
[3] Florida Fiscal Portal, *available at* http://floridafiscalportal.state.fl.us/Home.aspx (last visited Apr. 5, 2021).
[4] Section 215.985(6), F.S.
[5] Section 215.985(6)(a), F.S.
[6] Section 215.985(6)(b), F.S.
[7] Section 215.985(14), F.S.

- Applicable contract performance measures;
- If a competitive solicitation was not used to procure the goods and services, the justification of the action, including citation to a statutory exemption from competitive solicitation if any; and
- Electronic copies of the contract and procurement documents that have been redacted to exclude confidential information or exempt information.[8]

Within 30 calendar days after an amendment to an existing contract, the state entity that is a party to the contract must update the information on the contract tracking system.

Records made available on the contract tracking system may not reveal information made confidential or exempt by law. Each state entity that is a party to a contract must redact confidential and exempt information from the contract and procurement documents before posting an electronic copy on the contract tracking system.[9] A request to redact confidential and exempt information must be made in writing and delivered by mail, facsimile, electronic transmission, or in person to the state entity. The CFO, and the DFS, or an employee thereof, is not responsible for redacting confidential or exempt information contained on the system or the failure of a state entity to redact the confidential or exempt information. The CFO may regulate and prohibit the posting of records that could facilitate identity theft or fraud. Such action by the CFO does not supersede the duty of a public entity to provide a copy of a public record upon request.[10]

Verification of Documents

Section 92.525, F.S., specifies that the requirement that a document be verified means that the document must be signed or executed by a person and that the person must state under oath (affirmation) that the facts or matters stated or recited in the document are true or other words to that effect. A document may be verified in three ways:

- Under oath or affirmation taken or administered before an officer authorized under s. 92.50, F.S., to administer oaths;
- Under oath or affirmation taken or administered by an officer authorized under s. 117.10, F.S., to administer oaths; or
- By the signing of the written declaration prescribed in s. 92.525(2), F.S.[11,12]

III. Effect of Proposed Changes:

Section 1 amends s. 215.985, F.S., to expand transparency in government spending.

[8] Section 215.985(14)(a), F.S.
[9] Section 215.985(14)(d), F.S.
[10] Section 215.985(14)(f), F.S.
[11] Section 92.525(2), F.S., provides that a written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.
[12] Section 92.525(1), F.S.

The term "nongovernmental entity" is defined as a nonprofit corporation.

The term "state funds" is defined to mean funds paid from the General Revenue Fund or any state trust fund, funds allocated by the Federal Government and distributed by the state, or funds appropriated by the state for distribution through any grant program.

This section requires a nongovernmental entity that receives at least 50 percent of its annual revenue, calculated using the nongovernmental entity's fiscal year, from state funds or that receives $750,000 or more from state funds in a fiscal year, to submit a report to the DMS by January 15 of each year that lists the name, position, and total annual compensation of, including bonuses, exit bonuses, accrued paid time off, severance payments, and incentive payments paid to each director, board member, chief executive officer, chief financial officer, chief operating officer, or any other person performing equivalent functions of the nongovernmental entity. The report must be verified as provided in s. 92.525, F.S., by a director, board member, chief executive officer, chief financial officer, or chief operating officer of the nongovernmental entity. Beginning February 1, 2022, and annually thereafter, the DMS must post the submitted information on its Florida Has a Right to Know website. In addition, the nongovernmental entity must post the same information on its own website if it maintains a website.

Before receiving funds from a governmental entity, a nongovernmental entity must attest that it has received state funds above the applicable thresholds in the previous year and has submitted the report required to the DMS, or that it did not receive funding meeting those thresholds in the previous year.

Beginning January 15, 2022, a governmental entity may not expend, transfer, or distribute funds to a nongovernmental entity until the nongovernmental entity has complied with the requirements of the bill. This prohibition is applicable to payments associated with contracts executed, amended, extended, or renewed on or after July 1, 2021, and any transfers or distributions authorized on or after July 1, 2021.

Section 2 provides that the bill 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:

The bill will have an indeterminate fiscal impact on private sector organizations. A nonprofit corporation may experience costs associated with complying with the reporting requirement and including the reported information on its own website, if it maintains one. Further, nongovernmental entities will incur additional workload and costs associated with verifying the attestation being submitted to the affiliated governmental entity.

C. Government Sector Impact:

The DMS will incur additional workload and associated costs resulting from the processing and posting of the data provided by nongovernmental entities. The DMS estimates costs, based on current technology spending for the Florida Has a Right to Know website, will result in a net increase of at least $1,000 annually to maintain the data on the portal.[13]

The bill prohibits governmental entities from expending, transferring, or distributing funds to a nongovernmental entity that is in noncompliance with the requirements of the bill. Governmental entities will experience increased workload and associated costs relating to the determination or confirmation of a nongovernmental entity's compliance before expending, transferring, or distributing funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill as currently drafted does not appear to provide to noncompliant nongovernmental entities notice or an opportunity to be heard prior to the suspension of funding.

[13] Department of Management Services, *2021 Agency Legislative Bill Analysis for CS/SB 506*, at 4 (Mar. 22, 2021) (on file with the Senate Subcommittee on Agriculture, Environment, and General Government).

VIII. Statutes Affected:

This bill substantially amends section 215.985 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:

- Provides a definition for "nongovernmental entity" and "state funds."
- Requires a nonprofit corporation that receives at least 50 percent of its annual revenue from state funds or that receives $750,000 or more from state funds in a fiscal year, to submit to the DMS a report providing compensation information of the nongovernmental entities executives.
- Requires the DMS to include on the Florida Has a Right to Know website the information provided by the nongovernmental entity.
- Requires nongovernmental entities, before they receive funds from a governmental entity, to submit to the governmental entity an attestation verifying whether or not the nongovernmental entity submitted the required report if they received funding the previous year.
- Requires nongovernmental entities, before they receive funds from a governmental entity, which did not receive funding in the previous year, to submit to the governmental entity an attestation verifying that the nongovernmental entity did not receive funding in the previous year.
- Prohibits governmental entities from expending, transferring, or distributing funds to a nongovernmental entity until the nongovernmental entity has complied with the reporting requirements.
- Establishes that the provisions of the bill are applicable to payments associated with contracts executed, amended, extended, or renewed on or after July 1, 2021.

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 Garcia

585-02992-21 2021506c1

A bill to be entitled

An act relating to transparency in government spending; amending s. 215.985, F.S.; defining terms; requiring nongovernmental entities that have received a specified amount of state funds to submit an annual report detailing certain compensation data to the Department of Management Services; requiring such reports to be verified under penalty of perjury; requiring the department to post the information received through such reports on a specified website; requiring a nongovernmental entity to post the reported compensation information on its website; requiring a nongovernmental entity to take certain actions before receiving funds from a governmental entity; prohibiting a governmental entity from expending, transferring, or distributing funds to a nongovernmental entity if compliance with reporting requirements is not met; specifying applicability; providing an effective date.

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

Section 1. Subsections (2) and (6) of section 215.985, Florida Statutes, are amended to read:

215.985 Transparency in government spending.—

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

(a) "Committee" means the Legislative Auditing Committee.

(b) "Contract" means a written agreement or purchase order issued for the purchase of goods or services or a written

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585-02992-21 2021506c1

agreement for the receipt of state or federal financial assistance.

(c) "Governmental entity" means a state, regional, county, municipal, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, a department, division, bureau, commission, authority, district, or agency thereof, or public school, Florida College System institution, state university, or associated board.

(d) "Nongovernmental entity" means a nonprofit corporation.

(e) "State funds" means funds paid from the General Revenue Fund or any state trust fund, funds allocated by the Federal Government and distributed by the state, or funds appropriated by the state for distribution through any grant program.

(f) "Website" means a site on the Internet which is easily accessible to the public at no cost and does not require the user to provide information.

(6)(a) The Department of Management Services shall establish and maintain a website that provides current information relating to each employee or officer of a state agency, a state university, a Florida College System institution, or the State Board of Administration, regardless of the appropriation category from which the person is paid.

1.~~(a)~~ For each employee or officer, the information must include, at a minimum, his or her:

a.~~1.~~ Name and salary or hourly rate of pay.

b.~~2.~~ Position number, class code, and class title.

c.~~3.~~ Employing agency and budget entity.

2.~~(b)~~ The information must be searchable by state agency,

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

state university, Florida College System institution, and the State Board of Administration, and by employee name, salary range, or class code and must be downloadable in a format that allows offline analysis.

(b)1. A nongovernmental entity that receives at least 50 percent of its annual revenue, calculated using the nongovernmental entity's fiscal year, from state funds or that receives $750,000 or more in state funds in a fiscal year, must submit to the Department of Management Services by January 15 of each year a report that includes the name, position, and total annual compensation of, including bonuses, exit bonuses, accrued paid time off, severance payments, and incentive payments paid to, each director, board member, chief executive officer, chief financial officer, or chief operating officer or any other person performing equivalent functions. The report must be verified as provided in s. 92.525 by a director, board member, chief executive officer, chief financial officer, or chief operating officer of the nongovernmental entity.

2. Beginning February 1, 2022, and each February 1 thereafter, the Department of Management Services shall include the information reported in subparagraph 1. on the website established under paragraph (a).

3. A nongovernmental entity required to submit a report under subparagraph 1. must post the reported information on its website if the entity maintains a website.

4. Before receiving funds from a governmental entity, a nongovernmental entity that:

a. Received funding subject to this paragraph in the preceding year must submit to the governmental entity an

attestation verified as provided in s. 92.525, that the nongovernmental entity has submitted the report required in subparagraph 1.

b. Did not receive funding subject to this paragraph in the preceding year must submit to the governmental entity an attestation verified as provided in s. 92.525, that the nongovernmental entity has not received funding in the preceding year.

5.a. Beginning January 15, 2022, a governmental entity may not expend, transfer, or distribute funds to a nongovernmental entity until the nongovernmental entity has complied with the requirements of this paragraph.

b. This subparagraph is applicable to payments associated with contracts executed, amended, extended, or renewed on or after July 1, 2021, and any transfers or distributions authorized on or after July 1, 2021.

Section 2. 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 522
INTRODUCER:	Appropriations Committee; Regulated Industries Committee; and Senator Diaz
SUBJECT:	Vacation Rentals
DATE:	April 12, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Davis	Sadberry	AP	**Fav/CS**
3.	Oxamendi	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 522 revises the regulation of vacation rentals. A vacation rental is a unit in a condominium or cooperative, or a single, two, three, or four family house that is rented to guests more than three times a year for periods of less than 30 days or one calendar month, whichever is shorter, or held out as regularly rented to guests. Vacation rentals are licensed by the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR). Current law prohibits local laws, ordinances, or regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. However, this prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

The bill permits "grandfathered" local laws, ordinances, or regulations adopted on or before June 1, 2011, to be amended to be less restrictive.

The bill preempts the regulation of advertising platforms to the state. An advertising platform is a person who electronically advertises a vacation rental to rent for transient occupancy, maintains a marketplace, and a reservation or payment system.

The bill requires the owner or operator of a vacation rental offered for transient occupancy through an advertising platform to include the property's vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers on the vacation rental's advertisement, and attest that, to the best of their knowledge, those numbers are

current, valid, and accurate. The vacation rental property owner or operator must display this tax and licensure information inside the vacation rental property.

The bill requires an advertising platform to display the vacation rental license number and the Florida sales tax registration and tourist development tax account numbers of each property that advertises on its platform. The advertising platform must verify the validity of the vacation rental's license number before it publishes the advertisement and must perform ongoing checks every calendar quarter thereafter. To facilitate this verification, the division must maintain vacation rental license information in a readily accessible electronic format. The advertising platform must remove from public view any advertisement or listing that fails to display a valid vacation rental license number.

Under the bill, advertising platforms must provide to the division on a quarterly basis information that assists the division with identification and verification of the vacation rental property's compliance with the bill's requirements.

Advertising platforms are required by the bill to collect and remit any taxes imposed under chapters 125, 205, and 212, Florida Statutes, that result from payment for the rental of a vacation rental property on its platform. The bill allows platforms to exclude service fees from the taxable basis if the platforms do not own, operate, or manage the vacation rental. It allows the division to take enforcement action for noncompliance.

Additionally, the bill:

- Requires advertising platforms to adopt anti-discrimination policies and to inform users of the public lodging discrimination prohibition found in section 509.092, Florida Statutes;
- Allows Department of Revenue to adopt emergency rules for six months which may be renewed until permanent rules are adopted;
- Provides that its terms do not supersede any current or future declaration or covenant for condominium, cooperative, or homeowners' associations; and
- Requires a sexual offender or predator to register at the local sheriff's office no later than 5:00 p.m., 24 hours after establishing a temporary residence in a vacation rental.

The bill provides appropriations and positions for the DBPR and the Florida Department of Law Enforcement to implement the provisions of the bill.

There may be an increase in local tourist development taxes relating to the additional projected licenses. The Revenue Estimating Conference determined that the provisions in the bill that require advertising platforms to collect and remit state and local sales taxes have no fiscal impact.

The bill takes effect upon becoming a law. However, the provisions relating to the regulation of advertising platforms take effect January 1, 2022.

II. Present Situation:

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation is the state agency charged with enforcing the provisions of

ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

The term "public lodging establishments" includes transient and nontransient public lodging establishments.[1] The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

A "transient public lodging establishment" is defined in s. 509.013(4)(a)1., F.S., as:

> …any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

A "nontransient public lodging establishment" is defined in s. 509.013(4)(a)2., F.S., as:

> …any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests for periods of at least 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Section 509.013(4)(b), F.S., exempts the following types of establishments from the definition of "public lodging establishment":

> 1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors;
> 2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072, F.S.;
> 3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients;
> 4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or one calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than one calendar month, provided that no more than four rental units within a single complex of buildings are available for rent;

[1] Section 509.013(4)(a), F.S.

> 5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895, F.S.;
> 6. Any establishment inspected by the Department of Health and regulated by ch. 513 F.S.;
> 7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public;
> 8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement; and
> 9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242, F.S.

A public lodging establishment is classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.[2]

A "vacation rental" is defined in s. 509.242(1)(c), F.S., as:

> …any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but is not a timeshare project.

The DBPR licenses vacation rentals as condominiums, dwellings, or timeshare projects.[3] The division may issue a vacation rental license for "a single-family house, a townhouse, or a unit or group of units in a duplex, triplex, quadruplex, or other dwelling unit that has four or less units collectively."[4] The division does not license or regulate the rental of individual rooms within a dwelling unit based on the roominghouse and boardinghouse exclusion from the definition of public lodging establishment in s. 509.013(4)(b)9., F.S.[5]

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[2] Section 509.242(1), F.S.
[3] Fla. Admin. Code R. 61C-1.002(4)(a)1.
[4] The division further classifies a vacation rental license as a single, group, or collective license. *See* Fla. Admin. Code R. 61C-1.002(4)(a)1. A single license may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity. A group license is a license issued by the division to a licensed agent to cover all units within a building or group of buildings in a single complex. A collective license is a license issued by the division to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses or units per license.
[5] Department of Business and Professional Regulation, *2021 Agency Legislative Bill Analysis for SB 522*, at 2 (Feb. 8, 2021) (on file with the Senate Committee on Regulated Industries).

The 48,226 public lodging establishments licensed by the division are distributed as follows:[6]

- Hotels – 2,191 licenses;
- Motels – 2,497 licenses;
- Nontransient apartments – 18,571 licenses;
- Transient apartments – 942 licenses;
- Bed and Breakfast Inns – 269 licenses;
- Vacation rental condominiums – 9,031 licenses;
- Vacation rental dwellings – 17,934 licenses; and
- Vacation rental timeshare projects – 27 licenses.

Inspections of Vacation Rentals

The division must inspect each licensed public lodging establishment at least biannually, but must inspect transient and nontransient apartments at least annually. However, the division is not required to inspect vacation rentals, but vacation rentals must be available for inspection upon a request to the division.[7] The division conducts inspections of vacation rentals in response to a consumer complaint. In Fiscal Year 2019-2020, the division received 1,391 consumer complaints regarding vacation rentals. In response to the complaints, the division's inspection confirmed a violation for 38 of the complaints.[8]

The division's inspection of vacation rentals includes matters of safety (for example, fire hazards, smoke detectors, and boiler safety), sanitation (for example, safe water sources, bedding, and vermin control), consumer protection (for example, unethical business practices, compliance with the Florida Clean Air Act, and maintenance of a guest register), and other general safety and regulatory matters.[9] The division must notify the local fire safety authority or the State Fire Marshal of any readily observable violation of a rule adopted under ch. 633, F.S.,[10] which relates to a public lodging establishment.[11]

Additionally, an applicant for a vacation rental license is required to submit with the license application a signed certificate evidencing the inspection of all balconies, platforms, stairways, railings, and railways, from a person competent to conduct such inspections.[12]

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[6] Department of Business and Professional Regulation, *HR400A-Sum Public Food and Lodging Statewide Account Summary*, (Oct. 1, 2020) *available at* http://www.myfloridalicense.com/dbpr/hr/reports/statistics/documents/licensecount1.pdf (last visited Feb. 5, 2021).

[7] Section 509.032(2)(a), F.S.

[8] Department of Business and Professional Regulation, *Division of Hotels and Restaurants Annual Report for FY 2019-2020* at page 21, *available at* http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2019_20.pdf (last visited Feb. 5, 2021).

[9] *See* ss. 509.211 and 509.221, F.S., for the safety and sanitary regulations, respectively. *See also* Fla. Admin. Code R. 61C-1.002; *Lodging Inspection Report, DBPR Form HR 5022-014*, which details the safety and sanitation matters addressed in the course of an inspection. A copy of the Lodging Inspection Report is available at: https://www.flrules.org/Gateway/reference.asp?No=Ref-07062 (last visited Feb. 5, 2021).

[10] Chapter 633, F.S., relates to fire prevention and control, including the duties of the State Fire Marshal and the adoption of the Florida Fire Prevention Code.

[11] Section 509.032(2)(d), F.S.

[12] *See* ss. 509.211(3) and 509.2112, F.S., and form *DBPR HR-7020, Division of Hotels and Restaurants Certificate of Balcony Inspection*, *available at* http://www.myfloridalicense.com/dbpr/hr/forms/documents/application_packet_for_vacation_rental_license.pdf (last visited Feb. 5, 2021).

Preemption

Section 509.032(7)(a), F.S., provides that "the regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state."

Current law does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206, F.S.[13]

Section 509.032(7)(b), F.S., prohibits local laws, ordinances, or regulations that prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. However, this prohibition does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

Section 509.032(7)(c), F.S., provides that the prohibition in s. 509.032(7)(b), F.S., does not apply to local laws, ordinances, or regulations exclusively relating to property valuation as a criterion for vacation rental if the law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.[14]

Legislative History

In 2011, the Legislature preempted certain vacation rental regulation to the state. The preemption prevented local governments from enacting any law, ordinance, or regulation that:

- Restricted the use of vacation rentals;
- Prohibited vacation rentals; or
- Regulated vacation rentals based solely on their classification, use, or occupancy.[15]

This legislation grandfathered any local law, ordinance, or regulation that was enacted by a local government on or before June 1, 2011.[16]

In 2014, the Legislature revised the preemption to its current form with an effective date of July 1, 2014.[17] Chapter 2014-71, Laws of Fla., amended s. 509.032(7)(b), F.S., and repealed the portions of the preemption of local laws, ordinances, and regulations which prohibited "restrict[ing] the use of vacation rentals" and which prohibited regulating vacation rentals "based solely on their classification, use, or occupancy."[18]

[13] Section 509.032(7)(a), F.S.
[14] *See* s. 163.3164(43), F.S., which provides that the state land planning agency is the Department of Economic Opportunity.
[15] Chapter 2011-119, Laws of Fla.
[16] *Id.*
[17] Chapter 2014-71, Laws of Fla. (codified in s. 509.032(7)(b), F.S.).
[18] *Id.*

Attorney General Opinions

The office of the Attorney General issued an Informal Legal Opinion on October 22, 2013, regarding whether Flagler County could intercede and stop vacation rental operations in private homes that were zoned, prior to June 1, 2011, for single-family residential use.[19] According to the opinion, "due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood." Flagler County had no regulation governing vacation rentals before the grandfather date of June 1, 2011, in s. 509.032(7)(b), F.S. The Attorney General concluded that the county's local zoning ordinance for single-family homes that predated June 1, 2011, did not restrict the rental of such property as a vacation rental and that the zoning ordinances could not now be interpreted to restrict vacation rentals.

The Attorney General also issued an opinion on November 13, 2014, to the City of Wilton Manors, concluding that s. 509.032(7)(b), F.S., does not permit the city to regulate the location of vacation rentals through zoning, and the city may not prohibit vacation rentals that fail to comply with the registration and licensing requirements in s. 509.241, F.S., which requires public lodging establishments to obtain a license from the division.[20]

In addition, the Attorney General issued an advisory opinion on October 5, 2016, addressing whether a municipality could limit the spacing and concentration of vacation rentals through a proposed ordinance regarding vacation rentals.[21] The Attorney General concluded that the preemption in s. 509.032, F.S., allows local governments some regulation of vacation rentals, but prevents local governments from prohibiting vacation rentals. Consequently, the Attorney General noted that a municipality may not impose spacing or proportional regulations that would have the effect of preventing eligible housing from being used as a vacation rental.[22]

The Attorney General also opined that amending an ordinance that was enacted prior to June 1, 2011 will not invalidate the grandfather protection for the parts of the ordinance that are reenacted.[23] The new provisions would be preempted by state law if they revise an ordinance in a manner that would regulate the duration or frequency of rental of vacation rentals, even when the new regulation would be considered "less restrictive" than the prior local law.

Public Lodging Non-Discrimination Law

Section 509.092, F.S., prohibits an operator of a public lodging establishment from denying service or offering lesser quality accommodations to a person based upon his or her race, creed, color, sex, pregnancy, physical disability, or national origin. An aggrieved person may file a

[19] Florida Attorney General, *Informal Legal Opinion to Mr. Albert Hadeed, Flagler County Attorney, regarding Vacation Rental Operation-Local Ordinances,* Oct. 22, 2013, (on file with the Senate Committee on Regulated Industries).
[20] Op. Att'y Gen. Fla. 2014-09, *Vacation Rentals - Municipalities - Land Use* (November 13, 2014), *available at* http://www.myfloridalegal.com/ago.nsf/printview/5DFB7F27FB483C4685257D900050D65E (last visited Feb. 7, 2021).
[21] Op. Att'y Gen. Fla. 2016-12, *Municipalities - Vacation Rentals – Zoning,* Oct. 5, 2016 (on file with the Senate Committee on Regulated Industries).
[22] *Id.*
[23] Op. Att'y Gen. Fla. 2019-07, *Vacation rentals, municipalities, grandfather provisions* (August 16, 2019) *available at* http://www.myfloridalegal.com/ago.nsf/Opinions/933B3706FADB00CA85258458006F4CFA (last visited Feb. 17, 2021).

complaint pursuant to s. 760.11, F.S., of the Florida Civil Rights Act. Such complaints are mediated, investigated, and determined by the Florida Commission on Human Relations.[24]

Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of one or more specified sex offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.[25] The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. Generally, the sexual predator or offender must register with the sheriff 48 hours after being released from prison or otherwise establishing residence in Florida. The laws span several different chapters and numerous statutes[26] and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Florida Department of Corrections (FDC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles, and the Department of Children and Families.

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;[27]
- Has been convicted of a qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.[28]

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 requirements 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.[29]

[24] See Florida Commission on Human Relations, *Public Accommodations*, https://fchr.myflorida.com/public-accommodations (last visited Feb. 7, 2021).
[25] Sections 775.21 and 943.0435, F.S.
[26] Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.
[27] Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).
[28] Sections 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.
[29] Sections 943.0435(1)(h), 985.4815(1)(h), 944.606(1)(f), and 944.607(1)(f), F.S., address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

Requirements for registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration may differ.[30] Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the FDC's control or custody, under the FDC's or the DJJ's supervision, or in a residential commitment program under the DJJ.

Sexual predators and 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.

A sexual predator or offender must register at the sheriff's office in the county where he or she establishes or maintains a residence within 48 hours after establishing or maintaining a residence.[31]

The FDLE, through its agency website, provides a searchable database that includes some of this information.[32] Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

Residence Definitions

Section 775.21, F.S., defines the terms "permanent residence," "temporary residence," and "transient residence" for the purpose of reporting residence information. Section 943.0435, F.S., also uses these definitions.[33]

"Permanent residence" means a place where the person abides, lodges, or resides for three or more consecutive days.[34]

"Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of three or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.[35]

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[30] All sexual predators, sexual offenders convicted for offenses specified in s. 943.0435(14)(b), F.S., and juvenile sexual offenders required to register under s. 943.0435(1)(h)1.d., F.S., for certain offenses must reregister four times per year (in the birth month of the sexual predator or qualifying sexual offender and every third month thereafter). *See* ss. 775.21(8)(a), 943.0435(14)(b), 944.607(13)(a), and 985.4815(13)(a), F.S. All other sexual offenders are required to reregister two times per year (in the birth month of the qualifying sexual offender and during the sixth month following the sexual offender's birth month). Section 943.0435(14)(a), F.S.

[31] Sections 775.21(6)(e)1.a. and 943.0435(2)(a)1., F.S., providing registration requirements for sexual predators and offenders, respectively.

[32] The FDLE is the central repository for registration information, and 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 and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. *See* http://offender.fdle.state.fl.us/offender/Search.jsp (last visited on Jan. 26, 2021).

[33] Sections 775.21(2)(k), (n), and (o) and 943.0435(1)(f), F.S.

[34] Section 775.21(2)(k), F.S.

[35] Section 775.21(2)(n), F.S.

"Transient residence" means a county where a person lives, remains, or is located for a period of three or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.[36]

III. Effect of Proposed Changes:

Preemptions

The bill amends s. 509.032(7), F.S., to preempt the regulation of advertising platforms to the state.

The bill permits any "grandfathered" local law, ordinance, or regulation adopted on or before June 1, 2011, to be amended to be less restrictive.

Definition of "Advertising Platform"

The bill creates s. 509.013(17), F.S., to define the term "advertising platform." Under the bill, an advertising platform:

- Provides an online application, software, website, or system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;
- Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; and
- Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

Requirements for Operators of Vacation Rentals

The bill amends s. 509.241, F.S., to require the owner or operator of a vacation rental offered for transient occupancy through an advertising platform to display the vacation rental license number, the applicable Florida sales tax registration, and the applicable merchant business tax receipt or tourist development tax account number under which such taxes must be paid for each rental of the property as a vacation rental property.

Requirements for Advertising Platforms

Effective January 1, 2022, the bill creates s. 509.243, F.S., to provide requirements, including a quarterly reporting, and tax collection and remittance requirements, for an advertising platform.

Advertising and Reporting Requirements

Under the bill, an advertising platform must:

[36] Section 775.21(2)(o), F.S

- Require that a person who places an advertisement for the rental of a vacation rental to:
  - Include the vacation rental license number and the applicable Florida sales tax registration, and merchant business tax receipt or tourist development tax account numbers in the vacation rental's advertisement; and
  - Attest to the best of their knowledge that the license number for the vacation rental property and the applicable tax numbers are current, valid, and accurately stated in the advertisement.
- Verify and display the vacation rental property's license number, the verification must occur before the platform publishes the rental property's advertisement, and re-occur on a quarterly basis.
- Display the vacation rental property's applicable tax numbers.
- Provide to the Division of Hotels and Restaurants (division) on a quarterly basis, by file transfer protocol or electronic data exchange file:
  - The uniform resource locator (URL) for the Internet address of the vacation rental advertisement; and
  - Unless otherwise stated in the advertisement at the provided URL, the physical address of the vacation rental, including the unit designation, the vacation rental license number, and applicable tax numbers.
- Remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.
- Adopt an anti-discrimination plan and inform its users of the public lodging discrimination prohibition found in s. 509.092, F.S.

The division must maintain vacation rental license information in a readily accessible electronic format.

The bill provides processes for the division to issue a cease and desist order for any person who violates ch. 509, F.S. The bill authorizes the division to seek an injunction or a writ of mandamus to enforce a cease and desist order. If the Department of Business and Professional Regulation (DBPR) is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, F.S., it is entitled to collect its attorney fees and costs, together with any cost of collection.

Tax Collection and Reporting Requirements

The bill creates s. 509.243(4), F.S., to require advertising platforms to collect and remit taxes due under ss. 125.0104,[37] 125.0108,[38] 205.044,[39] 212.03,[40] 212.0305,[41] and 212.055, F.S.,[42] resulting from the reservation of a vacation rental property and payment therefor through an advertising platform.

[37] Section 125.0104, F.S., relates to the local option tourist development tax.
[38] Section 125.0108, F.S., relates to the tourist impact tax in areas within a county designated as an area of critical state concern.
[39] Section 205.044, F.S., relates to the merchant business tax measured by gross receipts.
[40] Section 212.03, F.S., relates to the transient rentals tax.
[41] Section 212.0305, F.S., relates to convention development taxes.
[42] Section 212.055, F.S., relates to discretionary sales taxes.

The bill also amends s. 212.03(3), F.S., to include the tax collection and remittance requirements for advertising platforms within ch. 212, F.S., and to:

- Provide that the taxes an advertising platform must collect and remit are based on the total rental amount charged by the owner or operator for use of the vacation rental.
- Exclude service fees from the calculation of taxes remitted by an advertising platform to the Department of Revenue (DOR), unless the advertising platform owns, is related to, operates, or manages the vacation rental.
- Require the DOR and other jurisdictions to allow advertising platforms to register, collect, and remit such taxes.

The bill also amends s. 509.013, F.S., to define the term "merchant business taxes" as the tax imposed under s. 205.044, F.S. The bill includes the merchant business tax numbers as one of the tax account number vacation rental owners or operators must include in their advertisement on an advertising platform and as one of the taxes advertising platforms must collect and remit.

The bill authorizes the DOR to adopt emergency rules, which are effective for six months and may be renewed until permanent rules are adopted. This emergency rulemaking authority expires on January 1, 2023.

Sexual Predators and Offenders Registration

The bill amends s. 775.21, F.S., to redefine the term "temporary residence" in the context of sexual predator or offender registration requirements, to mean lodging in a vacation rental for 24 hours or more. Under current law, a sexual offender or predator must register at the local sheriff's office no later than 5:00 p.m., 48 hours after establishing a temporary residence in a vacation rental.

Community Associations

The bill provides that the application of vacation rental provisions created by the bill do not supersede any current or future declaration or declaration of condominium, cooperative documents, or declaration of covenants or declaration for a homeowners' association.

Appropriations

The bill authorizes three full-time equivalent (FTE) positions with an associated salary rate of 111,036, and appropriates $194,042 in recurring funds and $176,143 in nonrecurring funds from the Hotel and Restaurant Trust Fund to the DBPR to implement provisions of the bill.

In addition, the bill authorizes two FTE positions with associated salary rate of 90,150, and appropriates $148,941 in recurring funds and $363,590 in nonrecurring funds from the General Revenue Fund to the Florida Department of Law Enforcement to implement provisions of the bill.

Effective Date

The bill takes effect upon becoming a law. However, the provisions of s. 509.243, F.S., relating to advertising platforms, take effect January 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill amends s. 775.21, F.S., to require a sexual offender or predator to register at the local sheriff's office no later than 5:00 p.m., 24 hours after establishing a temporary residence in a vacation rental. Under current law, a sexual offender or predator must register at the local sheriff's office no later than 5:00 p.m., 48 hours after establishing a temporary residence in a vacation rental.

The FDLE has expressed concerns with this provision in the bill. The FDLE notes that sexual offender and predator registration is civil and regulatory process, not punishment. Its purpose is to protect the public by providing information and serving as an investigative tool for law enforcement. If the impact on sexual predator and offender registration is viewed as punishment or to intended prevent or limit the ability of sexual offenders and predators to travel freely within the state, the FDLE advises that these concerns may lead to significant litigation, in an area of law that has been closely examined and vetted through the courts and upheld as constitutional. Such litigation may jeopardize constitutionality, and therefore the viability, of Florida sexual offender and predator registration laws.[43]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill does not affect current fees for a vacation rental license.

[43] *Id*. at 5.

The Department of Business and Professional Regulation (DBPR) anticipates an indeterminate increase in its collection of vacation rental license fees because vacation rentals currently operating without a license would require a license number to post an advertisement on an advertising platform. The department also anticipates an indeterminate increase in fines collected due to noncompliance.[44]

Local governments may see an increase in local tourist development taxes.

The Revenue Estimating Conference determined that the provisions of the bill that require advertising platforms to collect and remit state and local sales taxes have no fiscal impact.[45]

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The DBPR estimates a cost of $370,185 ($194,042 recurring) to the Hotel and Restaurant Trust Fund and a need of three full-time positions and seven OPS employees in order to process an estimated increase in licenses, complaints, and compliance cases.[46] The bill authorizes three full-time equivalent (FTE) positions with an associated salary rate of 111,036, and appropriates $194,042 in recurring funds and $176,143 in nonrecurring funds from the Hotel and Restaurant Trust Fund to the DBPR to implement provisions of the bill.

According to the Florida Department of Law Enforcement (FDLE), amending the definition of "temporary residence" to include a vacation rental where a person lodges for 24 hours or more will lead to a "substantial increase" in the number of sexual predators and offenders required to complete a registration, although the FDLE was unable to estimate the number of sexual predators or offenders subject to the revised definition.[47] The increase of registrations could potentially impact the workload associated with the Florida Sexual Offender and Predator Registry and require programmatic changes to FDLE's technology systems. The bill authorizes two FTE positions with associated salary rate of 90,150, and appropriates $148,941 in recurring funds and $363,590 in nonrecurring funds from the General Revenue Fund to the FDLE to implement provisions of the bill.

VI. Technical Deficiencies:

None.

[44] *See* note 5, *supra* at page 7.
[45] Revenue Estimating Impact Conference, *Vacation Rentals, CS/SB 522*, (Feb. 26, 2021), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/Impact0226.pdf (last visited Mar. 10, 2021).
[46] *See* note 5, *supra* at pages 5 and 8.
[47] Florida Department of Law Enforcement, *2021 Agency Legislative Bill Analysis for CS/SB 522*, at 3 (Feb. 25, 2021) (on file with the Senate Subcommittee on Agriculture, Environment, and General Government).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 159.27, 212.03, 212.08, 316.1955, 404.056, 477.0135, 509.221, 509.013, 509.032, 509.241, 509.243, 553.5041, 705.17, 705.185, 717.1355, 775.21, and 877.24.

IX. Additional Information:

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

CS/CS by Appropriations on March 11, 2021:
The committee substitute:

- Removes provisions from the bill that preempt all inspections of vacation rentals to the state and required local governments to regulate activities that arise when a property is used as a vacation rental uniformly with all other residential properties.
- Maintains current law on the regulation of vacation rentals by local governments.
- Permits "grandfathered" local laws, ordinances, or regulations adopted on or before June 1, 2011, to be amended to be less restrictive.
- Provides positions and appropriations.

CS by Regulated Industries on February 16, 2021:
The committee substitute:

- Amends s. 212.03(3), F.S., to include the tax collection and remittance requirements for advertising platforms within ch. 212, F.S., and to:
  - Clarify that the taxes an advertising platform must collect and remit are based on the total rental amount charged by the owner or operator for use of the vacation rental.
  - Exclude service fees from the calculation of taxes remitted by an advertising platform to the Department of Revenue (DOR), unless the advertising platform owns, is related to, operates, or manages the vacation rental.
  - Require the DOR and other jurisdictions to allow advertising platforms to register, collect, and remit such taxes.
- Includes "merchant business taxes" under s. 205.044, F.S., within the types of taxes an advertising platform must remit.
- Revises the exemption in s. 509.032(7)(c), F.S., for local laws, ordinances, or regulations of a jurisdiction within an area of critical state concern to permit such jurisdictions to regulate and inspect vacation rentals, prohibit vacation rentals, or regulate the duration or frequency of rental of vacation rentals, if the laws, ordinances, or regulations were adopted before June 1, 2011.
- Redefines the term "temporary residence" in the context of sexual predator or offender registration requirements, to mean lodging in a vacation rental for 24 hours or more.

- Authorizes the DOR to adopt emergency rules, which are effective for six months and may be renewed until permanent rules are adopted. This provision expires on January 1, 2023.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete lines 303 - 446
and insert:
Section 3. Paragraph (c) of subsection (3) and paragraphs (a) and (b) of subsection (7) of section 509.032, Florida Statutes, are amended, and paragraph (d) is added to subsection (7) of that section, to read:
509.032 Duties.—
(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:



(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors and notify the event sponsors of the availability of the food-recovery brochure developed under s. 595.420.

3.a. Unless excluded under s. 509.013 ~~s. 509.013(5)(b)~~, a public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number

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of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events.

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, licensing, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b)1. A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation is amended to be less restrictive or to comply with the local registration requirements provided in this paragraph. Notwithstanding paragraph (a), a local law, ordinance, or regulation may require the registration of vacation rentals with a local vacation rental registration program. Local governments may adopt a vacation rental registration program pursuant to subparagraph 3. and impose a fine for failure to register under

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the vacation rental registration program.

2. Local governments may charge a fee of no more than $50 for processing a registration application. A local law, ordinance, or regulation may not require renewal of a registration more than once per year. However, if there is a change of ownership, the new owner may be required to submit a new application for registration.

3. As a condition of registration, the local law, ordinance, or regulation may only require the owner or operator of a vacation rental to:

a. Submit identifying information about the owner or the owner's agents and the subject vacation rental property.

b. Obtain a license as a transient public lodging establishment issued by the division within 60 days after local registration.

c. Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue, a county, or a municipal government.

d. Update required information on a continuing basis to be current.

e. Comply with parking standards and solid waste handling and containment requirements so long as such standards are not imposed solely on vacation rentals.

f. Designate and maintain at all times a responsible party who is capable of responding to complaints and other immediate problems related to the vacation rental, including being available by telephone at a listed phone number.

g. Pay in full all recorded municipal or county code liens against the subject property. The local government may withdraw

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its acceptance of a registration on the basis of an unsatisfied recorded municipal or county code lien.

4.a. Within 15 business days after receiving an application for registration of a vacation rental, the local government must review the application for completeness and accept the registration of the vacation rental or issue a written notice specifying with particularity any areas that are deficient.

b. The vacation rental owner or operator and the local government may agree to a reasonable request to extend the time periods in this subparagraph, particularly in the event of a force majeure or other extraordinary circumstance.

c. When a local government denies an application for registration of a vacation rental, the local government must give written notice to the applicant. Such notice may be provided by United States mail or electronically. The written notice must specify with particularity the factual reasons for the denial and include a citation to the applicable portions of an ordinance, a rule, a statute, or other legal authority for the denial of the registration. A local government cannot deny any applicant from reapplying if the applicant cures the identified deficiencies.

d. If the local government fails to accept or deny the registration within the timeframes provided in this subparagraph, the application is deemed accepted.

e. Upon an accepted registration of a vacation rental, a local government shall assign a unique registration number to the vacation rental or other indicia of registration and provide such registration number or other indicia of registration to the owner or operator of the vacation rental in writing or

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electronically.

5. The local government may terminate or refuse to issue or renew a vacation rental registration when:

a. The operation of the subject premises violates a local law, ordinance, or regulation not otherwise preempted pursuant to this subsection; or

b. The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

(d) The regulation of advertising platforms is preempted to the state, and advertising platforms shall be regulated under this chapter.

Section 4. Effective January 1, 2022, subsections (2) and (3) of section 509.241, Florida Statutes, are amended to read:

509.241 Licenses required; exceptions.—

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division prior to the commencement of operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals or timeshare projects under s. 509.242(1)(c) or (g) is not required to apply for or receive a public lodging establishment license. All applications for a vacation rental license shall, if applicable, include the local registration number or other proof of registration required by local law, ordinance, or regulation. Upon receiving an application for a vacation rental license, the division may grant a temporary license that shall allow the vacation rental to begin operation while the application is pending and to post

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the information required under s. 509.243(1)(c). The temporary license shall automatically expire upon final agency action regarding the license application.

(3) DISPLAY OF LICENSE.—Any license issued by the division must ~~shall~~ be conspicuously displayed to the public inside ~~in~~ the ~~office or lobby of the~~ licensed establishment. Public food service establishments that ~~which~~ offer catering services must ~~shall~~ display their license number on all advertising for catering services. The owner or operator of a vacation rental offered for transient occupancy through an advertising platform must also display the vacation rental license number and the local registration number, if applicable.

Section 5. Effective January 1, 2022, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1)(a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement the vacation rental license number and the local registration number, if applicable; and

2. Attest to the best of their knowledge that the license number for the vacation rental property and the local registration are current, valid, and accurately stated in the advertisement.

(b) An advertising platform must display the vacation rental license number and the local registration number, if applicable. Effective July 1, 2022, the advertising platform must check that the vacation rental license number provided by the owner or operator appears as current on the information posted by the division pursuant to paragraph (c) and applies to

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the subject vacation rental before publishing the advertisement on its platform and again at the end of each calendar quarter that the advertisement remains on its platform.

(c) By July 1, 2022, the division shall maintain vacation rental license information in a readily accessible electronic format that is sufficient to facilitate prompt compliance with the requirements of this subsection by an advertising platform or a person placing an advertisement on an advertising platform for transient rental of a vacation rental.

(2) An advertising platform must remove from public view an advertisement or a listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.

(3) If a guest uses a payment system on or through an advertising platform to pay for the rental of a vacation rental located in this state, the advertising platform shall collect and remit all taxes due under ss. 125.0104, 125.0108, 205.044, 212.03, 212.0305, and 212.055 related to the rental as provided in s. 212.03(2)(b).

(4) If the division has probable cause to believe that a person not licensed by the division has violated this chapter or any rule adopted pursuant thereto, the division may issue and deliver to such person a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under s. 120.569 or s. 120.57 may be sought. For the purpose of enforcing a cease

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and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who violates any provision of the notice. If the division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, it is entitled to collect attorney fees and costs, together with any cost of collection.

(5) The division may fine an advertising platform an amount not to exceed $1,000 per offense for violations of this section or of the rules of the division. For the purposes of this subsection, the division may regard as a separate offense each day or portion of a day in which an advertising platform is operated in violation of this section or rules of the division. The division shall issue a written warning or notice and provide the advertising platform 15 days to cure a violation before commencing any legal proceeding under this subsection.

(6) Advertising platforms must adopt an antidiscrimination policy to help prevent discrimination among their users and must inform all users of their services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin pursuant to s. 509.092.

(7) Advertising platforms that comply with the requirements of this section are deemed to be in compliance with the requirements of this chapter. Nothing in this section creates or is intended to create a private cause of action against advertising platforms. An advertising platform may not be held liable for any action it takes voluntarily in good faith in relation to its users to comply with this chapter or the

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advertising platform's terms of service.

Section 6. Subsections (10) and (11) are added to section 509.261, Florida Statutes, to read:

509.261 Revocation or suspension of licenses; fines; procedure.—

(10) The division may revoke, refuse to issue or renew, or suspend for a period of not more than 30 days a vacation rental license when:

(a) The operation of the subject premises violates the terms of an applicable lease or property restriction, including any property restriction adopted pursuant to chapter 718, chapter 719, or chapter 720;

(b) The owner or operator fails to provide proof of registration, if required by local law, ordinance, or regulation;

(c) The registration of the vacation rental is terminated by a local government as provided in s. 509.032(7)(b)5.; or

(d) The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

(11) The division may suspend, for a period of not more than 30 days, a vacation rental license when the owner or operator has been cited for two or more code violations related to the vacation rental during a period of 90 days. The division shall issue a written warning or notice and provide an opportunity to cure a violation before commencing any legal proceeding under this subsection.

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



And the title is amended as follows:

Delete lines 8 - 45

and insert:

cross-reference; revising the regulated activities of public lodging establishments and public food service establishments preempted to the state to include licensing; revising an exemption to the prohibition against certain local regulation of vacation rentals; expanding the authority of local laws, ordinances, or regulations to include requiring vacation rentals to register with local vacation rental registration programs; authorizing local governments to adopt vacation rental registration programs and impose fines for failure to register; authorizing local governments to charge fees for processing registration applications; specifying requirements, procedures, and limitations for local vacation rental registration programs; authorizing local governments to terminate or refuse to issue or renew vacation rental registrations under certain circumstances; preempting the regulation of advertising platforms to the state; amending s. 509.241, F.S.; requiring applications for vacation rental licenses to include certain information; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to issue temporary licenses upon receipt of vacation rental license applications; providing for expiration of temporary vacation rental licenses; requiring licenses issued by the division to

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be displayed conspicuously to the public inside the licensed establishment; requiring the owner or operator of certain vacation rentals to also display its vacation rental license number and applicable local registration number; creating s. 509.243, F.S.; requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements and attest to certain information; requiring advertising platforms to display and check such information; requiring the division to maintain certain information in a readily accessible electronic format by a certain date; requiring advertising platforms to remove an advertisement or listing under certain conditions and within a specified timeframe; requiring advertising platforms to collect and remit taxes for certain transactions; authorizing the division to issue and deliver a notice to cease and desist for certain violations; providing that such notice does not constitute agency action for which certain hearings may be sought; authorizing the division to file certain proceedings; authorizing the division to seek certain remedies for the purpose of enforcing a cease and desist notice; authorizing the division to collect attorney fees and costs under certain circumstances; authorizing the division to impose a fine on advertising platforms for certain violations; requiring the division to issue written warnings or notices before commencing certain legal proceedings;

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requiring advertising platforms to adopt an antidiscrimination policy and to inform their users of the policy's provisions; providing construction; amending s. 509.261, F.S.; authorizing the division to revoke, refuse to issue or renew, or suspend vacation rental licenses under certain circumstances; amending s. 775.21,

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Diaz) recommended the following:

Senate Substitute for Amendment (888468) (with title amendment)

Delete lines 300 - 446
and insert:
Section 3. Paragraph (c) of subsection (3) and paragraphs (a) and (b) of subsection (7) of section 509.032, Florida Statutes, are amended, and paragraph (d) is added to subsection (7) of that section, to read:
509.032 Duties.—
(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE

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EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors and notify the event sponsors of the availability of the food-recovery brochure developed under s. 595.420.

3.a. Unless excluded under s. 509.013 ~~s. 509.013(5)(b)~~, a public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division



shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events.

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, licensing, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b)1. A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation is amended to be less restrictive or to comply with the local registration requirements provided in this paragraph. Notwithstanding paragraph (a), a local law, ordinance, or regulation may require the registration of vacation rentals with a local vacation rental registration program. Local governments may adopt a vacation rental registration program pursuant to


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subparagraph 3. and impose a fine for failure to register under the vacation rental registration program.

2. Local governments may charge a fee of no more than $50 for processing a registration application. A local law, ordinance, or regulation may not require renewal of a registration more than once per year. However, if there is a change of ownership, the new owner may be required to submit a new application for registration.

3. As a condition of registration, the local law, ordinance, or regulation may only require the owner or operator of a vacation rental to:

a. Submit identifying information about the owner or the owner's agents and the subject vacation rental property.

b. Obtain a license as a transient public lodging establishment issued by the division within 60 days after local registration.

c. Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue, a county, or a municipal government.

d. Update required information on a continuing basis to be current.

e. Comply with parking standards and solid waste handling and containment requirements so long as such standards are not imposed solely on vacation rentals.

f. Designate and maintain at all times a responsible party who is capable of responding to complaints and other immediate problems related to the vacation rental, including being available by telephone at a listed phone number.

g. Pay in full all recorded municipal or county code liens

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against the subject property. The local government may withdraw its acceptance of a registration on the basis of an unsatisfied recorded municipal or county code lien.

4.a. Within 15 business days after receiving an application for registration of a vacation rental, the local government must review the application for completeness and accept the registration of the vacation rental or issue a written notice specifying with particularity any areas that are deficient.

b. The vacation rental owner or operator and the local government may agree to a reasonable request to extend the time periods in this subparagraph, particularly in the event of a force majeure or other extraordinary circumstance.

c. When a local government denies an application for registration of a vacation rental, the local government must give written notice to the applicant. Such notice may be provided by United States mail or electronically. The written notice must specify with particularity the factual reasons for the denial and include a citation to the applicable portions of an ordinance, a rule, a statute, or other legal authority for the denial of the registration. A local government cannot deny any applicant from reapplying if the applicant cures the identified deficiencies.

d. If the local government fails to accept or deny the registration within the timeframes provided in this subparagraph, the application is deemed accepted.

e. Upon an accepted registration of a vacation rental, a local government shall assign a unique registration number to the vacation rental or other indicia of registration and provide such registration number or other indicia of registration to the

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owner or operator of the vacation rental in writing or electronically.

5. The local government may terminate or refuse to issue or renew a vacation rental registration when:

a. The operation of the subject premises violates a registration requirement authorized pursuant to this paragraph or a local law, ordinance, or regulation that does not solely apply to vacation rentals; or

b. The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

(d) The regulation of advertising platforms is preempted to the state, and advertising platforms shall be regulated under this chapter.

Section 4. Effective January 1, 2022, subsections (2) and (3) of section 509.241, Florida Statutes, are amended to read:

509.241 Licenses required; exceptions.—

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division prior to the commencement of operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals or timeshare projects under s. 509.242(1)(c) or (g) is not required to apply for or receive a public lodging establishment license. All applications for a vacation rental license shall, if applicable, include the local registration number or other proof of registration required by local law, ordinance, or regulation. Upon receiving an application for a vacation rental license, the division may

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grant a temporary license that shall allow the vacation rental to begin operation while the application is pending and to post the information required under s. 509.243(1)(c). The temporary license shall automatically expire upon final agency action regarding the license application.

(3) DISPLAY OF LICENSE.—Any license issued by the division must ~~shall~~ be conspicuously displayed to the public inside ~~in~~ the ~~office or lobby of the~~ licensed establishment. Public food service establishments that ~~which~~ offer catering services must ~~shall~~ display their license number on all advertising for catering services. The owner or operator of a vacation rental offered for transient occupancy through an advertising platform must also display the vacation rental license number and the local registration number, if applicable.

Section 5. Effective January 1, 2022, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1)(a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement the vacation rental license number and the local registration number, if applicable; and

2. Attest to the best of their knowledge that the license number for the vacation rental property and the local registration are current, valid, and accurately stated in the advertisement.

(b) An advertising platform must display the vacation rental license number and the local registration number, if applicable. Effective July 1, 2022, the advertising platform must check that the vacation rental license number provided by


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the owner or operator appears as current on the information posted by the division pursuant to paragraph (c) and applies to the subject vacation rental before publishing the advertisement on its platform and again at the end of each calendar quarter that the advertisement remains on its platform.

(c) By July 1, 2022, the division shall maintain vacation rental license information in a readily accessible electronic format that is sufficient to facilitate prompt compliance with the requirements of this subsection by an advertising platform or a person placing an advertisement on an advertising platform for transient rental of a vacation rental.

(2) An advertising platform must remove from public view an advertisement or a listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.

(3) If a guest uses a payment system on or through an advertising platform to pay for the rental of a vacation rental located in this state, the advertising platform shall collect and remit all taxes due under ss. 125.0104, 125.0108, 205.044, 212.03, 212.0305, and 212.055 related to the rental as provided in s. 212.03(2)(b).

(4) If the division has probable cause to believe that a person not licensed by the division has violated this chapter or any rule adopted pursuant thereto, the division may issue and deliver to such person a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not

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constitute agency action for which a hearing under s. 120.569 or s. 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who violates any provision of the notice. If the division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, it is entitled to collect attorney fees and costs, together with any cost of collection.

(5) The division may fine an advertising platform an amount not to exceed $1,000 per offense for violations of this section or of the rules of the division. For the purposes of this subsection, the division may regard as a separate offense each day or portion of a day in which an advertising platform is operated in violation of this section or rules of the division. The division shall issue a written warning or notice and provide the advertising platform 15 days to cure a violation before commencing any legal proceeding under this subsection.

(6) Advertising platforms must adopt an antidiscrimination policy to help prevent discrimination among their users and must inform all users of their services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin pursuant to s. 509.092.

(7) Advertising platforms that comply with the requirements of this section are deemed to be in compliance with the requirements of this chapter. Nothing in this section creates or is intended to create a private cause of action against advertising platforms. An advertising platform may not be held

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liable for any action it takes voluntarily in good faith in relation to its users to comply with this chapter or the advertising platform's terms of service.

Section 6. Subsections (10) and (11) are added to section 509.261, Florida Statutes, to read:

509.261 Revocation or suspension of licenses; fines; procedure.—

(10) The division may revoke, refuse to issue or renew, or suspend for a period of not more than 30 days a vacation rental license when:

(a) The operation of the subject premises violates the terms of an applicable lease or property restriction, including any property restriction adopted pursuant to chapter 718, chapter 719, or chapter 720, as determined by a final order of a court of competent jurisdiction or a written decision by an arbitrator authorized to arbitrate a dispute relating to the subject property and a lease or property restriction;

(b) The owner or operator fails to provide proof of registration, if required by local law, ordinance, or regulation;

(c) The registration of the vacation rental is terminated by a local government as provided in s. 509.032(7)(b)5.; or

(d) The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

(11) The division may suspend, for a period of not more than 30 days, a vacation rental license when the owner or operator has been cited for two or more code violations related to the vacation rental during a period of 90 days. The division

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shall issue a written warning or notice and provide an opportunity to cure a violation before commencing any legal proceeding under this subsection.

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

And the title is amended as follows:

Delete lines 6 - 45

and insert:

term "advertising platform"; amending s. 509.032, F.S.; conforming across-reference; revising the regulated activities of public lodging establishments and public food service establishments preempted to the state to include licensing; revising an exemption to the prohibition against certain local regulation of vacation rentals; expanding the authority of local laws, ordinances, or regulations to include requiring vacation rentals to register with local vacation rental registration programs; authorizing local governments to adopt vacation rental registration programs and impose fines for failure to register; authorizing local governments to charge fees for processing registration applications; specifying requirements, procedures, and limitations for local vacation rental registration programs; authorizing local governments to terminate or refuse to issue or renew vacation rental registrations under certain circumstances; preempting the regulation of advertising platforms to the state; amending s. 509.241, F.S.; requiring applications for vacation


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rental licenses to include certain information; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to issue temporary licenses upon receipt of vacation rental license applications; providing for expiration of temporary vacation rental licenses; requiring licenses issued by the division to be displayed conspicuously to the public inside the licensed establishment; requiring the owner or operator of certain vacation rentals to also display its vacation rental license number and applicable local registration number; creating s. 509.243, F.S.; requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements and attest to certain information; requiring advertising platforms to display and check such information; requiring the division to maintain certain information in a readily accessible electronic format by a certain date; requiring advertising platforms to remove an advertisement or listing under certain conditions and within a specified timeframe; requiring advertising platforms to collect and remit taxes for certain transactions; authorizing the division to issue and deliver a notice to cease and desist for certain violations; providing that such notice does not constitute agency action for which certain hearings may be sought; authorizing the division to file certain proceedings; authorizing the division to seek

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certain remedies for the purpose of enforcing a cease and desist notice; authorizing the division to collect attorney fees and costs under certain circumstances; authorizing the division to impose a fine on advertising platforms for certain violations; requiring the division to issue written warnings or notices before commencing certain legal proceedings; requiring advertising platforms to adopt an antidiscrimination policy and to inform their users of the policy's provisions; providing construction; amending s. 509.261, F.S.; authorizing the division to revoke, refuse to issue or renew, or suspend vacation rental licenses under certain circumstances; amending s. 775.21,

By the Committees on Appropriations; and Regulated Industries; and Senator Diaz

576-02741-21 2021522c2

A bill to be entitled

An act relating to vacation rentals; amending s. 212.03, F.S.; requiring advertising platforms to collect and remit taxes for certain transactions; reordering and amending s. 509.013, F.S.; defining the terms "advertising platform" and "merchant business tax receipt"; amending s. 509.032, F.S.; conforming a cross-reference; revising an exemption to the prohibition against certain local regulation of vacation rentals; preempting the regulation of advertising platforms to the state; amending s. 509.241, F.S.; requiring licenses issued by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to be displayed conspicuously to the public inside the licensed establishment; requiring the operator of certain vacation rentals to also display its vacation rental license number and applicable merchant business tax receipt or tax account numbers; creating s. 509.243, F.S.; requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements and attest to certain information; requiring advertising platforms to display and verify such information; requiring the division to maintain certain information in a readily accessible electronic format; requiring advertising platforms to quarterly provide the division with certain information regarding vacation rentals in this state listed on the

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

Florida Senate - 2021 CS for CS for SB 522

576-02741-21 2021522c2

platforms; requiring advertising platforms to remove an advertisement or listing under certain conditions and within a specified timeframe; requiring advertising platforms to collect and remit taxes for certain transactions; authorizing the division to issue and deliver a notice to cease and desist for certain violations; providing that such notice does not constitute agency action for which certain hearings may be sought; authorizing the division to file certain proceedings; authorizing the division to seek certain remedies for the purpose of enforcing a cease and desist notice; authorizing the division to collect attorney fees and costs under certain circumstances; requiring advertising platforms to adopt an antidiscrimination policy and to inform their users of the policy's provisions; amending s. 775.21, F.S.; revising the definition of the term "temporary residence"; amending ss. 159.27, 212.08, 316.1955, 404.056, 477.0135, 509.221, 553.5041, 705.17, 705.185, 717.1355, and 877.24, F.S.; conforming cross-references to changes made by the act; providing applicability; authorizing the department to adopt emergency rules; providing requirements and an expiration for such rules; providing for the expiration of such rulemaking authority; providing appropriations; providing effective dates.

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

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

Section 1. Effective January 1, 2022, subsection (2) of section 212.03, Florida Statutes, is amended to read:

212.03 Transient rentals tax; rate, procedure, enforcement, exemptions.—

(2)(a) The tax provided for herein shall be in addition to the total amount of the rental, shall be charged by the lessor or person receiving the rent in and by said rental arrangement to the lessee or person paying the rental, and shall be due and payable at the time of the receipt of such rental payment by the lessor or person, as defined in this chapter, who receives said rental or payment. The owner, lessor, or person receiving the rent shall remit the tax to the department at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax; the making of returns; the keeping of books, records, and accounts; and the compliance with the rules and regulations of the department in the administration of this chapter shall apply to and be binding upon all persons who manage or operate hotels, apartment houses, roominghouses, tourist and trailer camps, and the rental of condominium units, and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under this chapter.

(b) If a guest uses a payment system on or through an advertising platform, as defined in s. 509.013, to pay for the rental of a vacation rental located in this state, the advertising platform shall collect and remit taxes as provided in this paragraph.

1. An advertising platform, as defined in s. 509.013, which

owns, operates, or manages a vacation rental or which is related within the meaning of ss. 1504, 267(b), or 707(b) of the Internal Revenue Code of 1986 to a person who owns, operates, or manages the vacation rental shall collect and remit all taxes due under this section and ss. 125.0104, 125.0108, 205.044, 212.0305, and 212.055 which are related to the rental.

2. An advertising platform to which subparagraph 1. does not apply shall collect and remit all taxes due from the owner, operator, or manager under this section and ss. 125.0104, 125.0108, 205.044, 212.0305, and 212.055 which are related to the rental. Of the total amount paid by the lessee or rentee, the amount retained by the advertising platform for reservation or payment service is not taxable under this section or ss. 125.0104, 125.0108, 205.044, 212.0305, and 212.055.

In order to facilitate the remittance of such taxes, the department and counties that have elected to self-administer the taxes imposed under chapter 125 must allow advertising platforms to register, collect, and remit such taxes.

Section 2. Section 509.013, Florida Statutes, is reordered and amended to read:

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

(1) "Advertising platform" means a person who:

(a) Provides an online application, software, a website, or a system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;

(b) Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; and

(c) Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

(3) ~~(1)~~ "Division" means the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(9) ~~(2)~~ "Operator" means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.

(4) ~~(3)~~ "Guest" means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.

(11)(a) ~~(4)(a)~~ "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests

for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions in paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072.

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.

4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a

single complex of buildings are available for rent.

5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.

6. Any establishment inspected by the Department of Health and regulated by chapter 513.

7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

(10)(a) ~~(5)(a)~~ "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared before ~~prior to~~ being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or

sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:

a. For the use of students and faculty; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, or athletic contests.

Upon request by the division, a church or a religious, nonprofit fraternal, or nonprofit civic organization claiming an exclusion under this subparagraph must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

3. Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization. Upon request by the division, the event host must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

4. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.

5. Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072.

6. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

7. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

8. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

9. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

10. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

11. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

(2) ~~(6)~~ "Director" means the Director of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(12) ~~(7)~~ "Single complex of buildings" means all buildings

or structures that are owned, managed, controlled, or operated under one business name and are situated on the same tract or plot of land that is not separated by a public street or highway.

(13) ~~(8)~~ "Temporary food service event" means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.

(14) ~~(9)~~ "Theme park or entertainment complex" means a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

(15) ~~(10)~~ "Third-party provider" means, for purposes of s. 509.049, any provider of an approved food safety training program that provides training or such a training program to a public food service establishment that is not under common ownership or control with the provider.

(17) ~~(11)~~ "Transient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.

(18) ~~(12)~~ "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

(16) ~~(13)~~ "Transient" means a guest in transient occupancy.

(7) ~~(14)~~ "Nontransient establishment" means any public lodging establishment that is rented or leased to guests by an

operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

(8) ~~(15)~~ "Nontransient occupancy" means occupancy when it is the intention of the parties that the occupancy will not be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.

(6) ~~(16)~~ "Nontransient" means a guest in nontransient occupancy.

(5) "Merchant business tax receipt" means a business tax receipt or registration issued by a municipality that imposes a tax under s. 205.044 on transient occupancy.

Section 3. Paragraph (c) of subsection (3) and paragraph (b) of subsection (7) of section 509.032, Florida Statutes, are amended, and paragraph (d) is added to subsection (7) of that section, to read:

509.032 Duties.—

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food

service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors and notify the event sponsors of the availability of the food-recovery brochure developed under s. 595.420.

3.a. Unless excluded under s. 509.013 ~~s. 509.013(5)(b)~~, a public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events.

(7) PREEMPTION AUTHORITY.—

(b) A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011,

including when such law, ordinance, or regulation is amended to be less restrictive.

(d) The regulation of advertising platforms is preempted to the state, and advertising platforms shall be regulated under this chapter.

Section 4. Effective January 1, 2022, subsection (3) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(3) DISPLAY OF LICENSE.—Any license issued by the division must ~~shall~~ be conspicuously displayed to the public inside ~~in~~ the ~~office or lobby of the~~ licensed establishment. Public food service establishments that ~~which~~ offer catering services must ~~shall~~ display their license number on all advertising for catering services. The owner or operator of a vacation rental offered for transient occupancy through an advertising platform must also display the vacation rental license number, the applicable Florida sales tax registration number, and the applicable merchant business tax receipt or tourist development tax account number under which such taxes must be paid for each rental of the property as a vacation rental.

Section 5. Effective January 1, 2022, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1)(a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement the vacation rental license number, the applicable Florida sales tax registration number, and the applicable merchant business tax receipt or tourist development tax account number under which such taxes must be

paid before the advertisement may be listed; and

2. Attest to the best of their knowledge that the license number for the vacation rental property and the applicable tax numbers are current, valid, and accurately stated in the advertisement.

(b) An advertising platform must display the vacation rental license number, the applicable Florida sales tax registration number, and the applicable merchant business tax receipt or tourist development tax number. The advertising platform must verify that the vacation rental license number provided by the owner or operator is valid and applies to the subject vacation rental before publishing the advertisement on its platform and again at the end of each calendar quarter that the advertisement remains on its platform.

(c) The division shall maintain vacation rental license information in a readily accessible electronic format that is sufficient to facilitate prompt compliance with the requirements of this subsection by an advertising platform or a person placing an advertisement on an advertising platform for transient rental of a vacation rental.

(2) An advertising platform must provide to the division on a quarterly basis, by file transfer protocol or electronic data exchange file, a list of all vacation rentals located in this state which are advertised on its platform, along with the following information for each vacation rental:

(a) The uniform resource locator for the Internet address of the vacation rental advertisement.

(b) Unless otherwise stated in the vacation rental advertisement at the Internet address provided pursuant to

paragraph (a), the physical address of the vacation rental, including any unit designation, the vacation rental license number provided by the owner or operator, the applicable Florida sales tax registration number, and the applicable merchant business tax receipt or tourist development tax account number under which taxes will be remitted for the rentals commenced through the advertisement.

(3) An advertising platform must remove from public view an advertisement or a listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.

(4) If a guest uses a payment system on or through an advertising platform to pay for the rental of a vacation rental located in this state, the advertising platform shall collect and remit all taxes due under ss. 125.0104, 125.0108, 205.044, 212.03, 212.0305, and 212.055 related to the rental as provided in s. 212.03(2)(b).

(5) If the division has probable cause to believe that a person not licensed by the division has violated this chapter or any rule adopted pursuant thereto, the division may issue and deliver to such person a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a

writ of mandamus against any person who violates any provision of the notice. If the division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, it is entitled to collect attorney fees and costs, together with any cost of collection.

(6) Advertising platforms must adopt an antidiscrimination policy to help prevent discrimination among their users and must inform all users of their services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin pursuant to s. 509.092.

Section 6. Paragraph (n) of subsection (2) of section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act.—

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

(n) "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 3 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state. The term also includes a vacation rental, as defined in s. 509.242, where a person lodges for 24 hours or more.

Section 7. Subsection (12) of section 159.27, Florida Statutes, is amended to read:

159.27 Definitions.—The following words and terms, unless the context clearly indicates a different meaning, shall have

the following meanings:

(12) "Public lodging or restaurant facility" means property used for any public lodging establishment as defined in s. 509.242 or public food service establishment as defined in s. 509.013 ~~s. 509.013(5)~~ if it is part of the complex of, or necessary to, another facility qualifying under this part.

Section 8. Paragraph (jj) of subsection (7) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict

compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(jj) *Complimentary meals.*—Also exempt from the tax imposed by this chapter are food or drinks that are furnished as part of a packaged room rate by any person offering for rent or lease any transient living accommodations as described in s. 509.013 ~~s. 509.013(4)(a)~~ which are licensed under part I of chapter 509 and which are subject to the tax under s. 212.03, if a separate charge or specific amount for the food or drinks is not shown. Such food or drinks are considered to be sold at retail as part of the total charge for the transient living accommodations. Moreover, the person offering the accommodations is not considered to be the consumer of items purchased in furnishing such food or drinks and may purchase those items under conditions of a sale for resale.

Section 9. Paragraph (b) of subsection (4) of section 316.1955, Florida Statutes, is amended to read:

316.1955 Enforcement of parking requirements for persons who have disabilities.—

(4)

(b) Notwithstanding paragraph (a), a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ which provides parking in designated areas for persons who have disabilities may allow any vehicle that is transporting a person who has a disability to remain parked in a space reserved for persons who have disabilities throughout the period the theme park is open to the public for that day.

Section 10. Subsection (5) of section 404.056, Florida

Statutes, is amended to read:

404.056 Environmental radiation standards and projects; certification of persons performing measurement or mitigation services; mandatory testing; notification on real estate documents; rules.—

(5) NOTIFICATION ON REAL ESTATE DOCUMENTS.—Notification shall be provided on at least one document, form, or application executed at the time of, or prior to, contract for sale and purchase of any building or execution of a rental agreement for any building. Such notification shall contain the following language:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

The requirements of this subsection do not apply to any residential transient occupancy, as described in s. 509.013 ~~s. 509.013(12)~~, provided that such occupancy is 45 days or less in duration.

Section 11. Subsection (6) of section 477.0135, Florida Statutes, is amended to read:

477.0135 Exemptions.—

(6) A license is not required of any individual providing makeup or special effects services in a theme park or

entertainment complex to an actor, stunt person, musician, extra, or other talent, or providing makeup or special effects services to the general public. The term "theme park or entertainment complex" has the same meaning as in s. 509.013 ~~s. 509.013(9)~~.

Section 12. Paragraph (b) of subsection (2) of section 509.221, Florida Statutes, is amended to read:

509.221 Sanitary regulations.—

(2)

(b) Within a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, the bathrooms are not required to be in the same building as the public food service establishment, so long as they are reasonably accessible.

Section 13. Paragraph (b) of subsection (5) of section 553.5041, Florida Statutes, is amended to read:

553.5041 Parking spaces for persons who have disabilities.—

(5) Accessible perpendicular and diagonal accessible parking spaces and loading zones must be designed and located to conform to ss. 502 and 503 of the standards.

(b) If there are multiple entrances or multiple retail stores, the parking spaces must be dispersed to provide parking at the nearest accessible entrance. If a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ provides parking in several lots or areas from which access to the theme park or entertainment complex is provided, a single lot or area may be designated for parking by persons who have disabilities, if the lot or area is located on the shortest accessible route to an accessible entrance to the theme park or entertainment complex or to transportation to such an accessible

entrance.

Section 14. Subsection (2) of section 705.17, Florida Statutes, is amended to read:

705.17 Exceptions.—

(2) Sections 705.1015-705.106 do not apply to any personal property lost or abandoned on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with s. 705.185.

Section 15. Section 705.185, Florida Statutes, is amended to read:

705.185 Disposal of personal property lost or abandoned on the premises of certain facilities.—When any lost or abandoned personal property is found on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with this section, any lost or abandoned property must be delivered to such owner or operator, who must take charge of the property and make a record of the date such property was found. If the property is not claimed by its owner within 30 days after it is found, or a longer period of time as may be deemed appropriate by the owner or operator of the premises, the owner or operator of the premises may not sell and must dispose of the

property or donate it to a charitable institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code for sale or other disposal as the charitable institution deems appropriate. The rightful owner of the property may reclaim the property from the owner or operator of the premises at any time before the disposal or donation of the property in accordance with this section and the established policies and procedures of the owner or operator of the premises. A charitable institution that accepts an electronic device, as defined in s. 815.03(9), access to which is not secured by a password or other personal identification technology, shall make a reasonable effort to delete all personal data from the electronic device before its sale or disposal.

Section 16. Section 717.1355, Florida Statutes, is amended to read:

717.1355 Theme park and entertainment complex tickets.—This chapter does not apply to any tickets for admission to a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, or to any tickets to a permanent exhibition or recreational activity within such theme park or entertainment complex.

Section 17. Subsection (8) of section 877.24, Florida Statutes, is amended to read:

877.24 Nonapplication of s. 877.22.—Section 877.22 does not apply to a minor who is:

(8) Attending an organized event held at and sponsored by a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~.

Section 18. The application of this act does not supersede any current or future declaration or declaration of condominium adopted pursuant to chapter 718, Florida Statutes, cooperative document adopted pursuant to chapter 719, Florida Statutes, or declaration or declaration of covenant adopted pursuant to chapter 720, Florida Statutes.

Section 19. (1) The Department of Revenue is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing s. 212.03, Florida Statutes, including establishing procedures to facilitate the remittance of taxes.

(2) Notwithstanding any other provision of law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section expires January 1, 2024.

Section 20. For the 2021-2022 fiscal year, the sums of $194,042 in recurring funds and $176,143 in nonrecurring funds from the Hotel and Restaurant Trust Fund are appropriated to the Department of Business and Professional Regulation, and three full-time equivalent positions with a total associated salary rate of 111,036 are authorized for the purpose of implementing this act.

Section 21. For the 2021-2022 fiscal year, the sums of $148,941 in recurring funds and $363,590 in nonrecurring funds from the General Revenue Fund are appropriated to the Florida Department of Law Enforcement, and two full-time equivalent positions with a total associated salary rate of 90,150 are

authorized for the purpose of implementing this act.

Section 22. Except as otherwise expressly provided in this act, 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 532
INTRODUCER:	Education Committee and Senator Burgess
SUBJECT:	Workforce Education
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sagues	Bouck	ED	**Fav/CS**
2.	Smith	Brown	HP	**Favorable**
3.	Sagues	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 532 authorizes school district career centers to offer an associate in applied science or associate in science degree program in nursing but restricts offering the degree program to graduates of a licensed practical nursing program offered at that same career center.

The bill has no impact on state revenues or expenditures.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Workforce Education

Workforce education includes adult general education and career education and may consist of a course or a program of study leading to an occupational completion point (OCP),[1] a career certificate, an applied technology diploma, or a career degree.[2] Specifically, workforce education includes:[3]

[1] An "occupational completion point" (OCP) means the occupational competencies that qualify a person to enter an occupation that is linked to a career and technical program. *See* s. 1004.02(21), F.S.
[2] Section 1004.02(25), F.S.
[3] Section 1011.80(1), F.S.

- Adult general education programs;[4]
- Career certificate programs;[5]
- Applied technology diploma (ATD) programs;[6]
- Continuing workforce education courses;[7]
- Degree career education programs;[8] and
- Apprenticeship[9] and preapprenticeship[10] programs.

Any workforce education program may be conducted by a Florida College System (FCS) institution or a school district, except that college credit in an associate in applied science (AAS) or an associate in science (AS) degree may be awarded only by an FCS institution. However, if an AAS or an AS degree program contains an OCP that confers a certificate or an ATD, that portion of the program may be conducted by a school district career center.[11]

Career Centers

A district school board may, as a part of the district school system, operate a career center.[12] A career center is an educational institution offering terminal courses of a technical nature and courses for out-of-school youth and adults. A career center is administered by a director responsible through the district school superintendent to the local district school board.[13]

[4] "Adult general education" means comprehensive instructional programs designed to improve the employability of the state's workforce through adult basic education, adult secondary education, English for Speakers of Other Languages, applied academics for adult education instruction, and instruction for adults with disabilities. Section 1004.02(3), F.S.
[5] A "career certificate program" means a course of study that leads to at least one OCP. The program may also confer credit that may articulate with a diploma or career degree education program. Section 1004.02(20), F.S.
[6] An "applied technology diploma (ATD) program" means a course of study that is part of a technical degree program, is less than 60 credit hours, and leads to employment in a specific occupation. An ATD program may consist of either technical credit or college credit. A public school district may offer an ATD program only as technical credit, with college credit awarded to a student upon articulation to a Florida College System (FCS) institution. Section 1004.02(7), F.S.
[7] "Continuing workforce education" means instruction that does not result in a technical certificate, diploma, associate in applied science (AAS) degree, or associate in science (AS) degree. Continuing workforce education is for: (1) individuals who are required to have training for licensure renewal or certification renewal by a regulatory agency or credentialing body; (2) new or expanding businesses; (3) business, industry, and government agencies whose products or services are changing so that retraining of employees is necessary or whose employees need training in specific skills to increase efficiency and productivity; or (4) individuals who are enhancing occupational skills necessary to maintain current employment, to cross train, or to upgrade employment. Section 1004.02(12), F.S.
[8] A "degree career education program" or "technical degree education program" means a course of study that leads to an AAS degree or an AS degree. A technical degree program may contain within it one or more program progression points and may lead to certificates or diplomas within the course of study. Section 1004.02(13), F.S.
[9] Registered apprenticeship programs enable employers to develop and apply industry standards to training programs for registered apprentices that can increase productivity and improve the quality of the workforce. Apprentices who complete registered apprenticeship programs are accepted by the industry as journey workers. Florida Department of Education, *Apprenticeship Programs, available at* http://fldoe.org/academics/career-adult-edu/apprenticeship-programs/ (last visited Mar. 12, 2021).
[10] Registered pre-apprenticeship programs provide an avenue for both adults and youth who are at least 16 years old to become qualified to enter registered apprenticeship programs. Pre-apprenticeship programs are sponsored and operated by registered apprenticeship programs in the same trade or trades. Florida Department of Education, *Preapprenticeship, available at* http://fldoe.org/academics/career-adult-edu/apprenticeship-programs/preapprenticeship.stml (last visited Mar. 12, 2021).
[11] Section 1011.80(2), F.S.
[12] Section 1001.44(1), F.S.
[13] Section 1001.44(3)(a), F.S.

Currently, there are 48 career centers accredited by the Council on Occupational Education (COE) operating in 32 school districts in Florida.[14] The COE accredits postsecondary occupational institutions that offer career certificate, diploma, or applied associate degree programs. The associate degree includes both an AAS and AS degree.[15] The COE does not accredit institutions that offer credentials above an applied associate degree.[16] The COE is one of the national accrediting agencies recognized by the U.S. Department of Education for eligibility to offer federal student financial aid.[17]

Florida College System Institutions

The FCS is composed of 28 colleges and 72 campuses that serve each of Florida's counties.[18] The purpose of the FCS is to maximize open access for students, respond to community needs for postsecondary academic education and career degree education, and provide associate and baccalaureate degrees that will best meet the state's employment needs.[19] The State Board of Education supervises the FCS, and each FCS institution is governed by a local board of trustees.[20] Each FCS institution is accredited by the Southern Association of Colleges and Schools Commission on Colleges.[21]

Articulation of Career Education to Degree Programs

Florida law guarantees that students who complete specified career certificate programs or ATDs at a career center or FCS institution are able to articulate the non-college-credit program into a college-credit AAS or AS degree program at an FCS institution.[22] There are currently 33 career certificate program to AAS/AS degree articulation agreements, and eight ATD program to

[14] Florida Department of Education, *District Postsecondary Institutions*, *available at* http://www.fldoe.org/core/fileparse.php/5398/urlt/DistPSInstMap.pdf (last visited Mar. 12, 2021).
[15] Council on Occupational Education, *Handbook of Accreditation* (2020), *available at* https://council.org/wp-content/uploads/2020/07/2020-Handbook-of-Accreditation_Generic_FINAL-w-Covers_7-26-20.pdf, at 58 (last visited Mar. 12, 2021).
[16] Council on Occupational Education, *FAQs*, *available at* https://council.org/accreditation-frequently-asked-questions/ (last visited Mar. 12, 2021).
[17] *Id.*
[18] Florida Department of Education, *Division of Florida Colleges*, *available at* http://www.fldoe.org/schools/higher-ed/fl-college-system/ (last visited Mar. 12, 2021). Each Florida College System institution is assigned one or more counties as a part of its service delivery area. Section 1000.21(3), F.S.
[19] Section 1001.60(1), F.S.
[20] FLA. CONST. art. IX, s. 8.
[21] The Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) is the regional body for the accreditation of degree-granting higher education institutions in the southern states. It serves as the common denominator of shared values and practices among the diverse institutions in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia and Latin America and other international sites approved by the SACSCOC Board of Trustees that award associate, baccalaureate, master's, or doctoral degrees. Southern Association of Colleges and Schools Commission on Colleges, *available at* http://sacscoc.org/ (last visited Mar. 12, 2021). All FCS institutions except Hillsborough Community College are accredited to the baccalaureate degree level. SACSCOC, *Florida*, *available at* https://sacscoc.org/institutions/?state=FL&results_per_page=25&curpage=1 (last visited Mar. 12, 2021).
[22] Section 1007.23(4), F.S. The statewide articulation agreement guarantees the statewide articulation of appropriate workforce development programs and courses between school districts and FCS institutions and specifically provide that every ATD graduate must be granted the same amount of credit upon admission to an AAS or AS degree program.

AAS/AS degree articulation agreements.[23] The amount of credit applied to the degree program varies by program and is determined by school district career center and FCS institution college faculty. According to the Practical Nursing certificate program articulation agreement, students who complete the 1,350-clock-hour Practical Nursing program are guaranteed 10 college credits upon entrance into the 72-credit AS degree program in Nursing.[24] Twenty-eight districts offered licensed practical nursing (LPN) career certificate programs with close to 4,000 students enrolled in 2018-2019.[25]

Florida Public Postsecondary Nursing Programs

Any educational institution that wishes to conduct a program in Florida for the pre-licensure education of professional or practical nurses must apply to the Department of Health and be approved by the Florida Board of Nursing.[26]

Each FCS institution offers a 72-credit-hour AS degree in nursing to prepare students for employment as registered nurses (RN).[27] FCS institutions enrolled 13,619 students in the AS nursing degree program in 2018-2019.[28]

Each AS degree must also include a minimum of 15 college credits of general education coursework.[29] The standards for all Florida AS degree programs, including nursing, are determined in the curriculum frameworks maintained by the Department of Education (DOE).[30] All Florida AS nursing degree programs are accredited by the Accreditation Commission for

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[23] Florida Department of Education, *Career Certificate Program to AAS/AS Degree*, *available at* http://www.fldoe.org/academics/career-adult-edu/career-technical-edu-agreements/psav-to-aas-as-degree.stml (last visited Mar. 12, 2021), and *Applied Technology Diploma to Associate in Science or Associate in Applied Science Program Articulation* (Feb. 2020), *available at* http://www.fldoe.org/core/fileparse.php/7525/urlt/atd-to-asandaas-articulationagreemts.pdf (last visited Mar. 12, 2021).

[24] Florida Department of Education, *Postsecondary Adult Vocational (PSAV) to AAS/AS Degree Articulation, Statewide Agreement Worksheet Summary* (Feb. 28, 2018), *available at* http://www.fldoe.org/core/fileparse.php/7525/urlt/p1-practicalnursing.rtf (last visited Mar. 12, 2021).

[25] Department of Education, *2020 Legislative Bill Analysis of SB 418* (Oct. 8, 2019) at 3.

[26] Section 464.019, F.S. The Florida Board of Nursing is a 13-member board within the Department of Health that licenses, monitors, disciplines, educates and, when appropriate, rehabilitates its licensees to assure their fitness and competence in providing health care services for the people of Florida. Section 464.004, F.S., and Florida Board of Nursing, *available at* https://floridasnursing.gov/ (last visited Mar. 12, 2021).

[27] Twenty-seven FCS institutions are approved to offer the bachelor of science degree for nursing (BSN). In 2018-2019, 6,429 students were enrolled in FCS BSN programs. Department of Education, *2020 Legislative Bill Analysis of SB 418* (Feb 22, 2021) at 3.

[28] *Id.*

[29] Fla. Admin. Code R. 6A-14.030(4) (2021).

[30] The Career & Technical Education (CTE) Programs section in the DOE is responsible for developing and maintaining educational programs that prepare individuals for occupations important to Florida's economic development. These programs are organized into 17 different career clusters and are geared toward middle school, high school, district technical school, and FCS students throughout the state. With the help of partners in education, business and industry, and trade associations, each program includes the academic and technical skills required to be successful in today's economy. Florida Department of Education, *Career & Technical Education*, *available at* http://www.fldoe.org/academics/career-adult-edu/career-tech-edu/ (last visited Mar. 12, 2021).

Education in Nursing (ACEN).[31] There is currently no curriculum framework for an AAS degree in nursing, and no AAS degree programs in nursing are offered by FCS institutions.[32]

Occupational Outlook

There were 49,549 LPNs employed in Florida in 2020. By 2028, it is expected that there will be a need for 56,043 LPNs, growing the profession by 13.1 percent.[33] Total job openings over this period is expected to be 38,674.[34] It is further estimated that 1,984 practical nursing students will annually complete a program to fill 4,165 LPN job openings through 2027, placing the profession in the "moderate" supply gap category.[35]

There were 194,146 RNs employed in Florida, in 2020. By 2028, it is expected that there will be a need for 215,063 RNs, growing the profession by 10.8 percent.[36] Total job openings over this period is expected to be 108,324.[37] It is further estimated that 15,011 professional nursing students will annually complete an educational program to fill 14,094 RN job openings through 2027, placing the profession in the "very low or none" supply gap category.[38]

III. Effect of Proposed Changes:

CS/SB 532 amends s. 1011.80, F.S., to authorize school district career centers to offer an associate in applied science (AAS) or associate in science (AS) degree program but restricts offering the degree program to graduates of a licensed practical nursing (LPN) program offered at that same career center.

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[31] The purpose of the ACEN is to provide specialized accreditation for all levels of nursing education and transition-to-practice programs. The ACEN accredits nursing education programs in secondary, postsecondary, and hospital-based governing organizations that offer certificates, diplomas, or degrees. The ACEN serves as a Title IV gatekeeper for all types of nursing education programs offered by certain institutions that are eligible to participate in financial aid programs administered by the United States Department of Education or other federal agencies. Accreditation Commission for Education in Nursing, *Mission, Purpose, Goals*, *available at* https://www.acenursing.org/about/mission-purpose-goals/ (last visited Mar. 12, 2021).

[32] In 2012, Florida nursing programs were leveled at the AS degree level in order the facilitate student transfer to aligned baccalaureate degrees. Florida Department of Education, *2020 Agency Analysis of SB 418* (Oct. 8, 2019).

[33] Florida Department of Economic Opportunity, *Employment Projections*, *available at* https://floridajobs.org/workforce-statistics/data-center/statistical-programs/employment-projections (last visited Mar. 12, 2021).

[34] *Id*.

[35] The Workforce Potential Supply Gap Analysis groups occupations into categories (high, moderate, low, very low/no potential gaps) based on the relative difference between employment demand and potential supply as provided from Florida educational and training institutions. The annual occupational job opening is the main source of demand and based on the annualized 10-year projections. This number takes into account occupational growth, transfers between occupations, and exits from an occupation. Supply data are based on completion tabulations from programs within the District Postsecondary, Florida College System, Commission for Independent Education, Independent Colleges & Universities of Florida, and the State University System institutions. Supply counts do not represent the total availability of labor for a given occupation. Other sources of labor supply may include individuals currently employed in similar occupations, migration, military separations or others currently outside the labor force. Florida Department of Economic Opportunity, *Supply and Demand*, *available at* https://floridajobs.org/workforce-statistics/products-and-services/supply-and-demand (last visited Mar. 12, 2021).

[36] Florida Department of Economic Opportunity, *Employment Projections*, *available at* https://floridajobs.org/workforce-statistics/data-center/statistical-programs/employment-projections (last visited Mar. 12, 2021).

[37] *Id*.

[38] *Supra* note 36.

The bill may expand the number of institutions that may offer an associate degree in nursing and may therefore increase access to such programs for students. If more students complete such programs and become licensed, the supply of nurses in Florida may also increase. Career centers that implement associate degree programs under the bill will be required to comply with additional requirements related to college credit programs and to institution and program accreditation, as follows.

Associate Degree Program Requirements

Students entering a college-credit nursing program who are not otherwise exempt would be required to complete a common placement test to assess basic mathematics and communication skills.[39] In addition, a career center offering an AS nursing degree would be required to include in the program 15 credit hours of general education coursework. This general education coursework requirement would also apply to an AAS nursing program. However, since there is currently no curriculum framework for an AAS degree program in nursing, there is no mechanism to offer an AAS program.

In addition, the career center that offers the college-credit (professional) nursing program would be required to meet faculty qualifications that are more rigorous than those required for a practical nursing program.[40]

Approval and Accreditation

A career center seeking to offer an associate degree in nursing would need approval from the Board of Nursing. In addition, the career center would be required to obtain accreditation for its associate degree (professional) nursing program by a specialized nursing accrediting agency that is nationally recognized by the United States Secretary of Education to accredit nursing education programs.[41] Florida law requires a nursing education program that prepares students for the practice of professional nursing to become an accredited program within five years after the date of enrolling the program's first students.[42]

A career center would not, however, be required to seek institutional accreditation other than its existing accreditation by the Council on Occupational Education (COE). COE accreditation authorizes member institutions to offer both the AAS and AS degree.

[39] *Id.* Section 1008.30, F.S. The State Board of Education, in conjunction with the Board of Governors, is required to develop and implement a common placement test for the purpose of assessing the basic computation and communication skills of students who intend to enter a degree program at any public postsecondary educational institution. A student who entered 9th grade in a Florida public school in the 2003-2004 school year, or any year thereafter, and earned a Florida standard high school diploma or a student who is serving as an active duty member of any branch of the United States Armed Services is not be required to take the common placement test.

[40] An associate degree program requires the program director and at least 50 percent of the faculty to be registered nurses who have a master's or higher degree in nursing or a bachelor's degree in nursing and a master's or higher degree in a field related to nursing; a practical nursing program requires similar faculty to have bachelor's degrees. Section 464.019(1)(a), F.S.

[41] Sections 464.003(1) and 464.019(11), F.S.

[42] *Id.*

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:

School district career centers that choose to implement an associate degree nursing program would likely incur expenses related Board of Nursing approval and nursing program accreditation. For example:

- There is a $1,000 application fee to the Board of Nursing.
- Accreditation Commission for Education in Nursing fees include $3,500 for candidacy and initial accreditation, plus additional fees for site visits and full accreditation.[43]

VI. Technical Deficiencies:

None.

[43] Accreditation Commission for Education in Nursing, *2020 Schedule of Fees*, *available at* https://www.acenursing.org/for-programs/general-resources/2020-schedule-of-fees/ (last visited Mar. 12, 2021).

VII. Related Issues:

Florida law[44] specifies tuition that applies to students enrolled in workforce education programs who are reported for funding. College credit fees for associate degree programs are determined in law and are specific only to Florida College System (FCS) institutions.[45] It is unclear if such fees currently applied to FCS institution college-credit programs would be applied to school district career center college-credit degree programs.

VIII. Statutes Affected:

This bill substantially amends section 1011.80 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 Education on March 9, 2021:
The committee substitute makes a technical change and conforms language in the bill to clarify that a career center offering an Associate in Applied Science degree in nursing may offer such degree to graduates of a licensed practical nursing program at that career center.

B. Amendments:

None.

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

44 Section 1009.22, F.S. The tuition for programs leading to a career certificate or an ATD is $2.33 per contact hour for residents and nonresidents and the out-of-state fee is $6.99 per contact hour. Adult general education programs have a block tuition of $45 per half year or $30 per term. Fees are determined by the district school board or FCS institution.

By the Committee on Education; and Senator Burgess

581-02632-21 2021532c1

A bill to be entitled

An act relating to workforce education; amending s. 1011.80, F.S.; revising the workforce education programs that school district career centers are authorized to conduct; providing an effective date.

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

Section 1. Subsection (2) of section 1011.80, Florida Statutes, is amended to read:

1011.80 Funds for operation of workforce education programs.—

(2) Any workforce education program may be conducted by a Florida College System institution or a school district, except that college credit in an associate in applied science or an associate in science degree may be awarded only by a Florida College System institution. However, a school district career center may conduct the following:

(a) Portions of ~~if~~ an associate in applied science or an associate in science degree program which contain ~~contains within it~~ an occupational completion point that confers a certificate or an applied technology diploma.

(b) An associate in applied science or an associate in science nursing degree program if the career center offering the associate in applied science or associate in science nursing degree program offers it only to graduates of a licensed practical nursing program offered by the same~~, that portion of the program may be conducted by a school district career~~ center. Any instruction designed to articulate to a degree program is

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

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subject to guidelines and standards adopted by the State Board of Education pursuant to s. 1007.25.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 654
INTRODUCER:	Rules Committee; Military and Veterans Affairs, Space, and Domestic Security Committee; and Senator Bradley
SUBJECT:	Public Records/Department of Military Affairs
DATE:	April 20, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Caldwell	MS	**Fav/CS**
2.	Brown	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 654 creates a public records exemption for records held by the Department of Military Affairs which:

- Are stored in a United States Department of Defense (DoD) system of records;
- Are transmitted using a DoD network or communication device; or
- Pertains to the DoD pursuant to 10 U.S.C. s. 394.[1]

These records are made exempt from disclosure.

In the required public necessity statement, the bill provides as justification for the exemption that it is a public necessity that this information be made exempt from disclosure as national security and the safety of servicemembers and their families could otherwise be compromised.

The exemption applies to information made exempt which is held by the department before, on, or after the effective date of the exemption. Therefore, the exemption applies retroactively.

As this is a public records bill, a two-thirds vote of each House of the Legislature is required for passage.

[1] Federal law 10 U.S.C. s. 394(a), which addresses military cybersecurity operations, provides for the Secretary of Defense to develop, prepare, and coordinate; make ready all armed forces for purposes of; and, when appropriately authorized to do so, conduct, military cyber activities or operations in cyberspace, including clandestine military activities or operations in cyberspace.

The public records exemption is subject to an Open Government Sunset Review and is scheduled for repeal October 2, 2026, unless the Legislature reviews and saves the exemption from repeal before that date.

The bill takes effect upon becoming law.

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.[2] This 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.[3]

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.[4] 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.[5]

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.[6] Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[7] 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."[8]

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[2] FLA. CONST., art. I, s. 24(a).
[3] *Id*.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.
[6] *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).
[7] 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."
[8] *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 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.[9] A violation of the Public Records Act may result in civil or criminal liability.[10]

Only the Legislature may create an exemption to public records requirements.[11] An exemption must be created by general law and must specifically state the public necessity justifying the exemption.[12] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[13] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[14]

When creating or expanding a public records exemption, the Legislature may provide that a record is 'confidential and exempt' or 'exempt.'[15] Records designated as 'confidential and exempt' may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as 'exempt' may be released at the discretion of the records custodian under certain circumstances.[16]

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,[17] with specified exceptions.[18] The Act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.[19] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

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

[9] Section 119.07(1)(a), F.S.
[10] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[11] FLA. CONST., art. I, s. 24(c).
[12] *Id.*
[13] The bill may, however, contain multiple exemptions that relate to one subject.
[14] FLA. CONST., art. I, s. 24(c)
[15] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[16] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[17] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.
[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 subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[21]
- Releasing sensitive personal information would be defamatory or would jeopardize an 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 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, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[26]

Federal System of Records

The Privacy Act of 1974 [27] establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of information about individuals maintained in systems of records by federal agencies. A system of records is a group of records under agency control from which information is retrieved by name or other identifier assigned to an individual.

The Privacy Act requires agencies to give the public notice of their systems of records by publication in the Federal Register. The Privacy Act prohibits the disclosure of a record about an individual from a system of records unless the individual has consented in writing, or the

[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] FLA. CONST. art. I, s. 24(c).
[26] Section 119.15(7), F.S.
[27] 5 U.S.C. s. 552(a).

disclosure qualifies under one of 12 statutory exceptions.[28] The Privacy Act authorizes disclosure in the following instances:

- To the officers and employees of the agency which maintains the record, who need the record in the performance of their duties;
- When the disclosure is made under the Freedom of Information Act;
- For an established routine use;
- To the Census Bureau to carry out a census or survey;
- For statistical research or reporting without release of individually identifying data, provided that adequate notice is given;
- To the National Archives and Records Administration as a record of historical value;
- To another agency or an instrumentality of the government for a civil or criminal law enforcement activity;
- To an individual under a compelling circumstance affecting health or safety, and the person whose health or safety is affected is sent a notification of the disclosure;
- To either House of Congress, or one of its committees or subcommittees;
- To the Comptroller General in the course of duties of the General Accountability Office;
- Pursuant to the order of a court of competent jurisdiction; or
- To a consumer reporting agency.[29]

Applicability of Confidentiality Pursuant to Federal Law on State Agencies

A record that is exempt from disclosure under federal law is not automatically protected from disclosure pursuant to state law. In *Wallace v. Guzman*, the court held that an exemption from disclosure provided in the Freedom of Information Act applies to federal, but not to state agencies.[30] The records in question, personal income tax returns and personal financial statements submitted in an application for a loan, are maintained by the state housing authority. These records, which would be protected from disclosure under federal law, are not protected under state law.[31]

Likewise, tenant records of a state public housing authority which would be exempt from disclosure pursuant to the Federal Privacy Act are not protected from disclosure by Florida Public Records Law.[32] Here, the public housing authority asserted that it is considered a federal agency for purposes of the mandates of the Federal Privacy Act, as the authority receives funding from the federal government.[33] In refuting this, the court determined:

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[28] Department of Justice, *Privacy Act of 1974, available at* https://www.justice.gov/opcl/privacy-act-1974#:~:text=The%20Privacy%20Act%20of%201974,of%20records%20by%20federal%20agencies. (last visited March 23, 2021).
[29] United States Department of Legal Affairs, *Privacy Reminders, Privacy Act "Exceptions", available at* https://www.dla.mil/Portals/104/Documents/GeneralCounsel/FOIA/PrivacyReminders/FOIA_Reminder12.pdf?ver=pmD36CFRR8zarytVh_aWCg%3d%3d (last visited March 24, 2021).
[30] *Wallace v. Guzman*, 687 So.2d 1351, 1353 (Fla. 3d DCA 1997).
[31] *Id*.
[32] *Housing Authority of the City of Daytona Beach v. Gomillion*, 639 So. 2d 117, 118 (Fla. 5th DCA 1994).
[33] *Id*. at 121.

> On the basis of the foregoing authority the Court finds that the Housing Authority is not an agency for purposes of the Federal Privacy Act. The Housing Authority is a public body created by state statute. It would be an overly broad reading of the state statute to suggest that the authorization to receive funds from the Federal Government and the requirement to be monitored by the Federal Government thereby renders a public housing authority a federally chartered corporation or federal "agency." Although the Federal Government funds the Housing Authority and requires compliance with federally mandated standards, it does not provide extensive, detailed or virtually day-to-day supervision over the Housing Authority's business.[34]

Exemptions to Public Records Disclosure in Florida Law

Public Records Exemption for Social Security Numbers

A Social Security Number of Agency Personnel

Social security numbers of current and former agency personnel held by an employing agency are confidential and exempt from disclosure.[35] However, social security numbers of current and former agency employees may be disclosed by the employing agency if:

- Disclosure of the social security number is expressly required by federal or state law or a court order;
- Disclosure is necessary to another agency or governmental entity for the receiving agency or entity to perform its duties and responsibilities; or
- The employee expressly consents in writing to the disclosure.[36]

A Social Security Number of a Member of the Public

Additionally, an exemption applies generally to social security numbers held by an agency other than for personnel, in which case, this information is also confidential and exempt from public disclosure. This exemption applies to social security numbers held by an agency before, on, or after the effective date of this exemption. The exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemption for social security numbers existing prior to May 13, 2002, or created after that date.[37]

However, a social security number held by an agency may be disclosed if:

- Disclosure is expressly required by federal or state law or a court order.
- Disclosure is necessary for the receiving agency or governmental entity to perform its duties and responsibilities.
- The individual expressly consents in writing to disclosure.

[34] *Id*.
[35] Section 119.071(4)(a)1., F.S.
[36] Section 119.071(4)(a)2., F.S.
[37] Section 119.071(5)(a)5., F.S.

- The disclosure of the social security number is made to comply with the USA Patriot Act of 2001, or Presidential Executive Order 13224[38].
- The disclosure is made to a commercial entity for the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994; the Fair Credit Reporting Act; or the Financial Services Modernization Act of 1999.
- The disclosure is for the purpose of the administration of health benefits for an agency employee or his or her dependents.[39]
- The disclosure of the social security number is for the purpose of the administration of a pension fund administered for the agency employee's retirement fund, deferred compensation plan, or defined contribution plan.
- The disclosure of the social security number is for the purpose of the administration of the Uniform Commercial Code by the office of the Secretary of State.

Public Records Exemption for Medical Information

Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from disclosure. However, the information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission or pursuant to court order.[40]

Public Records Exemption for Personal Identifying Information

Personal identifying information required to be maintained for an agency group insurance plan of a dependent child of a current or former agency officer or employee, is exempt from disclosure.[41]

Military Cybersecurity Operations

Federal law 10 U.S.C. s. 394(a), authorizes the Secretary of Defense for defense purposes to develop, prepare, and coordinate; make ready all armed forces for purposes of; and, when appropriately authorized to do so, conduct military cyber activities or operations in cyberspace, including clandestine military activities or operations. A "clandestine military activity or operation in cyberspace" is a military activity or operation carried out in cyberspace, authorized by the President or Secretary that is marked by, held in, or conducted with secrecy, to deter, safeguard, or defend against attacks or malicious cyber activities against the DoD information, networks, systems, installations, facilities, or other assets in support of information related capabilities.[42] A clandestine military activity or operation in cyberspace is considered a traditional military activity.[43]

[38] Presidential Executive Order 13224, signed September 23, 2001, is an anti-terrorism order aimed at blocking financial assets of networks that fund terrorism. U.S. Dep't of State, Bureau of Counterterrorism, *Executive Order 1322,* https://www.state.gov/executive-order-13224/
[39] Section 119.071(5)(a)6., F.S.
[40] Section 119.071(4)(b)1., F.S.
[41] Section 119.071(4)(b)2.a., F.S.
[42] 10 U.S.C. s. 394(f)(1)
[43] 10 U.S.C. s. 394(c)

Information Maintained by the Department of Military Affairs

Records held by the Department of Military Affairs include information on military missions, units, deployments, troop concentrations, rules on the use of force, highly deployable units, personal identifying information of servicemembers and their families, and certain identifying information of employees of the Department of Defense.[44]

III. Effect of Proposed Changes:

CS/CS/SB 654 creates a public records exemption for records held by the Department of Military Affairs which:

- Are stored in a United States Department of Defense (DoD) system of records;
- Are transmitted using a DoD network or communication device; or
- Pertains to the DoD pursuant to 10 U.S.C. s. 394.[45]

These records are made exempt from disclosure.

In the required public necessity statement, the bill provides as justification for the exemption that it is a public necessity that this information be made exempt from disclosure as national security and the safety of servicemembers and their families could otherwise be compromised.

The exemption applies to information made exempt which is held by the department before, on, or after the effective date of the exemption. Therefore, the exemption applies retroactively.

As this is a public records bill, a two-thirds vote of each House of the Legislature is required for passage.

This public records exemption is subject to an Open Government Sunset Review and is scheduled for repeal October 2, 2026, unless the Legislature reviews and saves the exemption from repeal before that date.

The bill takes effect upon becoming law.

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 shared tax shared with counties and municipalities.

[44] Department of Military Affairs, *2021 Agency Legislative Bill Analysis* (Jan. 21, 2021) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

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 includes a statement of public necessity. The statement provides as justification for the exemption that it is a public necessity that this information be made exempt, as disclosure could adversely affect national security and the safety of servicemembers and their families.

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 records held by the Department of Military Affairs which are stored in a United States Department of Defense (DoD) system of records; transmitted using a DoD network or communication device; or pertain to the DoD pursuant to federal law 10 U.S.C. s. 394, that addresses military cybersecurity. As the exemption does not protect specific categories of information, the bill may 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.0712 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 20, 2021:
The committee substitute:

- Changes references to records "held by" from records that are "received or maintained by" the Department of Military Affairs; and
- Clarifies in the public necessity statement that the public records exemption applies retroactively.

CS by Military and Veterans Affairs, Space, and Domestic Security on March 30, 2021:
The committee substitute:

- Replaces information currently provided in the bill as protected from disclosure under the Freedom of Information Act and the Privacy Act of 1974, with that of information stored in a United States Department of Defense (DoD) system of records; transmitted using a DoD network or communications device; or pertaining to the DoD, pursuant to 10 U.S.C. s. 394 on military cybersecurity operations;
- Removes language that provided that any information not made exempt may be disclosed only after the department makes redactions in accordance with applicable federal and state laws, as this is unnecessary.

B. Amendments:

None.

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

392722

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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	.	

The Committee on Rules (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 22 - 53

and insert:

(4) DEPARTMENT OF MILITARY AFFAIRS.—Information held by the Department of Military Affairs which is stored in a United States Department of Defense system of records, is transmitted using a United States Department of Defense network or communications device, or pertains to the United States Department of Defense pursuant to 10 U.S.C. s. 394 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State



392722

Constitution. This exemption applies to information made exempt by this subsection which is held by the department before, on, or after the effective date of the exemption. 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 certain information held by the Department of Military Affairs which is stored in a United States Department of Defense system of records, is transmitted using a United States Department of Defense network or communications device, or pertains to the United States Department of Defense pursuant to 10 U.S.C. s. 394 be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of such information could adversely affect national security and the safety of servicemembers and their families. A servicemember's information should only be disclosed by consent, as provided in the Privacy Act of 1974. It is necessary that such sensitive information in the custody of the Department of Military Affairs be protected from disclosure to the same degree required under federal law. Therefore, the Legislature finds that it is a public necessity that such information be made exempt from public records requirements and that such exemption should be applied retroactively.

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

And the title is amended as follows:

Delete lines 4 - 5

392722

and insert:

records requirements for certain information held by the Department of Military Affairs

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Bradley

583-03588-21 2021654c1

A bill to be entitled

An act relating to public records; amending s. 119.0712, F.S.; providing an exemption from public records requirements for certain information received or maintained by the Department of Military Affairs which is stored in a United States Department of Defense system of records, is transmitted using a United States Department of Defense network or communications device, or pertains to the United States Department of Defense; providing for retroactive application; 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. Subsection (4) is added to section 119.0712, Florida Statutes, to read:

119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.—

(4) DEPARTMENT OF MILITARY AFFAIRS.—Information received or maintained by the Department of Military Affairs which is stored in a United States Department of Defense system of records, is transmitted using a United States Department of Defense network or communications device, or pertains to the United States Department of Defense, pursuant to 10 U.S.C. s. 394, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information made exempt

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583-03588-21 2021654c1

by this subsection which is held by the department before, on, or after the effective date of the exemption. 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 certain information received or maintained by the Department of Military Affairs which is stored in a United States Department of Defense system of records, is transmitted using a United States Department of Defense network or communications device, or pertains to the United States Department of Defense, pursuant to 10 U.S.C. s. 394, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of such information could adversely affect national security and the safety of servicemembers and their families. A servicemember's information should only be disclosed by consent, as provided in the Privacy Act of 1974. It is necessary that such sensitive information in the custody of the Department of Military Affairs be protected from disclosure to the same degree required under federal law. Therefore, the Legislature finds that it is a public necessity that such information be made exempt from public records requirements.

Section 3. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE
Tallahassee, Florida 32399-1100

SENATOR JENNIFER BRADLEY
5th District

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

April 6, 2021

Senator Kathleen Passidomo, Chair
Senate Committee on Rules
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair:

I respectfully request that Senate Bill 654 be placed on the committee's agenda at your earliest convenience. This bill relates to Public Records/Department of Military Affairs.

The Strike-All Amendment creates a public records exemption from Chapter 119 for information received or maintained by the department that is stored in a Department of Defense system, transmitted using a DoD network or pertaining to the DoD. Due to this relationship, the department requested this public records exemption to resolve conflicts between state and federal information laws, particularly the Freedom of Information Act.

Thank you for your consideration.

Sincerely,

Jennifer Bradley

Jennifer Bradley

cc: John B. 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

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 760
INTRODUCER:	Senators Burgess and Baxley
SUBJECT:	Florida High School Athletic Association (FHSAA)
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Westmark	Bouck	ED	**Favorable**
2.	Hackett	Ryon	CA	**Favorable**
3.	Westmark	Phelps	RC	**Pre-meeting**

I. Summary:

SB 760 enables public schools, virtual schools, and home education cooperatives to choose to maintain sport-selected membership, not only full membership, in the Florida High School Athletic Association (FHSAA) without penalty from the FHSAA.

The bill takes effect July 1, 2021.

II. Present Situation:

The Florida High School Athletic Association

The Florida High School Athletic Association (FHSAA) is designated by law as the governing nonprofit organization of athletics in Florida public schools.[1] The FHSAA is not a state agency, but performs similar functions.[2] The FHSAA is required to adopt bylaws regulating student eligibility, student residency and transfer, recruiting, health and safety, and investigations and sanctions.[3] The bylaws of the FHSAA govern high school athletic programs in its member schools, unless otherwise specifically provided by statute.[4]

If the FHSAA fails to meet requirements specified in law, the Commissioner of Education must designate a nonprofit organization to govern athletics with the approval of the State Board of Education.[5]

[1] Section 1006.20(1), F.S.
[2] *Id.*
[3] Section 1006.20(2)(a), F.S.
[4] Section 1006.20(1), F.S.
[5] *Id.*

FHSAA Membership

Any high school[6] in the state, including charter schools, virtual schools, and home education cooperatives,[7] may become a member of the Florida High School Athletic Association (FHSAA) and participate in the activities of the FHSAA. However, membership in the FHSAA is not mandatory for any school.[8] The FHSAA must allow a private school the option of maintaining full membership in the association or joining by sport, and may not discourage a private school from simultaneously maintaining membership in another athletic association.[9] The FHSAA may allow a public school the option to apply for consideration to join another athletic association.[10]

Qualifications for membership in the FHSAA for a Florida secondary school that is accredited and registered with the Florida Department of Education, as well as a home education cooperative, include, but are not limited to:[11]

- Approval by its governing body of the FHSAA bylaws as the rules governing its interscholastic athletic program;
- Payment of all dues and fees required of member schools;
- Maintenance of insurance coverage required of member schools; and
- Successful completion of the application and provisional period.

Among other responsibilities, the FHSAA Board of Directors approves schools or cooperatives for initial and continuing membership, adopts and amends administrative regulations to govern FHSAA programs, and serves as its highest appellate authority.[12]

The FHSAA defines full member schools as those enjoying all privileges of membership, including the privilege to:[13]

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[6] A senior high school is defined as "any traditional public school, charter school, virtual school, private school or university laboratory school that provides instruction to students at one or more grade levels from 9 through 12." A combination school is defined as "any traditional public school, charter school, virtual school, private school or university laboratory school that provides instruction to students in both middle/junior high school grades and/or senior high school grades (i.e. K-12, K-8, 6-12, 7-12, etc.) under the direction of a single principal as defined in Bylaw 1.4.25 and located on the same campus, except for 9-12 high schools which have 9th grade centers at a separate location, with participation and enrollment based on a single campus site." Middle/junior high schools may also join the FHSAA, such schools are defined as "any traditional public school, charter school, virtual school, private school or university laboratory school that provides instruction to students in middle school configurations (terminal grade of 6, 7 or 8) or junior high school configurations (terminal grade of 9)." Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association, Inc.* (2020-21 Ed.), *available at* https://fhsaa.com/documents/2020/10/1//2021_handbook_website_1001.pdf?id=292, at 9.

[7] Defined as "a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6-12." *Id.*

[8] Section 1006.20(1), F.S.

[9] *Id.*

[10] *Id.*

[11] Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association, Inc.* (2020-21 Ed.), *available at* https://fhsaa.com/documents/2020/10/1//2021_handbook_website_1001.pdf?id=292, at 9.

[12] *Id.*, at 9,12, and 14. The FHSAA is composed of 16 individuals: four elected public school representatives, four elected private school representatives, two elected district school superintendents, two elected district school board members, three representatives appointed by the Commissioner of Education, and the Commissioner of Education or his/her designated representative. Florida High School Athletic Association, *Board of Directors*, https://fhsaa.com/sports/2020/3/11/Board_of_Directors.aspx (last visited Feb. 11, 2021).

[13] Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association, Inc.* (2020-21 Ed.), *available at* https://fhsaa.com/documents/2020/10/1//2021_handbook_website_1001.pdf?id=292, at 8 and 12. Other

- Compete in FHSAA championships;
- Vote in FHSAA elections;
- Seek election to positions in the FHSAA governance structure and substructures; and
- Make applications for and serve as host of multi-school events that require FHSAA office approval.

FHSAA bylaws state that the privilege to participate in the Florida High School State Championship Series is limited only to those senior high schools and combination schools duly elected to full membership in the FHSAA.[14]

A school may exercise the option of independent status.[15] However, the FHSAA prohibits member schools from declaring independence in a sport and organizing a conference or league to conduct a playoff or championship without approval of the FHSAA Board of Directors.[16]

Athletic Associations

Other athletic associations within the state include the Florida Independent Christian Athletic Association and the Sunshine State Athletic Conference. Outside of Florida, at least a dozen states host multiple state-based athletic associations.[17]

III. Effect of Proposed Changes:

SB 760 requires the Florida High School Athletic Association (FHSAA) to allow a public school, a charter school, a virtual school, and a home education cooperative the option of maintaining full membership in the FHSAA or joining by sport. The bill specifies that the FHSAA may not discourage such school or cooperative from simultaneously maintaining membership in another athletic association.

The bill requires the FHSAA to allow a public school to join another athletic association, rather than providing the public school the option to apply for consideration to join.

The bill prohibits the FHSAA from taking any retributory or discriminatory action against any of its member schools that join another athletic association, not only against those who participate in interscholastic competition with non-FHSAA member Florida schools. The bill also prohibits the FHSAA from punishing, discouraging, intimidating, or penalizing any private school; public school, including a charter school; virtual school; and home education cooperative from choosing not to participate in the FHSAA for any sport.

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categories of membership defined by the FHSAA include restricted member, applying member, provisional member, and membership by sport.

[14] Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association, Inc.* (2020-21 Ed.), *available at* https://fhsaa.com/documents/2020/10/1//2021_handbook_website_1001.pdf?id=292, at 8.

[15] *Id.*, at 58. Reasons for independence include a newly opening school; a school that has consistently been unable to compete in the classification to which it is assigned; a school that is geographically isolated and chooses not to participate for financial reasons; a school whose educational philosophies prohibit such extended athletic participation; or a school that does not or cannot compete for religious reasons. *Id.*

[16] *Id*.

[17] *See* National Federation of State High School Associations, *State High School Associations Come in All Shapes and Sizes*, https://www.nfhs.org/articles/state-high-school-associations-come-in-all-shapes-and-sizes/ (last visited Feb. 12, 2021).

The bill may offer a school that is a member of the FHSAA the flexibility to choose the athletic association appropriate for each of its offered sports, while ensuring the school can maintain privileges under the FHSAA.

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 identified.

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 1006.20 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 Burgess

20-00571A-21 2021760__

A bill to be entitled

An act relating to the Florida High School Athletic Association (FHSAA); amending s. 1006.20, F.S.; requiring the FHSAA to allow certain schools and home education cooperatives to maintain full membership in the association or to join by sport; prohibiting the FHSAA from discouraging such school or cooperative from simultaneously maintaining membership in another athletic association; requiring, rather than authorizing, the FHSAA to allow public schools to join other athletic associations; prohibiting the FHSAA from taking retributory or discriminatory actions against member schools that join other athletic associations; prohibiting the FHSAA from taking certain actions against specified entities that choose not to participate in the association for any sport; providing an effective date.

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

Section 1. Subsection (1) of section 1006.20, Florida Statutes, is amended to read:

1006.20 Athletics in public K-12 schools.—

(1) GOVERNING NONPROFIT ORGANIZATION.—The Florida High School Athletic Association (FHSAA) is designated as the governing nonprofit organization of athletics in Florida public schools. If the FHSAA fails to meet the provisions of this section, the commissioner shall designate a nonprofit organization to govern athletics with the approval of the State

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20-00571A-21 2021760__

Board of Education. The FHSAA is not a state agency as defined in s. 120.52. The FHSAA shall be subject to the provisions of s. 1006.19. A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA. Any high school in the state, including charter schools, virtual schools, and home education cooperatives, may become a member of the FHSAA and participate in the activities of the FHSAA. However, membership in the FHSAA is not mandatory for any school. The FHSAA must allow a private school or a public school, including a charter school, a virtual school, and a home education cooperative, the option of maintaining full membership in the association or joining by sport and may not discourage such school or cooperative ~~a private school~~ from simultaneously maintaining membership in another athletic association. The FHSAA must ~~may~~ allow a public school ~~the option to apply for consideration~~ to join another athletic association. The FHSAA may not deny or discourage interscholastic competition between its member schools and non-FHSAA member Florida schools, including members of another athletic governing organization, and may not take any retributory or discriminatory action against any of its member schools that join another athletic association or that participate in interscholastic competition with non-FHSAA member Florida schools. The FHSAA may not punish, discourage, intimidate, or penalize any private school or public school, including a charter school, a virtual school, and a home education cooperative, from choosing not to participate in the association for any sport. The FHSAA may not unreasonably withhold its approval of an application to become an affiliate

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member of the National Federation of State High School Associations submitted by any other organization that governs interscholastic athletic competition in this state. The bylaws of the FHSAA are the rules by which high school athletic programs in its member schools, and the students who participate in them, are governed, unless otherwise specifically provided by statute. For the purposes of this section, "high school" includes grades 6 through 12.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 762
INTRODUCER:	Criminal Justice Committee and Senator Baxley
SUBJECT:	Public Records/Criminal Conflict and Civil Regional Counsel Offices
DATE:	April 19, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	**Fav/CS**
2.	Candelaria	McVaney	GO	**Favorable**
3.	Cellon	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 762 makes all records relating to the application of a confidential registration certificate and registration license plate or decal submitted to the Department of Highway Safety and Motor Vehicles (DHSMV) by an office of the Criminal Conflict and Civil Regional Counsel (CCCRC), and any other records necessary to carry out the purpose of s. 320.025, F.S., exempt the public inspection and copying requirements of s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

The bill authorizes the CCCRC to register a vehicle or vessel under a fictitious name with the DHSMV and receive a license plate or decal based on such fictitious name similar to how the state public defender's offices currently register vehicles.

The bill provides a statement of public necessity. The bill appears to be no more broad than necessary to accomplish its purpose.

The bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature. The bill requires a two-thirds vote of the members present and voting for final passage.

The bill is not expected to impact state and local government 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 branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

[1] Fla. Const. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (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 Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended[17] 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]

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[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).
[11] *Id*. *See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[16] Section 119.15, F.S.
[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[18] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[19] Section 119.15(3), F.S.
[20] Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

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]

Confidential Motor Vehicle Registration

Section 320.025, F.S., authorizes the DHSMV to issue a confidential registration certificate and registration license plate or decal under a fictitious name for a motor vehicle or vessel owned or operated by:

- A law enforcement agency of state, county, municipal, or federal government;
- The Attorney General's Medicaid Fraud Control Unit; or
- Any state public defender's office.[27]

To register a motor vehicle or vessel under a fictitious name, the law enforcement agency, Fraud Control Unit, or public defender's office must file a written application with the DHSMV

[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] Section 320.025(1), F.S.

affirming the license plate or decal will be used for activities that require concealment of the true owner of the vehicle and listing individuals who are authorized to use the vehicle.[28] All records relating to the registration application are exempt from disclosure under the public records provisions in s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.[29]

Criminal Conflict and Civil Regional Counsel

The CCCRC was created by the Legislature in 2007 to provide legal representation to indigent persons that are constitutionally entitled to court-appointed counsel.[30] The CCCRC primarily provides representation in three types of cases:

- Criminal cases in which the public defender must withdraw due to a conflict of interest;[31]
- Dependency cases;[32] and
- Involuntary civil commitment cases involving a mentally ill person, sexually violent predator, or a person with developmental disabilities.[33]

In representing a defendant in a criminal case, the CCCRC performs similar functions to that of a traditional public defender. To effectively represent a client in a criminal proceeding, both the public defender and the CCCRC employ investigators to investigate cases and conduct interviews with defendants and witnesses.[34] Currently, the CCCRC employs approximately 20 investigators.[35]

III. Effect of Proposed Changes:

The bill amends s. 320.025, F.S., to authorize the CCCRC to register a vehicle or vessel under a fictitious name with the DHSMV and receive a license plate or decal based on such fictitious name. The bill provides that all records relating to the application of a confidential registration certificate and registration license plate or decal submitted to the DHSMV by an office of the CCCRC, and any other records necessary to carry out the purpose of s. 320.025, F.S., be made exempt from the public inspection and copying requirements in s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

The bill provides that the public records exemption is a public necessity because investigations by the CCCRC may be jeopardized if a vehicle is registered in the name of the CCCRC or in the name of an investigator. Additionally, a person under investigation may use registration information to retaliate against a CCCRC office or its investigators. The bill provides the CCCRC with the same protections and confidentiality enjoyed by a public defender's office, which performs a virtually identical function.

[28] *Id*.
[29] Section 320.025(3), F.S.
[30] Chapter 2007-62, L.O.F.
[31] Section 27.511(5), F.S.
[32] Section 27.511(6), F.S.
[33] *Id*.
[34] Section 27.53, F.S.
[35] E-mail correspondence with Legislative Affairs, CCCRC, (February 2, 8, and 9, 2021), on file with the Senate Criminal Justice Committee.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature. The bill requires a two-thirds vote of the members present and voting for final passage.

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.

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 the office of the CCCRC to register a vehicle or vessel under a fictitious name with the DHSMV and receive a license plate or decal based on such fictitious name in s. 320.025, 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, 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 the safety of the CCCRC investigators by disguising their vehicles' tag and registration. 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 identified.

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 320.025 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on March 23, 2021:
The committee substitute:

- Corrects how the office of criminal conflict and civil regional counsel (CCCRC) is referred to throughout the bill to provide consistency.
- Corrects a reference in the bill to the CCCRC being akin to a law enforcement agency when, in fact, the CCCRC is comparable to the public defenders.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Baxley

591-03237-21 2021762c1

A bill to be entitled

An act relating to public records; amending s. 320.025, F.S.; authorizing the issuance of confidential registration certificates and license plates or decals under a fictitious name to criminal conflict and civil regional counsel offices to conduct specified activities; expanding a public records exemption to include all records pertaining to a registration application submitted by any office of criminal conflict and civil regional counsel; providing for construction; providing for future legislative review and repeal; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 320.025, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

320.025 Registration certificate and license plate or decal issued under fictitious name; application.—

(1) A confidential registration certificate and registration license plate or decal shall be issued under a fictitious name only for a motor vehicle or vessel owned or operated by a law enforcement agency of state, county, municipal, or federal government~~;~~ ~~,~~ the Attorney General's Medicaid Fraud Control Unit~~;~~ ~~, or~~ any state public defender's office; or any office of criminal conflict and civil regional counsel. The requesting agency shall file a written application with the department, on

591-03237-21 2021762c1

forms furnished by the department, which includes a statement that the license plate or decal will be used for certain activities by the Attorney General's Medicaid Fraud Control Unit, ~~or~~ law enforcement, ~~or~~ any state public defender's office, or any office of criminal conflict and civil regional counsel which require the ~~activities requiring~~ concealment of publicly leased or owned motor vehicles or vessels and a statement of the position classifications of the individuals who are authorized to use the license plate or decal. The department may modify its records to reflect the fictitious identity of the owner or lessee until such time as the license plate or decal and registration certificate are surrendered to it.

(3) This section constitutes an exception to other statutes relating to falsification of public records, false swearing, and similar matters. All records relating to the registration application of the Attorney General's Medicaid Fraud Control Unit, a law enforcement agency, ~~or~~ any state public defender's office, or any office of criminal conflict and civil regional counsel, and records necessary to carry out the intended purpose of this section, are exempt from ~~the provisions of~~ s. 119.07(1)~~,~~ and s. 24(a), Art. I of the State Constitution as long as the information is retained by the department. This section does not prohibit other personations, fabrications, or creations of false identifications by the Attorney General's Medicaid Fraud Control Unit, ~~or~~ law enforcement or public defender's officers, or any office of criminal conflict and civil regional counsel in the official performance of covert operations.

(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 all records relating to the application of a confidential registration certificate and registration license plate or decal submitted by an office of criminal conflict and civil regional counsel, and any other records necessary to carry out the intended purpose of s. 320.025, Florida Statutes, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Investigations by an office of criminal conflict and civil regional counsel may be jeopardized by the registration of motor vehicles under the office's name or under the names of the office's investigators in that persons under investigation may acquire such registration information in order to seek retaliation against the office or its investigators. Authorizing offices of criminal conflict and civil regional counsel to obtain confidential registration certificates and registration license plates or decals in the same manner as any state public defender's office would better ensure the safety of the regional counsel offices' investigators in performing their official duties.

Section 3. This act shall take effect July 1, 2021.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 844
INTRODUCER:	Rules Committee; Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senator Hooper
SUBJECT:	Public Records
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	**Fav/CS**
2.	Hackett	Ryon	CA	**Fav/CS**
3.	Ponder	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 844 amends s. 28.222, F.S., establishing the clerk as the county recorder, to improve readability, and s. 28.2221, F.S., which governs electronic access to Official Records to provide access to otherwise exempt information to specified parties and for limited purposes.

The bill prohibits a county recorder, unless otherwise required by the court, from removing the grantor name, grantee name, or party name from the register of the Official Records, as described in s. 28.222(2), F.S., and the index on the publicly available Internet website on the basis of a public records exemption as defined in s. 119.011, F.S., unless the name of the grantor or grantee includes the street address portion of the home address as defined in s.119.071(4)(d), F.S.[1] The bill expressly provides that home addresses that are exempt from inspection or copying must be included within the Official Records as described in s. 28.222(2), F.S., but may not be included within the index or otherwise displayed on the county recorder's publicly available Internet website on which images or copies of the county's Official Records are placed.

Current law prohibits a county recorder from placing an image or copy of a public record, including an Official Record, on a publicly available website for general public display if that

[1] Section 119.071(4)(d), F.S., defines "home address" to mean the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

copy or image is of a (1) military discharge; (2) death certificate; or (3) a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.[2] The bill amends s. 28.2221, F.S., to include information made exempt from inspection or copying by the public within this prohibition.

Current law provides for notice to affected parties of the right to request removal of records prohibited from being placed by the county recorder on a publicly available website and specifies that no fee may be charged for such request. The bill provides that the notice to affected parties must state (i) that any person has a right to request a county recorder remove from a publicly available Internet website information made exempt from inspection or copying under s. 119.071, F.S., and (ii) that information removed as exempt under s. 119.071, F.S., will not be removed from the Official Records as described in s. 28.222(2), F.S.

The bill provides that a request for removal of information by eligible individuals claiming an exemption under s. 119.071, F.S., must:

- Be written and notarized;
- State under oath the statutory basis for removal of the information, image, or copy that is restricted from general public display; and
- Confirm the individual's eligibility for exempt status.

A party making a false attestation in a written request for removal or for restricted information is subject to the penalty of perjury.

The bill provides that the written request for removal made under s. 119.071, F.S., must be provided at any time to the individual whose information was removed. The written request for restricted information must be made by sworn affidavit consistent with s. 92.50, F.S., and must include the Official Records book and page number, instrument number, or clerk's file number for any information or document to be released and a description of the lawful purpose and must identify the individual or property that is the subject of the search. A party making a false attestation is subject to the penalty of perjury. A fee may not be charged for the production of any document pursuant to such request.

The bill authorizes access to exempt information under s. 119.071(4)(d), F.S., for the purpose of conducting a title search, to:

- A title insurer and its affiliates;
- A title insurance agent, or a title insurance agency; or
- An attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

The bill requires presentation of a photo identification and affirmation via sworn affidavit consistent with s. 92.50, F.S., to the county recorder in person, by mail, or by electronic transmission. The affiant requestor must attest to specified information including his or her authority and the authorized purpose to access exempt information pursuant to this section for the property specified within the sworn affidavit.

[2] Section 28.2221(5)(a), F.S.

The bill requires the county recorder to record the affidavit in the Official Records. However the county recorder may not place the image or copy of the affidavit on a publicly available Internet website for general public display.

The bill provides that upon providing a document disclosing redacted information to an affiant requestor, the county recorder must provide a copy of the affidavit requesting disclosure to each affected party. Any party making a false attestation under this section is subject to the penalty of perjury under s. 837.012, F.S.

The bill provides that a person who unlawfully uses any Official Record in a manner not authorized in this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Further, a person who unlawfully uses any Official Record with intent to cause bodily harm or with intent to threaten to cause bodily harm commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

The bill amends s. 119.071, F.S., which contains several general exemptions to the Public Records Act. Current law provides that an agency that is the custodian of certain exempt information and is not the employer of the individual benefiting from the exemption must maintain the exempt status of that exemption only if the individual or employing agency submits a written request for maintenance of the exemption to the custodial agency. The bill requires this request to be notarized and that the individual state under oath the statutory basis for his or her exemption and confirm his or her status as a party eligible for exempt status.

The bill requires a county property appraiser or county tax collector to comply with a written request for maintenance of exemption by removing the name of the individual with exempt status and the instrument number and/or Official Records book and page number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector. The bill provides that for written requests received prior to July 1, 2021, a county property appraiser or county tax collector must comply by October 1, 2021. The bill prohibits a county property appraiser or county tax collector from removing the street address, legal description or other information identifying real property within agency records, so long as a name or personal information otherwise exempt under s. 19.071(4)(d), F.S., is associated with the property or otherwise displayed in the public records of the agency.

The bill provides notice to individuals eligible for exempt status under s. 119.071(4)(d), F.S., that such information may be disclosed to: (i) a title insurer and its affiliates; (ii) a title insurance agent or title insurance agency; or (iii) an attorney admitted to practice law in this state.

Current law does not provide an expiration date for when the redacted or removed information is restored. The bill provides that the exempt status of a home address[3] contained in the Official Records is maintained only during the period which the protected party resides at the dwelling

[3] Section 119.071(4)(d)1.a., F.S., defines "home address" to mean the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

location. Upon conveyance of the real property after October 1, 2021, and when such real property no longer constitutes the protected party's home address as defined in s. 119.071(4)(d), F.S., the protected party must submit a written request to release the removed information to the county recorder. The written request must comport with specified requirements. Additionally, upon the death of a protected party, any party can request the county recorder to release the removed information under certain circumstances.

The bill requires a county recorder to include on the daily schedule of deeds and conveyances, which is provided to county property appraisers, notification of any information therein that is subject to a request for removal on file with the county recorder.

Clerks of court may incur additional costs as they process requests for access, facilitate limited access license agreements, include notification of removal requests on file within the daily schedule, and process requests to release home address information.

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.[4] 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.[5]

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.[6] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[7] 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.[8]

[4] FLA. CONST. art. I, s. 24(a).
[5] *Id*.
[6] *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)
[7] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[8] 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

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[9] 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.[10]

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.[11] A violation of the Public Records Act may result in civil or criminal liability.[12]

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.[13] 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.[14]

General exemptions from the public records requirements are contained in the Public Records Act.[15] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[16]

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.[17] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.

Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

[9] 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."

[10] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

[11] Section 119.07(1)(a), F.S.

[12] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

[13] FLA. CONST. art. I, s. 24(c).

[14] *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).

[15] *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).

[16] *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).

[17] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

General Exemptions from Inspection under the Public Records Act

Section 119.071, F.S., provides categories of public records that are exempt from inspection or copying and is entitled "General exemptions from inspection or copying of public records." It contains five subparts and exempts information related to:

- Agency Administration;[18]
- Agency Investigations;[19]
- Security and Firesafety;[20]
- Agency Personnel Information;[21] and
- Other Personal Information.[22]

Section 119.071, F.S., provides for disclosure of certain exempt information under specified circumstances. The individuals covered by the exemptions found in s. 119.071, F.S., are eligible for redaction of their personal identifying information from public records. Many agencies make requests for removal or redaction on behalf of their current employees.

Public Records Exemption for Agency Personnel Information

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified agency personnel and their spouses and children. Personnel covered by these exemptions include:

- Active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, certain investigative personnel of the Department of Children and Families and Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and revenue and child support enforcement;[23]
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;[24]
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;[25]
- Current or former certified firefighters;[26]
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;[27]

[18] Section 119.071(1), F.S.; includes information related to (1) examinations administered by an agency for purposes of licensure, certification or employment; (2) certain specified information related to a competitive solicitation; (3) any financial statement of a prospective bidder in submitted to prequalify for bidding or for responding to a proposal for a road or any other public works project; (4) certain attorney work product; (5) videotape or video signals involving a federally licensed radio television station; (6) certain data processing software; and (7) specified United States Census Bureau address and map information.
[19] Section 119.071(2), F.S.
[20] Section 119.071(3), F.S.
[21] Section 119.071(4), F.S.
[22] Section 119.071(5), F.S.
[23] Section 119.071(4)(d)2.a., F.S.
[24] Section 119.071(4)(d)2.b., F.S.
[25] Section 119.071(4)(d)2.c., F.S.
[26] Section 119.071(4)(d)2.d., F.S.
[27] Section 119.071(4)(d)2.e., F.S.

- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;[28]
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;[29]
- Certain current or former human resource, labor relations, or employee relations directors, assistant directors, managers, and assistant managers of any local government agency or water management district;[30]
- Current or former code enforcement officers;[31]
- Current or former guardians ad litem;[32]
- Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice;[33]
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;[34]
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;[35]
- County tax collectors;[36]
- Certain current or former personnel of the Department of Health;[37]
- Certain current or former impaired practitioner consultants who are retained by an agency and certain current or former employees of an impaired practitioner consultant;[38]
- Current or former certified emergency medical technicians and paramedics;[39]
- Certain current or former personnel employed in an agency's office of inspector general or internal audit department;[40]
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;[41] and
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers.[42]

[28] Section 119.071(4)(d)2.f., F.S.
[29] Section 119.071(4)(d)2.g., F.S.
[30] Section 119.071(4)(d)2.h., F.S.
[31] Section 119.071(4)(d)2.i., F.S.
[32] Section 119.071(4)(d)2.j., F.S.
[33] Section 119.071(4)(d)2.k., F.S.
[34] Section 119.071(4)(d)2.l., F.S.
[35] Section 119.071(4)(d)2.m., F.S.
[36] Section 119.071(4)(d)2.n., F.S.
[37] Section 119.071(4)(d)2.o., F.S.
[38] Section 119.071(4)(d)2.p., F.S.
[39] Section 119.071(4)(d)2.q., F.S.
[40] Section 119.071(4)(d)2.r., F.S.
[41] Section 119.071(4)(d)2.s., F.S.
[42] Section 119.071(4)(d)2.t., F.S.

The employing agency as well as the employee is authorized assert the maintenance of the exempt status by submitting a written request for maintenance of the exemption (Request for Maintenance of an Exemption) to each agency which holds the employee's information.[43] Further, all of these exemptions have retroactive application.[44]

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses, telephone numbers, and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

In 2019, the Legislature defined term "home address" in s. 119.071(4), F.S., for the first time.[45] "Home address" is defined to mean:

> the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

Thus, the rights of individuals specified under s. 119.071(4)(d), F.S., and their spouses and their children, to request redaction of specified information is applicable to property records throughout their entire lives with no requirement for renewal.[46] This change allows qualifying individuals to redact all property descriptions from a public record, which may limit the ability to determine ownership of or encumbrances on a property.[47]

Redacting this information may limit the effectiveness of the public record to give notice of property ownership to interested parties, which may:
- Create potential issues related to constructive notice and chain of title;
- Increase the possibility of fraud;
- Provide protected parties a false sense of safety;
- Cause problems accurately surveying property; and
- Delay real property transactions.[48]

Civil and Criminal Penalties Under The Public Records Act

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

[43] Section 119.071(4)(d)3., F.S.
[44] Section 119.071(4)(d)4., F.S.
[45] Chapter 2019-12, L.O.F.
[46] *See* OPPAGA Report at 2.
[47] Florida Office of Program Policy Analysis & Government Accountability, *A Review of Home Address Redaction Processes and Real Property Interests*, (hereinafter the "OPPAGA Report"), Report 20-06, December 2020, available at https://oppaga.fl.gov/Documents/Reports/20-06.pdf (last visited February 11, 2021).
[48] The OPPAGA Report at 10.

imprisonment up to one year and a fine of up to $1000.[49] 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 five years and a fine of up to $5,000.[50]

Reasonable attorney's fees will be assessed against an agency found to have violated public records law.[51]

Clerks of the Courts

Clerks of the circuit courts (Clerks) are constitutionally elected officers.[52] A Clerk is considered to be the county recorder.[53] As county recorder, the Clerk must record all instruments in one general series called "Official Records."[54] Official Records consist of each instrument that the Clerk is required or authorized to record.

The Clerk is responsible for:
- Keeping and maintaining all court documents and electronic filings in the Clerk's office;[55]
- Affixing a stamp, which may be electronic, to each document indicating the date and time that the submission was filed;[56]
- Maintaining a progress docket on which the filing of each pleading or motion is noted;[57]
- Maintaining a general alphabetical index, direct and inverse of all instruments filed for recordation;[58]
- Implementing an electronic filing process;[59] and
- Keeping and furnishing to respective county property appraisers a daily schedule of the deeds and conveyances filed for recordation (the schedule should set forth the name of the grantor, the names and addresses of each grantee and a description of the land as specified in each instrument so filed).[60]

Official Records as Public Records

All instruments recorded in the Official Records must always be available to the public for inspection under the supervision of the Clerk.[61] The term "public records" includes each Official Record.[62] The purpose of recording a document is to put the public on notice about a particular matter. Clerks record numerous types of documents that are eligible for redaction or removal pursuant to s. 119.071, F.S.

[49] Section 119.10(2)(a), F.S.
[50] Section 119.10(2)(b), F.S.
[51] Section 286.011(4), F.S.
[52] *See*, FLA. CONST., art. V, s. 16 and art. VIII, s. 1.
[53] Section 28.222(1), F.S.
[54] Section 28.222(2), F.S.
[55] Section 28.13, F.S.
[56] *Id*.
[57] Section 28.211, F.S.
[58] Section 28.222(2), F.S.
[59] Section 28.22205, F.S.
[60] Section 695.22, F.S.
[61] Section 28.222(7), F.S.
[62] Section 28.001(2), F.S.

Section 119.0714(3), F.S., provides that a person who prepares or files a record for recording in the Official Records may not include in that record a social security number or a bank account, debit, charge, or credit card number (Card Number) "unless otherwise expressly required by law." If the social security number or Card Number is in electronic format, the county recorder must use his or her best effort to keep the social security numbers confidential and exempt pursuant to s. 119.071(5)(a), F.S., and to keep the complete Card Numbers exempt pursuant to s. 119.071(5)(b), F.S., without any person having to request redaction.[63] A holder of a social security number or a Card Number, or the attorney or legal guardian may request that a county record redact his social security number or Card Number that is part of an Official Record and made publicly available.[64] A request for redaction must be:

- Signed;
- Legibly written;
- Delivered by mail, facsimile, electronic transmission, or in person to the county recorder; and
- Specify the identification page number of the record that contains the number to be redacted.[65]

The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

Since October 1, 2002, any person has a right to request a county recorder to remove from a publicly available website, any social security number contained in an Official Record. Such request must be:

- Made in writing;
- Delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder; and
- Specify the identification page number that contains the social security number to be redacted.[66]

A fee may not be charged for the redaction of a social security number pursuant to such a request.

Section 119.0714(3)(e), F.S., specifies that the county recorder is not liable for the inadvertent release of social security numbers, or Card Numbers, filed with the county recorder.

A Request for Maintenance of an Exemption made pursuant to s. 119.071(4)(d) 3., F.S., must specify the document type, name, identification number, and page number of the Official Record that contains the exempt information.

[63] Section 119.0714(3)(a)1., F.S.
[64] Section 119.0714(3)(b), F.S.
[65] Section 119.0714(3)(b)1., F.S.
[66] Section 119.0714(3)(c)2., F.S.

Clerk Records That May Have Personal Identifying Information Eligible for Redaction[67]

Type of Official Record		
• Affidavit • Agreement • Assignment • Bond • Certificate • Certified Copy of Judgements • Condominium • Death Certificate • Deed • Easement • Financing Statement	• Government Related • Judgment • Lien • Lis Pendens • Maps • Marriage Record • Mortgage • Military Discharge • Notices • Order	• Plat Related • Plats • Powers of Attorney • Probate Documents • Releases • Restitution Orders • Restrictions • Satisfaction • Termination • Transfers of Security

In December 2020, the Florida Office of Program Policy Analysis and Government Accountability (the OPPAGA Report) issued a report entitled *A Review of Home Address Redaction Processes and Real Property Interests*. The OPPAGA Report states that the Florida Association of Court Clerks & Comptrollers has identified best practices for redaction requests.[68] Each requestor, even those residing in the same home, are required to complete a request form:

- Identifying themselves;
- Stating what makes them eligible for redaction; and
- Enumerating the specific documents and identifying pieces of information to be redacted (specific instrument number, book, and page of the document). [69]

If an eligible individual seeks additional redactions in the future, they must complete a new redaction request each time.[70] Most requestors self-attest that they meet the eligibility criteria for redaction.[71] The OPPAGA Report states that several Clerks reported that they require individuals to show identification or have the request form notarized to attest to their identity, most Clerks interviewed by OPPAGA do not further verify eligibility.[72] "When asked, staff from multiple Clerk's offices stated that they do not have the authority or the ability to investigate or verify that the requestor meets the statutory criteria for redaction."[73]

Electronic Access To Official Records

Since January 1, 2002, under s. 28.2221, F.S., the county recorder or Clerk must provide a current index of documents in the Official Records on a publicly accessible website of instruments recorded on or after January 1, 1990, limited to grantor and grantee names, party

[67] OPPAGA Report at 6.
[68] *Id.* at 8.
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*

names, date, book and page number, comments, and type of record.[74] Since January 1, 2006, the Clerk has also been required to provide electronic access to images of the indexed documents.

Florida law prohibits a county recorder or a Clerk from placing certain images or copies of public records, including an Official Record, on a publicly available Internet website.[75] Specifically, no county recorder or Clerk may place an image or copy of a public record, including an Official Record, on a publicly available Internet website if that image or copy is of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.

Section 28.2221(5)(c), F.S., provides for notice to affected parties of the right to request removal or redaction of any image or copy of a public record, including an Official Record, if that image or copy is of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules. This request must be in writing (via mail, facsimile, or electronic transmission or in person) to the county recorder or Clerk. The request must identify the document identification page number of the document to be removed. No fee is charged for the removal or redaction of a document pursuant to such request. An affected person may petition the circuit court for an order directing compliance with this subsection.[76]

Court Records as Public Records

To implement article 1, section 24(a) of The Florida Constitution, the Florida Supreme Court adopted Florida Rule of Judicial Administration 2.051, which has since been renumbered to rule 2.420. Rule 2.420 governs public access to judicial branch records and provides that "[t]he public shall have access to all records of the judicial branch of government" except in limited circumstances."[77]

County Property Appraisers and County Tax Collectors

A "county property appraiser" is defined to mean "the county officer charged with determining the value of all property within the county, with maintaining certain records connected therewith, and with determining the tax on taxable property after taxes have been levied."[78] A "county tax collector" is defined to mean "the county officer charged with the collection of ad valorem taxes levied by the county, the school board, any special taxing districts within the county, and all municipalities within the county."[79] The County Officers maintain records, such as property records, that contain information that is exempt under s. 119.071, F.S. For example, a county property appraiser's website may have a property owner name and a legal description of the

[74] In 2000, the Legislature passed CS/CS/SB 1334, codified as s. 28.221, F.S.
[75] Section 28.2221(5)(a), F.S.
[76] Section 28.2221(5)(d), F.S.
[77] Fla. R. Jud. Admin. 2.420(a).
[78] Section 192.001(3), F.S
[79] Section 192.001(4),F.S.

property.[80] A county property appraiser's website can also include courtesy web-links to images of deeds found on Clerks' internet-based index of Official Records.[81]

III. Effect of Proposed Changes:

Section 1 amends s. 28.222(7), F.S., to improve the readability and substitutes the word "copies" for "extracts" in referring to instruments recorded in the Official Records.

Section 2 amends s. 28.2221, F.S., to remove past implementation dates regarding notice and make clarifying changes. The section prohibits a county recorder, unless otherwise required by the court, from removing the grantor name, grantee name, or party name from the register of the Official Records, as described in s. 28.222(2), F.S., and the index on the publicly available Internet website on the basis of an exemption as defined in s. 119.011, F.S., unless the name of the grantor or grantee includes the street address portion of the home address as defined in s. 119.071(4)(d), F.S. Additionally, this section provides that home addresses, as defined in s. 119.071(4)(d), F.S., that are exempt from inspection or copying, must be included within the Official Records as described in s. 28.222(2), F.S., but may not be included within the index or otherwise displayed on the county recorder's publicly available Internet website on which images or copies of the county's Official Records are placed.

Section 2 also prohibits a county recorder from placing information made exempt from inspection or copying under s. 119.071, F.S., on a publicly available Internet website for general public display. The section provides that the notice to affected parties must state (i) that any person has a right to request a county recorder remove from a publicly available Internet website information made exempt from inspection or copying under s. 119.071, F.S., and (ii) that information removed as exempt under s. 119.071, F.S., will not be removed from the Official Records as described in s. 28.222(2), F.S. Section 2 specifies that a request to remove must identify the Official Records book and page number, instrument number; or Clerk's file number for any information or document to be removed. Further, a request for removal from a person claiming a public records exemption under s. 119.071, F.S., must:

- Be made in writing and notarized;
- State under oath the statutory basis for removal of the information, image, or copy that is restricted from general public display; and
- Confirm the individual's eligibility for exempt status.

A party making a false attestation is subject to the penalty of perjury under s. 837.012, F.S.

Section 2 also provides that any information restricted from public display pursuant to a request for removal must be provided to the individual whose information was removed, at any time. The written request for restricted information must be made by sworn affidavit consistent with s. 92.50, F.S., and must include the Official Records book and page number, instrument number, or clerk's file number for any information or document to be released and a description of the lawful purpose and must identify the individual or property that is subject of the search. A party

[80] OPPAGA Report at 6.
[81] *Id.*

making a false attestation is subject to the penalty of perjury. A fee may not be charged for the production of any document pursuant to such request.

This section permits access to information restricted from public display or copying pursuant to a request for removal made under s. 119.071(4)(d), F.S., for the purpose of conducting a title search, as defined in s. 627.7711, F.S., of the Official Records, as described in s. 28.222(2), F.S., and upon presentation of photo identification and sworn affidavit consistent with s. 92.50 to the county recorder, to:

- A title insurer authorized pursuant to s. 624.401, F.S., and its affiliates, as defined in s. 624.10, F.S.;
- A title insurance agent, or title insurance agency, as defined in s. 626.841, F.S.; or
- An attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

Section 2 provides that the photo identification and affirmation by sworn affidavit may be presented in person, by mail or by electronic transmission to the county recorder. The affiant requestor must include the Official Records book and page number, instrument number, or the clerk's file number for each document requested within the sworn affidavit and must include a description of the lawful purpose and identify the individual or property that is the subject of the search within the sworn affidavit.

An affidavit submitted by a title insurer, title insurance agent or title insurance agency must include the Florida Company Code or the license number, as applicable, and an attestation to the affiant requestor's authorization to transact business in this state. Affidavits submitted by an attorney authorized under this section must include the affiant requestor's Florida Bar number and a statement that the affiant requestor has an agency agreement with a title insurer, directly, or through his or her law firm.

The county recorder must record the affidavit in the Official Records, as described in s. 28.222(2), F.S., but must not place the image or copy of the affidavit on a publicly available Internet website for general public display.

Upon providing a document disclosing redacted information to an affiant requestor, the county recorder must provide the affected party with a copy of the affidavit requesting disclosure at the address listed on the document or on the request for removal. The county recorder must prepare a certificate of mailing to be affixed to the affidavit and must receive the statutory service charges as prescribed by s. 28.24 from the affiant requestor.

A party making a false attestation under this section is subject to the penalty of perjury under s. 837.012, F.S.

This section also provides that a person who unlawfully uses any Official Record in a manner not authorized in this subsection commits a misdemeanor of the second degree, punishable as provided in ss. 775.082, or 775.083, F.S. Further, a person who unlawfully uses any Official Record with intent to cause bodily harm or with intent to threaten to cause bodily harm commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, 775.084, F.S.

Section 3 amends s. 119.071(4)(d), F.S., to require that a request for maintenance of an exemption be notarized and state under oath the statutory basis for the individual's exemption request and confirm the individual's status as a party eligible for exempt status.

Section 3 creates new subparagraph 4.a. to require a county property appraiser or county tax collector, as defined in s. 192.001, who receives a written request for maintenance of an exemption to comply by removing the name of the individual with exempt status and the instrument number and/or Official Records book and page number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector. For written requests received prior to July 1, 2021, a county property appraiser or tax collector must comply with this section by October 1, 2021. A county property appraiser or county tax collector must not remove the street address, legal description, or other information identifying real property within the agency's records so long as the name or personal information otherwise exempt from inspection and copying pursuant to this section are not associated with the property or otherwise displayed in the public records of the agency. A new subparagraph 4.b. is created to provide that any information restricted from public display, inspection or copying must be provided to the individual whose information was removed.

This section provides notice that information made exempt under s. 119.071(4)(d), F.S., may be disclosed pursuant to s. 28.2221, F.S., to: (i) a title insurer authorized pursuant to s. 624.401 and its affiliates as defined in s. 624.10; (ii) a title insurance agent or title insurance agency as defined in s. 626.841(1) or (2), respectively; or (iii) an attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

Section 3 provides that the exempt status of a home address within the Official Records is maintained only during the period which the protected party resides at the dwelling location. Upon conveyance of the real property after October 1, 2021, and when such real property no longer constitutes the protected party's home address as defined in s. 119.071(4)(d), F.S., the protected party must submit a written request to release the removed information to the county recorder. The written request to release the removed information must be notarized, confirm the protected party's request for release is pursuant to a conveyance of his or her dwelling location, and specify the identification page number of the document containing the information to be released. A fee may not be charged for the release of any document pursuant to such request.

Section 3 also provides that upon the death of the protected party as verified by a certified copy of a death certificate or court order, any party can request the county recorder to release the protected removed information unless there is a related request on file with the county recorder for continued removal of the information or unless such removal is otherwise by statute or by court order. The written request must attach the certified copy of a death certificate or order and must be notarized, must confirm the request for release is due to the death of the protected party, and must specify the Official Records book and page number, instrument number, or clerk's file number for each document containing the information to be released. A fee may not be charged for the release of any document pursuant to such request.

Section 4 amends s. 695.22, F.S., to require the daily schedule of deeds and conveyances include notification of any information therein that is subject to a request for removal on file with the county recorder.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in relevant part, that:

> No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds vote of the membership of each house of the legislature; [or] . . . the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments….

As drafted the bill does not contain a finding that the bill fulfills and important state interest nor does it apply to all persons similarly situated (records custodians).

Article VII, s. 18(d) of the State Constitution provides "laws having insignificant impact . . . are exempt from the requirements" of s. 18(a). The "insignificant" threshold, for the Fiscal Year 2021-2022, is forecast at approximately $2.2 million.[82] The cumulative cost for counties and municipalities to comply with the provisions of the bill is unknown at this time. If the cumulative costs are less than $2.2 million, the bill is exempt from the requirements in s. 18(a).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[82] 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).

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An individual or a business that is currently unauthorized to obtain exempt records under s. 119.071, F.S., will now have access such information to the extent they comply with the process provided in the bill.

C. Government Sector Impact:

Indeterminate. The bill may have an indeterminate negative fiscal impact for clerks of court as they process requests for access, facilitate limited access license agreements, include notification of removal requests on file within the daily schedule, and process requests to release home address information. County property appraisers and county tax collectors may see an indeterminate negative fiscal impact in complying with the request for maintenance of exemption provision in removing restricted information from general public display.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 28.222, 28.2221, 119.071 and 695.22 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/CS by Rules on April 20, 2021:
The CS:

- Provides that unless otherwise required by the court, a county recorder may not remove a grantor name, grantee name, or party name from the register of the Official Records on the basis of a public record exemption, unless the name of the grantor or

grantee includes the street address portion of the home address, in which case the county recorder must remove the street address portion from display.
- Requires the notice to affected parties to state that information removed as exempt under s. 119.071, F.S., will not be removed from the Official Records as described in s. 28.222(2), F.S.
- Clarifies language regarding requests for removal by a person (i) claiming a public records exemption and (ii) requesting removal for the purpose of conducting a title search.
- Specifies that the affiant requestor must include a description of the lawful purpose and identify the individual or property that is the subject of the search within the sworn affidavit.
- Clarifies that reference to the Official Records is as that term is described in s. 28.222(2), F.S.

CS/CS by Community Affairs on March 30, 2021:
The CS:
- Provides conducting a title search as the sole valid purpose for requesting redacted information.
- Provides that an affidavit requesting redacted information must specify the exact location of the document requested.
- Removes financial institutions as an eligible party to request redacted information.
- Provides that, upon providing a document disclosing redacted information to an affiant requestor, the county recorder must provide the affected party with a copy of both the affidavit and released information.
- Provides that various records subject to public records exemptions can be released upon the death of the protected party under certain circumstances.

CS by Governmental Oversight and Accountability on March 3, 2021:
The CS:
- Limits the exempt status of a home address contained in the Official Records to the period during which the employee resides at the dwelling location. Upon conveyance of the dwelling location, the employee must submit to the county recorder a written request to release the removed information.
- Authorizes access of restricted information to specified entities[83] for defined purposes[84] upon presentation of identification and affidavit. Upon obtaining the address information, the affiant requestor must provide notice to the affected parties.
- Permits county recorders to enter into limited access license agreements with specified parties for defined purposes.
- Provides that an individual whose information was removed from public display to access his or her restricted information, at any time.

[83] An authorized title insurer as defined in s. 624.09, F.S., and their affiliates, as defined in s. 624.10, F.S.; A title insurance agent or title insurance agencies, as defined in s. 626.841, F.S.; An attorney duly admitted to practice law in this state and in good standing with The Florida Bar; or A financial institution as defined in s. 655.005, F.S.
[84] For the purpose of conducting a title search, as defined by s. 627.7722(4), F.S., perfecting or enforcing a lien or other interest in real or personal property, or purchasing, leasing, or lending involving real or personal property.

- Provides notice to employees covered by the exemption under s. 119.071(4)(d), F.S., that such exempt information may be disclosed to specified entities pursuant to s. 28.2221, F.S.
- Requires a county property appraiser and county tax collector to comply with a written request for maintenance of exemption.
- Prohibits a county property appraiser or county tax collector from removing a street address, legal description or other information identifying real property within agency records, so long as a name or personal information otherwise exempt under s. 119.071(4)(d), F.S., is associated with the property or otherwise displayed in the public records of the agency.
- Prohibits a county recorder from removing a grantor name, grantee name or party name from the index on the publicly available website unless the street address portion of a home address as defined in s. 119.071(4)(d), F.S., is included.
- Expressly provides that a home address as defined in s. 119.071(4)(d), F.S., must not be included within the index or otherwise displayed on the publicly available website.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
	.	
	.	
	.	

The Committee on Rules (Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (7) of section 28.222, Florida Statutes, is amended to read:

28.222 Clerk to be county recorder.—

(7) All instruments recorded in the Official Records are ~~shall always be~~ open to the public, under the supervision of the clerk, for the purpose of inspection thereof and of making copies ~~extracts~~ therefrom; but the clerk is ~~shall~~ not ~~be~~



required to perform any service in connection with such inspection or making of copies ~~extracts~~ without payment of service charges as provided in s. 28.24.

Section 2. Subsection (2) and paragraphs (a) and (c) of subsection (5) of section 28.2221, Florida Statutes, are amended, and subsections (6) and (7) are added to that section, to read:

28.2221 Electronic access to official records.—

(2)(a) ~~No later than January 1, 2002,~~ The county recorder in each county must ~~shall~~ provide a current index of documents recorded in the official records of the county for the period beginning no later than January 1, 1990, on a publicly available Internet website which must ~~shall~~ also contain a document requisition point for obtaining images or copies of the documents reflected in the index and which has the capability of electronically providing the index data to a central statewide search site. The index must ~~shall~~ be limited to grantor and grantee names, party names, date, book and page number, comments, and type of record.

(b) Unless otherwise required by the court, a county recorder may not remove the grantor name, grantee name, or party name from the register of the Official Records, as described in s. 28.222(2), and the index on the publicly available Internet website on the basis of an exemption as defined in s. 119.011 unless the name of the grantor or grantee includes the street address portion of the home address as defined in s. 119.071(4)(d), in which case the county recorder must remove the street address portion from display. Home addresses, as defined in s. 119.071(4)(d), which are exempt from inspection or copying


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under s. 119.071 must be included within the Official Records as described in s. 28.222(2) but may not be included within the index or otherwise displayed on the county recorder's publicly available Internet website on which images or copies of the county's official records are placed.

(5)(a) A ~~No~~ county recorder ~~or clerk of the court~~ may not place on a publicly available Internet website for general public display information made exempt from inspection or copying under s. 119.071 or any ~~an~~ image or copy of a public record, including an official record, ~~on a publicly available Internet website for general public display~~ if that image or copy is of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.

(c) ~~No later than 30 days after June 5, 2002,~~ Notice of the right of any affected party to request removal of information or records pursuant to this subsection must ~~shall~~ be conspicuously and clearly displayed by the county recorder ~~or clerk of the court~~ on the publicly available Internet website on which images or copies of the county's public records are placed and in the office of each county recorder ~~or clerk of the court~~. ~~In addition, no later than 30 days after June 5, 2002, the county recorder or the clerk of the court must have published, on two separate dates, a notice of such right in a newspaper of general circulation in the county where the county recorder's office is located as provided for in chapter 50.~~ Such notice must contain appropriate instructions for making the removal request in person, by mail, ~~by facsimile,~~ or by electronic transmission.


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The notice must ~~shall~~ state, in substantially similar form, that any person has a right to request that a county recorder ~~or clerk of the court~~ remove from a publicly available Internet website information made exempt from inspection or copying under s. 119.071 or an image or copy of a public record, including an official record, ~~from a publicly available Internet website~~ if that image or copy is of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules. The notice must state that information removed as exempt under s. 119.071 will not be removed from the Official Records as described in s. 28.222(2). Such request must be made in writing and delivered in person, by mail, ~~facsimile,~~ or by electronic transmission~~, or in person~~ to the county recorder ~~or clerk of the court~~. The request must identify the Official Records book and page number, instrument number, or clerk's file number for any information or ~~document identification page number of the~~ document to be removed. For requests for removal from a person claiming a public records exemption pursuant to s. 119.071, the request must be written and notarized; state under oath the statutory basis for removal of the information, image, or copy that is restricted from general public display on the county recorder's publicly available Internet website; and confirm the individual's eligibility for exempt status. A party making a false attestation is subject to the penalty of perjury under s. 837.012. A ~~No~~ fee may not ~~will~~ be charged for the removal of a document pursuant to such request.

(6)(a) Any information restricted from general public


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display, inspection, or copying under paragraph (5)(a) pursuant to a request for removal made under s. 119.071 must be provided at any time to the individual whose information was removed. The written request for the restricted information must be by sworn affidavit consistent with s. 92.50 and must include the Official Records book and page number, instrument number, or the clerk's file number for any information or document to be released and a description of the lawful purpose and must identify the individual or property that is the subject of the search. Any party making a false attestation is subject to the penalty of perjury under s. 837.012. A fee may not be charged for the production of any document pursuant to such request.

(b)1. For the purpose of conducting a title search, as defined in s. 627.7711, of the Official Records, as described in s. 28.222(2), and upon presentation of photo identification and affirmation by sworn affidavit consistent with s. 92.50 to the county recorder, information restricted from public display, inspection, or copying under paragraph (5)(a) pursuant to a request for removal made under s. 119.071(4)(d) may be disclosed to:

a. A title insurer authorized pursuant to s. 624.401 and its affiliates as defined in s. 624.10;

b. A title insurance agent or title insurance agency as defined in s. 626.841(1) and (2), respectively; or

c. An attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

2. The photo identification and affirmation by sworn affidavit may be delivered in person, by mail, or by electronic transmission to the county recorder.



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3. The affiant requestor must attest to his or her authority and the authorized purpose to access exempt information pursuant to this section for the property specified within the sworn affidavit.

4. The affiant requestor must include the Official Records book and page number, instrument number, or the clerk's file number for each document requested within the sworn affidavit and must include a description of the lawful purpose and identify the individual or property that is the subject of the search within the sworn affidavit.

5. Affidavits submitted by a title insurer, title insurance agent, or title insurance agency must include the Florida Company Code or the license number, as applicable, and an attestation to the affiant requestor's authorization to transact business in this state. Affidavits submitted by an attorney authorized under this section must include the affiant requestor's Florida Bar number and a statement that the affiant requestor has an agency agreement with a title insurer directly or through his or her law firm.

6. The county recorder must record such affidavit in the Official Records, as described in s. 28.222(2), but may not place the image or copy of the affidavit on a publicly available Internet website for general public display.

7. Upon providing a document disclosing redacted information to an affiant requestor under this section, the county recorder must provide a copy of the affidavit requesting disclosure of the redacted information to each affected party at the address listed on the document or on the request for removal made by the affected party under s. 119.071. The county recorder


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must prepare a certificate of mailing to be affixed to the affidavit and must receive the statutory service charges as prescribed by s. 28.24 from the affiant requestor.

8. Any party making a false attestation under this section is subject to the penalty of perjury under s. 837.012.

(7) A person who uses any official record in a manner not authorized in this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who unlawfully uses any official record with intent to cause bodily harm or with intent to threaten to cause bodily harm commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term:

a. "Home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

b. "Telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth,


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and photographs of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.



c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.


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f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, dates of birth,



and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation



officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

l. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; and the names and locations of schools and day care facilities attended by the children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.



m. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of


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the State Constitution.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person’s skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency’s office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline;


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the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this sub-subparagraph, the term "addiction treatment facility" means a county government, or agency thereof, that is licensed pursuant to s. 397.401 and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26).

t. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1) and fulfills the screening requirement of s. 39.3035(2), and the members of a Child Protection Team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case



review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. must ~~shall~~ maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written and notarized request for maintenance of the exemption to the custodial agency. The request must state under oath the statutory basis for the individual's exemption request and confirm the individual's status as a party eligible for exempt status.

4.a. A county property appraiser as defined in s. 192.001(3) or a county tax collector as defined in s. 192.001(4) who receives a written and notarized request for maintenance of the exemption pursuant to subparagraph 3. must comply by removing the name of the individual with exempt status and the instrument number or Official Records book and page number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector. For written requests received on or before July 1, 2021, a county property appraiser or county tax collector must comply with this section by October 1, 2021. A county property appraiser or county tax collector may not remove



the street address, legal description, or other information identifying real property within the agency's records so long as a name or personal information otherwise exempt from inspection and copying pursuant to this section are not associated with the property or otherwise displayed in the public records of the agency.

b. Any information restricted from public display, inspection, or copying under sub-subparagraph a. must be provided to the individual whose information was removed.

5.~~4.~~ An officer, an employee, a justice, a judge, or other person specified in subparagraph 2. may submit a written request for the release of his or her exempt information to the custodial agency. The written request must be notarized and must specify the information to be released and the party ~~that is~~ authorized to receive the information. Upon receipt of the written request, the custodial agency must ~~shall~~ release the specified information to the party authorized to receive such information.

6.~~5.~~ The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

7.~~6.~~ Information made exempt under this paragraph may be disclosed pursuant to s. 28.2221 to a title insurer authorized pursuant to s. 624.401 and its affiliates as defined in s. 624.10; a title insurance agent or title insurance agency as defined in s. 626.841(1) or (2), respectively; or an attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

8. The exempt status of a home address contained in the


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Official Records is maintained only during the period when a protected party resides at the dwelling location. Upon conveyance of real property after October 1, 2021, and when such real property no longer constitutes a protected party's home address as defined in subparagraph 1.a., the protected party must submit a written request to release the removed information to the county recorder. The written request to release the removed information must be notarized, must confirm that a protected party's request for release is pursuant to a conveyance of his or her dwelling location, and must specify the Official Records book and page number, instrument number, or clerk's file number for each document containing the information to be released.

9. Upon the death of a protected party as verified by a certified copy of a death certificate or court order, any party can request the county recorder to release a protected decedent's removed information unless there is a related request on file with the county recorder for continued removal of the decedent's information or unless such removal is otherwise prohibited by statute or by court order. The written request to release the removed information upon the death of a protected party must attach the certified copy of a death certificate or court order and must be notarized, must confirm the request for release is due to the death of a protected party, and must specify the Official Records book and page number, instrument number, or clerk's file number for each document containing the information to be released. A fee may not be charged for the release of any document pursuant to such request.

10. This paragraph is subject to the Open Government Sunset


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Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. Section 695.22, Florida Statutes, is amended to read:

695.22 Daily schedule of deeds and conveyances filed for record to be furnished property appraiser.—After October 1, 1945, the several county recorders must ~~clerks of the circuit courts shall~~ keep and furnish to the respective county property appraisers in the counties where such instruments are recorded a daily schedule of the aforesaid deeds and conveyances so filed for recordation, in which schedule must ~~shall~~ be set forth the name of the grantor or grantors, the names and addresses of each grantee, and a description of the land as specified in each instrument so filed. The daily schedule must include notification of any information therein which is subject to a request for removal on file with the county recorder.

Section 5. 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 public records; amending s. 28.222, F.S.; deleting obsolete language; amending s. 28.2221, F.S.; deleting obsolete language; prohibiting a county recorder from removing a grantor name, grantee name, or party name from the register of the Official


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Records and the index on the publicly available website unless the information is subject to a specified public records exemption; requiring that certain information be included in the Official Records; prescribing requirements for a person claiming a public records exemption to request removal of information from a publicly available website, subject to penalty of perjury; prescribing the release of restricted information to the individual whose information was removed, subject to penalty of perjury; authorizing specified parties to access information recorded in the Official Records of a county which is otherwise exempt pursuant to a specified public records exemption, for a specific purpose, if specified conditions are met; requiring a sworn affidavit, subject to penalty of perjury; providing criminal penalties for the unlawful use of any official record; amending s. 119.071, F.S.; requiring that a request for maintenance of an exemption be notarized and confirm the individual's status; prescribing procedures for the removal of exempt information for a county property appraiser or county tax collector; requiring the release of information restricted from public display to the individual whose information was removed; authorizing the disclosure of exempt information under specified circumstances to specified entities; providing that the exempt status of a home address contained in the Official Records is maintained only during a certain



563 period; requiring the protect party to submit a
564 written request to release removed information upon
565 the conveyance of his or her dwelling location;
566 prescribing procedures to release certain information
567 for a decedent under specified conditions; specifying
568 that such release is not subject to a fee; amending s.
569 695.22, F.S.; deleting obsolete language; requiring
570 the daily schedule of deeds and conveyances to include
571 notification of any information therein which is
572 subject to a request for removal; providing an
573 effective date.

By the Committees on Community Affairs; and Governmental Oversight and Accountability; and Senator Hooper

578-03615-21 2021844c2

A bill to be entitled

An act relating to public records; amending s. 28.222, F.S.; deleting obsolete language; amending s. 28.2221, F.S.; deleting obsolete language; prohibiting a county recorder from removing a grantor name, grantee name, or party name from the index on the publicly available website unless the information is subject to a specified public records exemption; prohibiting a county recorder from placing certain information on the publicly available website; prescribing requirements for a person claiming a public records exemption to request removal of information from a publicly available website, subject to penalty of perjury; prescribing the release of restricted information to the individual whose information was removed, subject to penalty of perjury; authorizing specified parties to access information recorded in the Official Records of a county which is otherwise exempt pursuant to a specified public records exemption, for a specific purpose, if specified conditions are met; requiring a sworn affidavit, subject to penalty of perjury; providing criminal penalties for the unlawful use of any official record; amending s. 119.071, F.S.; requiring that a request for maintenance of an exemption be notarized and confirm the individual's status; prescribing procedures for the removal of exempt information for a county property appraiser and county tax collector; requiring the release of information restricted from

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public display to the individual whose information was removed; providing disclosure of exempt information under specified circumstances to specified entities; providing that the exempt status of a home address contained in the Official Records is maintained only during a certain period; requiring the employee to submit a written request to release removed information upon the conveyance of his or her dwelling location; prescribing procedures to release certain information for a decedent under specified conditions; specifying that such release is not subject to a fee; amending s. 695.22, F.S.; deleting obsolete language; requiring the daily schedule of deeds and conveyances to include notification of any information therein which is subject to a request for removal; providing an effective date.

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

Section 1. Subsection (7) of section 28.222, Florida Statutes, is amended to read:

28.222 Clerk to be county recorder.—

(7) All instruments recorded in the Official Records are ~~shall always be~~ open to the public, under the supervision of the clerk, for the purpose of inspection thereof and of making copies ~~extracts~~ therefrom; but the clerk is ~~shall~~ not ~~be~~ required to perform any service in connection with such inspection or making of copies ~~extracts~~ without payment of service charges as provided in s. 28.24.

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Section 2. Subsection (2) and paragraphs (a) and (c) of subsection (5) of section 28.2221, Florida Statutes, are amended, and subsections (6) and (7) are added to that section, to read:

28.2221 Electronic access to official records.—

(2)(a) ~~No later than January 1, 2002,~~ The county recorder in each county must ~~shall~~ provide a current index of documents recorded in the official records of the county for the period beginning no later than January 1, 1990, on a publicly available ~~Internet~~ website which must ~~shall~~ also contain a document requisition point for obtaining images or copies of the documents reflected in the index and which has the capability of electronically providing the index data to a central statewide search site. The index must ~~shall~~ be limited to grantor and grantee names, party names, date, book and page number, comments, and type of record.

(b) Unless otherwise required by the court, a county recorder may not remove the grantor name, grantee name, or party name from the index on the publicly available website on the basis of an exemption as defined in s. 119.011 unless the name of the grantor or grantee includes the street address portion of the home address as defined in s. 119.071(4)(d). Home addresses, as defined in s. 119.071(4)(d), which are exempt from inspection or copying under s. 119.071 may not be included within the index or otherwise displayed on the county recorder's publicly available website on which images or copies of the county's official records are placed.

(5)(a) A ~~No~~ county recorder ~~or clerk of the court~~ may not place on a publicly available website for general public display

information made exempt from inspection or copying under s. 119.071, or any ~~an~~ image or copy of a public record, including an official record, ~~on a publicly available Internet website for general public display~~ if that image or copy is of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.

(c) ~~No later than 30 days after June 5, 2002,~~ Notice of the right of any affected party to request removal of information or records pursuant to this subsection must ~~shall~~ be conspicuously and clearly displayed by the county recorder ~~or clerk of the court~~ on the publicly available ~~Internet~~ website on which images or copies of the county's public records are placed and in the office of each county recorder ~~or clerk of the court~~. ~~In addition, no later than 30 days after June 5, 2002, the county recorder or the clerk of the court must have published, on two separate dates, a notice of such right in a newspaper of general circulation in the county where the county recorder's office is located as provided for in chapter 50.~~ Such notice must contain appropriate instructions for making the removal request in person, by mail, ~~by facsimile,~~ or by electronic transmission. The notice must ~~shall~~ state, in substantially similar form, that any person has a right to request that a county recorder ~~or clerk of the court~~ remove from a publicly available website information made exempt from inspection or copying under s. 119.071 or an image or copy of a public record, including an official record, ~~from a publicly available Internet website~~ if that image or copy is of a military discharge; death

certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules. Such request must be made in writing and delivered in person, by mail, ~~facsimile,~~ or by electronic transmission~~, or in person~~ to the county recorder ~~or clerk of the court~~. The request must identify the Official Records book and page number, instrument number, or clerk's file number for any ~~document identification page number of the~~ information or document to be removed. For requests for removal from a person claiming a public records exemption pursuant to s. 119.071, the request must be written, be notarized, and state under oath the statutory basis for removal of the information, image, or copy that is restricted from general public display, and confirm the individual's eligibility for exemption status. A party making a false attestation is subject to the penalty of perjury under s. 837.012. A ~~No~~ fee may not ~~will~~ be charged for the removal of a document pursuant to such request.

(6)(a) Any information restricted from public display, inspection, or copying under paragraph (5)(a) pursuant to a request for removal made under s. 119.071 must be provided at any time to the individual whose information was removed. The written request for the restricted information must be by sworn affidavit consistent with s. 92.50 and must include the Official Records book and page number, instrument number, or clerk's file number for any information or document to be released. Any party making a false attestation is subject to the penalty of perjury under s. 837.012. A fee may not be charged for the production of any document pursuant to such request.

(b)1. For the purpose of conducting a title search as defined by s. 627.7711 and upon presentation of photo identification and affirmation by sworn affidavit consistent with s. 92.50 to the county recorder, information restricted from public display, inspection, or copying under paragraph (5)(a) pursuant to a request for removal made under s. 119.071 may be disclosed to:

a. A title insurer authorized pursuant to s. 624.401 and its affiliates as defined in s. 624.10;

b. A title insurance agent or title insurance agency as defined in s. 626.841(1) and (2), respectively; or

c. An attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

2. The photo identification and affirmation by sworn affidavit may be delivered in person, by mail, or by electronic transmission to the county recorder.

3. The affiant requestor must attest to his or her authority and the authorized purpose to access exempt information pursuant to this section for the property specified within the sworn affidavit.

4. The affiant requestor must identify the Official Records book and page number, instrument number, or clerk's file number for each document requested within the sworn affidavit.

5. Affidavits submitted by a title insurer, title insurance agent, or title insurance agency must include the Florida Company Code or the license number, as applicable, and an attestation to the affiant requestor's authorization to transact business in this state. Affidavits submitted by an attorney authorized under this section must include the affiant

requestor's Florida Bar number and a statement that the affiant requestor has an agency agreement with a title insurer directly or through his or her law firm.

6. The county recorder must record such affidavit in the official records but may not place the image or copy of the affidavit on a publicly available website for general public display.

7. Upon providing a document disclosing redacted information to an affiant requestor under this section, the county recorder must provide a copy of the affidavit requesting disclosure of the redacted information to each affected party at the address listed on the document or on the request for removal made by the affected party under s. 119.071. The county recorder must prepare a certificate of mailing to be affixed to the affidavit and must receive the statutory service charges as prescribed by s. 28.24 from the affiant requestor.

8. Any party making a false attestation under this section is subject to the penalty of perjury under s. 837.012.

(7) A person who uses any official record in a manner not authorized in this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who unlawfully uses any official record with intent to cause bodily harm or with intent to threaten to cause bodily harm commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term:

a. "Home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

b. "Telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State

Constitution.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names

and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement

hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care

facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

l. The home addresses, telephone numbers, dates of birth,

and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; and the names and locations of schools and day care facilities attended by the children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and

s. 24(a), Art. I of the State Constitution.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person’s skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the

names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this sub-subparagraph, the term "addiction treatment facility" means

a county government, or agency thereof, that is licensed pursuant to s. 397.401 and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26).

t. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1) and fulfills the screening requirement of s. 39.3035(2), and the members of a Child Protection Team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. must ~~shall~~ maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written and notarized request for maintenance of the exemption to the custodial agency. The request must state under oath the statutory basis for the individual's exemption request and confirm the individual's status as a party eligible for exempt

status.

4.a. A county property appraiser as defined in s. 192.001(3) or a county tax collector as defined in s. 192.001(4) who receives a written and notarized request for maintenance of the exemption pursuant to subparagraph 3. must comply by removing the name of the individual with exempt status and the instrument number or Official Records book and page number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector. For written requests received on or before July 1, 2021, a county property appraiser or county tax collector must comply with this section by October 1, 2021. A county property appraiser or county tax collector may not remove the street address, legal description, or other information identifying real property within the agency's records so long as a name or personal information otherwise exempt from inspection and copying pursuant to this section are not associated with the property or otherwise displayed in the public records of the agency.

b. Any information restricted from public display, inspection, or copying under sub-subparagraph a. must be provided to the individual whose information was removed.

5.~~4.~~ An officer, an employee, a justice, a judge, or other person specified in subparagraph 2. may submit a written request for the release of his or her exempt information to the custodial agency. The written request must be notarized and must specify the information to be released and the party ~~that is~~ authorized to receive the information. Upon receipt of the written request, the custodial agency must ~~shall~~ release the

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specified information to the party authorized to receive such information.

6.~~5.~~ The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

7.~~6.~~ Information made exempt under this paragraph may be disclosed pursuant to s. 28.2221 to a title insurer authorized pursuant to s. 624.401 and its affiliates as defined in s. 624.10; a title insurance agent or title insurance agency as defined in s. 626.841(1) or (2), respectively; or an attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

8. The exempt status of a home address contained in the Official Records is maintained only during the period when the protected party resides at the dwelling location. Upon conveyance of the real property after October 1, 2021, and when such real property no longer constitutes the protected party's home address as defined in subparagraph 1.a., the protected party must submit a written request to release the removed information to the county recorder. The written request to release the removed information must be notarized, must confirm that the protected party's request for release is pursuant to a conveyance of his or her dwelling location, and must specify the Official Records book and page, instrument number, or clerk's file number for each document containing the information to be released.

9. Upon the death of the protected party as verified by a certified copy of a death certificate or court order, any party can request the county recorder to release the protected

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decedent's removed information unless there is a related request on file with the county recorder for continued removal of the decedent's information or unless such removal is otherwise prohibited by statute or by court order. The written request to release the removed information upon the death of a protected party must attach the certified copy of a death certificate or court order and must be notarized, must confirm the request for release is due to the death of the protected party, and must specify the Official Records book and page number, instrument number, or clerk's file number for each document containing the information to be released. A fee may not be charged for the release of any document pursuant to such request.

10. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. Section 695.22, Florida Statutes, is amended to read:

695.22 Daily schedule of deeds and conveyances filed for record to be furnished property appraiser.—After October 1, 1945, the several county recorders must ~~clerks of the circuit courts shall~~ keep and furnish to the respective county property appraisers in the counties where such instruments are recorded a daily schedule of the aforesaid deeds and conveyances so filed for recordation, in which schedule must ~~shall~~ be set forth the name of the grantor or grantors, the names and addresses of each grantee, and a description of the land as specified in each instrument so filed. The daily schedule must include notification of any information therein which is subject to a

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request for removal on file with the county recorder.

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

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The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 5, 2021

I respectfully request that **Senate Bill # 844**, relating to Public Records, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

CS/CS/SB 844 amends s. 28.222, F.S., establishing the clerk as the county recorder, to improve readability, and s. 28.2221, F.S., which governs electronic access to Official Records to provide access to otherwise exempt information to specified parties and for limited purposes.

The bill prohibits a county recorder, unless otherwise required by the court, from removing a grantor name, grantee name, or party name from the index on the publicly available website on the basis of a public records exemption as defined in s. 119.011(8), F.S., unless the name of the grantor or grantee includes the street address portion of the home address. The bill expressly provides that home addresses1 that are exempt from inspection or copying must not be included within the index or otherwise displayed on the county recorder's publicly available website on which images or copies of the county's official records are placed.

Senator Ed Hooper
Florida Senate, District 16

File signed original with committee office

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

SB 44
Bill Number (if applicable)

619F74
Amendment Barcode (if applicable)

Topic Public Records

Name Anthony DiMarco

Job Title EVP of Govt. Affairs

Address 1001 Thomasville Rd
Street

Tallahassee FL 32303
City *State* *Zip*

Phone 224-2265

Email adimarco@flbankers.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL. 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.

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)

4c 20-21
Meeting Date

SB 844
Bill Number (if applicable)

Topic REDACTION

Amendment Barcode (if applicable)

Name

Job Title KARI HEBRANK

Address 7711 Deepwood Trail
Street
Tallahassee FL 32317
City *State* *Zip*

Phone 516-1824

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SOUTHERN TITLE

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.

This information was not read 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:	CS/CS/SB 856
INTRODUCER:	Community Affairs Committee; Regulated Industries Committee; and Senator Hutson
SUBJECT:	Express Preemption of Fuel Retailers and Related Transportation Infrastructure
DATE:	April 19, 2021 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 856 centralizes transportation energy infrastructure regulation by expressly preempting transportation energy infrastructure regulation to the state.

The bill defines "fuel retailer" as a fuel station or retail establishment that sells fuel to provide power to vehicles, and "related transportation infrastructure" as underground storage tanks, pipelines, or any related equipment that is necessary to dispense fuel at a fuel retailer.

The bill prohibits local governments from adopting a law, ordinance, regulation, policy, or resolution which:

- Prohibits the siting, development, or redevelopment of a fuel retailer or related transportation infrastructure necessary to provide fuel to a retailer throughout the local government's jurisdiction;
- Results in the de facto prohibition of a fuel retailer or related transportation throughout the local government's jurisdiction; or
- Requires a fuel retailer to install or invest in a particular kind of fueling infrastructure, such as electric vehicle charging stations.

The bill takes effect upon becoming a law.

II. Present Situation:

Local Government Authority

The Florida Constitution grants local governments 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]

In Florida, special districts are separate governmental entities created for a special purpose that have jurisdiction to operate within a limited geographic boundary.[4] Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.[5] Throughout the state there are over 1,770 active special districts encompassing more than 80 specialized governmental functions.[6] Types of special districts vary and can include anything from mosquito control districts to gas districts.[7] In Florida, there are currently four special natural gas districts.[8]

Interlocal Cooperation and the Florida Municipal Power Agency

The Florida Interlocal Cooperation Act of 1969 (act) allows local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.[9] The act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.[10] Under such an agreement, the local governmental units may create a separate legal or administrative entity "to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities."[11]

In 1978, the Florida Municipal Power Agency (FMPA) was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric

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[1] FLA. CONST. art. VIII, s. 1(f).
[2] FLA. CONST. art. VIII, s. 1(g).
[3] FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.
[4] Section 189.012(6), F.S.
[5] *Id*.
[6] *See* Florida Department of Economic Opportunity, *Introduction to Special Districts*, https://floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/florida-special-district-handbook-online/introduction-to-special-districts (last visited Mar. 5, 2021).
[7] *See* Florida Department of Economic Opportunity, *Official List of Special Districts*, http://specialdistrictreports.floridajobs.org/webreports/websitelist.aspx (last visited Mar. 5, 2021).
[8] *See* Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/April%202020.pdf (last visited Mar. 5, 2021).
[9] Section 163.01(2), F.S.
[10] Section 163.01(5), F.S.
[11] Section 163.01(2), F.S.

utilities. FMPA is currently owned by 31 municipalities.[12] Through various joint power supply projects,[13] the FMPA supplies all of the electrical power needs of 13 member utilities and a part of the power needs for seven other member utilities.[14] Through these projects, FMPA members maintain ownership interests in various electrical power plants throughout Florida. FMPA manages the transmission of electrical power over facilities owned by FMPA or its members.[15]

Federal Regulation

The Clean Air Act requires U.S. Environmental Protection Agency (EPA) to regulate fuels and fuel additives for use in motor vehicle, motor vehicle engine, if the fuel, fuel additive or any emission products causes or contributes to air or water pollution that may endanger the public health or welfare. The EPA is required to also address emission products of fuel or fuel additives that may impair any emission control devices used on vehicles or engines. [16]

The Office of Underground Storage Tanks in the EPA (OUST) regulates underground storage tanks (USTs) All portions of a UST system must be compatible with the fuel being stored. Demonstrations of compatibility must be provided for tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment.[17]
The single largest source of energy information available is the Department of Energy's Energy Information Administration (EIA). The EIA publishes extensive reports on natural gas and other energy sources.[18]

Domestic natural gas markets are regulated in part by the Federal Energy Regulatory Commission. The commission's chief area of concern is the interstate natural gas market.

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[12] Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. Florida Municipal Power Agency, *Members*, http://fmpa.com/about/members/ (last visited Mar. 5, 2021).

[13] Section 361.12, F.S., authorizes any electric utility, or any organization, association, or separate legal entity whose membership consists only of electric utilities, to join with any other such entity to finance, acquire, construct, manage, operate, or own an electric power supply project for the joint generation or transmission of electrical energy, or both. Further, s. 361.13, F.S., authorizes any such entity to purchase capacity or energy, or both, in an agreed upon quantity from any project in which the purchaser has an ownership interest.

[14] *See* Florida Municipal Power Agency, *Projects*, https://fmpa.com/power-supply-projects/ (last visited Mar. 5, 2021).

[15] *See* Florida Municipal Power Agency, *Value of Public Power*, https://fmpa.com/value-of-public-power/ (last visited Mar. 5, 2021).

[16] *See* Federal Gasoline Regulations, *available* at https://www.epa.gov/gasoline-standards/federal-gasoline-regulations, (last visited March 10, 2021). Gasoline regulations are under 40 CFR Part 80 ("Regulation of Fuels and Fuel Additives"): subparts A (general provisions, applying to all 40 CFR Part 890 fuels programs), B (controls and prohibitions), C (oxygenated gasoline), D & E (reformulated gasoline), G (detergent gasoline program), H & O (gasoline sulfur) and J & L (gasoline toxics).

[17] Ethanol Code, Standards and Safety, *available* at https://afdc.energy.gov/fuels/ethanol_codes.html, (last visited March 10, 2021).

[18] Natural Gas Regulation – Other Gas-Related Information Sources, *available* at https://www.energy.gov/fe/natural-gas-regulation-other-gas-related-information-sources, (last visited March 10, 2021). Code of Federal Regulation (CFR) Title 40 Subtitle 1 Subchapter 1 Parts 280-282. The federal UST regulation was updated in October 2015 with section CFR 280.32 to specify additional compatibility requirements for owners and operators who store regulated substances, including gasoline containing greater than 10% ethanol (E10) and diesel containing greater than 20% biodiesel (B20).

Natural gas moves for the most part by pipeline in the United States. The safety of those pipelines is the concern of the Department of Transportation's Office of Pipeline Safety.

Renewable fuels include liquid and gaseous fuels, and electricity derived from renewable feedstock sources.[19]

Advanced biofuels (D5) are produced from any type of renewable biomass (sugarcane, biobutanol, bionaphtha) except corn starch ethanol. Required life cycle GHG emissions reduction is at least 50% compared to the petroleum baseline. Biomass-based diesel (D4) includes biodiesel and renewable diesel produced from biomass such as soybean oil, canola oil, waste oil, or animal fats. Required life cycle GHG emissions reduction is at least 50% compared to the diesel baseline. Cellulosic biofuel (D3 or D7) produced from cellulose or hemicellulose of corn stover, wood chips, *Miscanthus*, or biogas. To be eligible for D7 RINs the fuel must be cellulosic diesel. Required life cycle GHG emissions reduction is at least 60% compared to the petroleum baseline. Conventional renewable biofuel (D6) includes ethanol derived from corn starch, or any other qualifying renewable fuel. Required life cycle GHG emissions reduction is at least 20% compared to the average petroleum baseline.[20]

Local Authority to Regulate Energy Infrastructure

Local Regulation of Oil and Gas Exploration and Production

While cities and counties do not operate oil and gas permitting programs in Florida, some, through their land use regulations or zoning ordinances, require special exceptions for oil and gas activities or limit oil and gas activities to certain zoning classifications.[21] When authorizing oil and gas exploration and production activities, local governments consider factors such as consistency with their comprehensive plan, injuries to communities or the public welfare, and compliance with zoning ordinances.[22]

In certain instances, the Department of Environmental Protection (DEP) may not issue a permit without specified approval. The DEP may not issue permits to drill a gas or oil well:

- Within the corporate limits of a municipality without a resolution approving the permit from the governing authority;[23]
- In tidal waters abutting or immediately adjacent to the corporate limits of a municipality or within three miles of such corporate limits extending from the line of mean high tide into such waters without a resolution approving the permit from the governing authority;[24] or
- On any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters abutting or immediately adjacent to an improved beach, or within three miles of an improved beach extending from the line of mean high tide into such tidal waters without a resolution approving the permit from the county commission.[25]

[19] Renewable Fuel, *available* at https://www.sciencedirect.com/topics/engineering/renewable-fuel, (last visited March 10, 2021).
[20] *Id.*
[21] *See, e.g.*, Lee County's Land Development Code §§ 34-1651 and 34-145(c).
[22] *Id*.
[23] Section 377.24(5), F.S.
[24] Section 377.24(6), F.S.
[25] Section 377.24(7), F.S.

If the proposed oil or gas well is on lands owned by the Board of Trustees of the Internal Improvement Trust Fund, it may not grant a lease for gas, oil, or mineral rights:

- Within the corporate limits of a municipality without a resolution approving the lease from the governing authority;[26]
- In tidal waters abutting or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters without a resolution approving the lease from the governing authority;[27]
- On any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters abutting or immediately adjacent to an improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters without a resolution approving the lease from the county commission;[28]or
- In Florida's territorial waters in the Gulf of Mexico or Atlantic Ocean.[29]

Six municipalities (Estero, Bonita Springs, Coconut Creek, Cape Coral, Dade, and Zephyrhills) and thirteen counties (Alachua, Bay, Brevard, Broward, Citrus, Indian River, Martin, Miami-Dade, Osceola, Pinellas, St. Lucie, Volusia, Wakulla, and Walton) have banned one or more forms of well stimulation techniques, commonly referred to as "fracking," by ordinance.[30]

Additionally, many other counties and cities have passed resolutions supporting various types of bans and moratoriums relating to fracking.[31]

State Regulation of Energy Infrastructure

Florida Department of Environmental Protection

The DEP possesses the authority to issue permits:

- For drilling, exploring, or production of oil, gas, or other petroleum products that are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.[32]

[26] Section 253.61(1)(a), F.S.
[27] Section 253.61(1)(b), F.S.
[28] Section 253.61(1)(c), F.S.
[29] Section 253.61(1)(d), F.S.
[30] *See* Village of Estero, Ordinance No. 2015-19; Bonita Spring's Land Development Code, Chapter 4, Article VI, Division 15, Section 4-1380; Coconut Creek's Land Development Code, Article IV, Section 13-1000; City of Cape Coral, Ordinance §3.23; City of Dade, Ordinance No. 2016-08; City of Zephyrhills, Ordinance No. 1310-16; Alachua County's Code of Ordinances, §77.13.5; Bay County's Land Development Regulation, §311; Brevard County's Code of Ordinances, §46-375; Citrus County's Code of Ordinances, §66-133; Indian River County's Code of Ordinances, §317.03; Osceola County's Land Development Code, §4.12.3; Broward County's Code of Ordinances, §27-193; Martin County's Code of Ordinances, §67.441; Miami-Dade County's Code of Ordinances, §33-437; Pinellas County's Code of Ordinances, §58-489; St. Lucie County's Code of Ordinances, Policy 6.1.5.7; Volusia County's Code of Ordinances, §50-42; Wakulla County's Code of Ordinances, §6-34; Walton County's Code of Ordinances, §9-156.
[31] *See* Food & Water Watch, *Local Regulations Against Fracking*, https://www.foodandwaterwatch.org/insight/local-resolutions-against-fracking (last visited Mar. 5, 2021) (listing of local governments nationwide that passed resolutions against fracking).
[32] Section 377.242(1)(a), F.S.

- To explore for and extract minerals that are subject to extraction from the land by means other than through a well hole.[33]
- To establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for storage in natural gas storage reservoirs.[34]

However, DEP may not permit drilling for, or production of, oil, gas, or other petroleum products within:

- Florida's territorial waters in the gulf of Mexico or Atlantic Ocean;[35]
- In bays or estuaries;[36]
- Within one mile of coastline;[37]
- Within one mile of seaward boundary of any local, state, or federal park or aquatic or wildlife preserve;[38] and
- Within one mile inland from the shoreline of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary or within 1 mile of any freshwater lake, river, or stream unless the department is satisfied that the natural resources of such bodies of water and shore areas of the state will be adequately protected in the event of accident or blowout.[39]

The DEP monitors and inspects drilling operations, producing wells, or injecting wells.[40] Each permit issued by DEP must contain an agreement that the permit holder will not prevent inspection by division personnel at any time.[41]

The DEP is vested with the authority to adopt rules and issue orders that must "ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products, or during the injection of gas into and recovery of gas from a natural gas storage reservoir."[42]

The DEP's Oil and Gas Program (program) oversees permitting for oil and gas production in the state.[43] The program regulates the conservation of oil and gas resources, drilling of wells, health and human safety, and environmental protection.[44] The program is governed by part 1 of ch. 377, F.S. and Florida Administrative Code Rules 62C-25 through 62C-30.[45]

[33] Section 377.242(2), F.S.
[34] Section 377.242(3), F.S.
[35] Sections 377.24(9) and 377.242(1)(a)5., F.S.
[36] Section 377.242(1)(a)1., F.S.
[37] Section 377.242(1)(a)2., F.S.
[38] Section 377.242(1)(a)3., F.S.
[39] Section 377.242(1)(a)4., F.S.
[40] Section 377.22(2)(g), F.S.
[41] Section 377.242, F.S.
[42] Section 377.22(2), F.S. *See also* ss. 377.22(2)(a)-(y), F.S., (listing additional, but not all, purposes of rules and orders issued by DEP).
[43] Florida Department of Environmental Protection, *Oil and Gas Program*, https://floridadep.gov/water/oil-gas (last visited Mar. 5, 2021).
[44] *Id*.
[45] The Oil and Gas Program is governed by part 1 of ch. 377, F.S., and Fla. Admin. Code R. 62C-25 through 62C-30.

Well Stimulation and Fracking

Well stimulation refers to any action taken by a well operator to increase the inherent productivity of an oil or gas well.[46] Common examples of well stimulation treatments are hydraulic fracturing, commonly referred to as "fracking," and acid fracturing.[47] Both hydraulic fracturing and acid fracturing involve the pressurized injection of fluids and chemicals to create fractures within a rock formation.[48] The fractures then allow for more oil and gas to escape the rock formation and migrate up the well.[49]

The DEP's rules currently require an operator to notify the DEP before beginning any workover operation on an oil or gas well.[50] A workover is defined as "an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production, disposal, or injection rates."[51]

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.[52] The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner.[53] In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[54] The PSC monitors the safety and reliability of the electric power grid[55] and may order the addition or repair of infrastructure as necessary.[56] Further, the PSC reviews application to determine the need for certain new electrical power plants[57] and certain large transmission lines as part of the DEP's siting process.[58]

In 2020, the PSC regulated

- 5 investor-owned electric utilities;
- 8 investor-owned natural gas utilities; and
- 147 investor-owned water and/or wastewater utilities.[59]

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[46] Keith B. Hall, *Recent Developments in Hydraulic Fracturing Regulation and Litigation*, 29 J. LAND USE & ENVTL. L. 29, 22 (2013).
[47] *Id*. at 1-2.
[48] *Id*.
[49] *Id*. at 2.
[50] Fla. Admin. Code R. 62C-29.006(1).
[51] Fla. Admin. Code R. 62C-25.002(61).
[52] Section 350.001 F.S.
[53] *See* Florida Public Service Commission, *The PSC's Role*, http://www.psc.state.fl.us (last visited Mar. 5, 2021).
[54] *Id*.
[55] Section 366.04(5) and (6), F.S.
[56] Section 366.05(1) and (8), F.S.
[57] Section 403.519, F.S.
[58] Section 403.537, F.S.
[59] Florida Public Service Commission, *Annual Report*, (2020) available at http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf (last visited Mar. 5, 2021.

The PSC does not fully regulate publicly owned municipal or cooperative electric utilities.[60] However, it does have jurisdiction over 35 municipally owned electric systems and 18 rural electric cooperatives with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.[61] Additionally, the PSC has jurisdiction over 27 municipally owned natural gas utilities and four gas districts with regard to territorial boundaries, safety, and safety authority over all electric and natural gas systems operating in the state.[62]

Florida Department of Agriculture and Consumer Services

The Florida Department of Agriculture and Consumer Services (DACS) is responsible for the administration of a number of programs relating to energy infrastructure and houses the Office of Energy.[63] Moreover, the DACS is responsible for the administration of a number of programs relating to energy infrastructure, including the Renewable Energy and Energy-Efficient Technologies Grants Program,[64] the Energy Efficiency and Conservation Clearinghouse,[65] the Florida Green Government Grants Act,[66] the Natural Gas Fuel Fleet Vehicle Rebate Program.[67] Additionally DACS has as the statutory authority to allocate federal energy conservation bonds[68] and to post information on its website relating to alternative fueling stations or electric vehicle charging stations that are available for public use.[69]

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.[70]

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[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *See* s. 377.805, F.S.
[64] Section 377.804, F.S. (establishing within DACS the Renewable Energy and Energy-Efficient Technologies Grants Program "to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies . . .").
[65] Section 377.805, F.S., (requiring the development of a clearinghouse of "information regarding cost savings associated with various energy efficiency and conservation measures" by the Office of Energy in consultation with the Public Service Commission, the Florida Building Commission, and the Florida Energy Systems Consortium).
[66] Section 377.808, F.S., (directing DACS to use appropriated funds to award grants that assist local governments and school districts with development and implementation of programs aimed at achieving green standards).
[67] Section 377.810, F.S., (establishing the program within DACS to help reduce transportation costs and encourage freight mobility investments contributing to the state's economic growth).
[68] Section 37.816, F.S.
[69] Section 377.815, F.S.
[70] *See* James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 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. 5, 2021).

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[71] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[72] In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.[73]

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.[74] 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."[75] 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.[76] Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.[77]

III. Effect of Proposed Changes:

The bill creates s. 377.707, F.S., relating to state preemption of fuel retailers and related transportation infrastructure.

The bill defines "fuel retailer" as a fuel station or retail establishment that sells fuel to provide power to vehicles, and "related transportation infrastructure" as underground storage tanks, pipelines, or any related equipment that is necessary to dispense fuel at a fuel retailer.

The bill prohibits local governments[78] from adopting a law, ordinance, regulation, policy, or resolution which:

- Prohibits the siting, development, or redevelopment of a fuel retailer or related transportation infrastructure necessary to provide fuel to a retailer throughout the local government's jurisdiction;
- Results in the de facto prohibition of a fuel retailer or related transportation throughout the local government's jurisdiction; or
- Requires a fuel retailer to install or invest in a particular kind of fueling infrastructure, such as electric vehicle charging stations.

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[71] *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).

[72] *Mulligan*, 934 So. 2d at 1243.

[73] *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.

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

[75] *Phantom of Clearwater, Inc.*, 894 So. 2d at 1019.

[76] *Id*.

[77] *Sarasota Alliance for Fair Elections, Inc.*, 28 So. 3d at 886.

[78] Enumerated in the bill as a municipality, county, special district, or political subdivision.

The bill provides for clarification that it does not preempt local governments from adopting and implementing requirements not otherwise inconsistent with general law related to the siting, development, or redevelopment of fuel retailers or related transportation infrastructure so long as such requirement does not result in a de facto prohibition of fuel retailers or related transportation infrastructure within the entirety of the jurisdictional boundaries of the local government.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 377.707 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Community Affairs on March 16, 2021:
The committee substitute incorporates an alternative framework to preempt local governments from regulating fuel retailers and related transportation infrastructure. The effect of the committee substitute is substantially similar to the first committee substitute. The committee substitute:

- Defines the terms "fuel retailer" and "related transportation infrastructure."
- Provides that a local government may not adopt an ordinance, regulation, policy, or resolution that prohibits the siting, development, or redevelopment of a fuel retailer or necessary related transportation infrastructure.
- Prohibits a local government from requiring a fuel retailer to install or invest in a particular kind of fueling infrastructure, such as electric vehicle charging stations.
- Clarifies that the bill does not preempt local governments from adopting and implementing requirements not otherwise inconsistent with general law.

CS by Regulated Industries on March 9, 2021:
The committee substitute:

- Narrows the scope of the bill to transportation energy infrastructure.
- Moves the legislative findings from a preamble to a subsection within s. 377.707, F.S., and expands the findings to include the importance of consumer choice in the energy market.
- Deletes the definition of energy infrastructure.
- Defines "fuel," as including petroleum fuel, petroleum products, gasoline, diesel fuel, motor fuel, marine fuel, aviation fuel, renewable fuel, alternative fuel, natural gas fuel, hydrogen fuel, and electricity, when such fuel sources are used for transportation.
- Defines "transportation energy infrastructure" to mean infrastructure supporting the production, importation, storage, and distribution of fuel.
- Preempts the regulation of transportation energy infrastructure to the state.
- Prohibits local governments from adopting laws that prohibit, restrict, or require the construction of new transportation energy infrastructure or the expansion, upgrading, or repair of existing transportation energy infrastructure.
- Prohibits local governments from imposing requirements regulating transportation energy infrastructure that are more stringent than state law or rule, with the exception

of local ordinances regulating petroleum storage system construction, operation, and maintenance, pursuant to s. 376.317(3)(a), F.S.

- Prohibits local governments from amending comprehensive plans, land use maps, zoning districts, or land development regulations in a way that would render existing transportation energy infrastructure to be nonconforming.

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 Committees on Community Affairs; and Regulated Industries; and Senator Hutson

578-02922-21 2021856c2

A bill to be entitled

An act relating to the express preemption of fuel retailers and related transportation infrastructure; creating s. 377.707, F.S.; defining terms; prohibiting a municipality, county, special district, or political subdivision from taking certain actions to prohibit the siting, development, or redevelopment of fuel retailers and the related transportation infrastructure and from requiring fuel retailers to install or invest in a particular fueling infrastructure; providing construction; providing an effective date.

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

Section 1. Section 377.707, Florida Statutes, is created to read:

377.707 Express preemption of fuel retailers and related transportation infrastructure.—

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

(a) "Fuel retailer" means a fuel station or retail establishment that sells fuel to provide power to vehicles.

(b) "Related transportation infrastructure" means underground storage tanks, pipelines, or any related equipment that is necessary to dispense fuel at a fuel retailer.

(2) A municipality, county, special district, or political subdivision may not do any of the following:

(a) Adopt a law, an ordinance, a regulation, a policy, or a resolution that prohibits the siting, development, or

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

578-02922-21 2021856c2

redevelopment of a fuel retailer or the related transportation infrastructure that is necessary to provide fuel to a fuel retailer within the entirety of the jurisdictional boundary of the municipality, county, special district, or political subdivision.

(b) Adopt or apply a law, an ordinance, a regulation, a policy, or a resolution that results in the de facto prohibition of a fuel retailer or the related transportation infrastructure that is necessary to provide fuel to a fuel retailer within the entirety of the jurisdictional boundary of a municipality, county, special district, or political subdivision.

(c) Require a fuel retailer to install or invest in a particular kind of fueling infrastructure, including, but not limited to, electric vehicle charging stations.

This section does not preempt a municipality, county, special district, or political subdivision from adopting and implementing a law, an ordinance, a regulation, a policy, or a resolution that is not otherwise inconsistent with general law relating to the siting, development, or redevelopment of fuel retailers or related transportation infrastructure necessary for them to provide fuel, if such law, ordinance, regulation, policy, or resolution does not result in a de facto prohibition of fuel retailers or related transportation infrastructure necessary to provide fuel to fuel retailers from being sited, developed, or redeveloped within the entirety of the jurisdictional boundaries of the municipality, county, special district, or political subdivision.

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

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: April 3, 2021

I respectfully request that **Senate Bill #856**, relating to Express Preemption of Fuel Retailers and Related Transportation Infrastructure, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

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

4/20/2021
Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

856
Bill Number (if applicable)

Topic Fuel Retailers + Transportation Infrastructure
Amendment Barcode (if applicable)

Name JAKE FARMER

Job Title Dir. Legislative Affairs

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Email JAKE@frf.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL 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)

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THE FLORIDA SENATE

APPEARANCE RECORD

April 20, 2021
Meeting Date

SB 856
Bill Number (if applicable)

Topic Express Preemption of Fuel Retailers and Related Transportation Infrastructure

Amendment Barcode (if applicable)

Name Eric Hamilton

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Petroleum Institute

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)

4/20/21	856
Meeting Date	*Bill Number (if applicable)*

Topic Preemt of Fuel Retail — *Amendment Barcode (if applicable)*

Name Brewster Bevis

Job Title Senior VP

Address 516 N Adams — Phone 224-7173
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TLH — FL — Email
City — *State* — *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

4/20/21
Meeting Date

CR/CS SB 56
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Fossil Fuels

Name Robert Fingar

Job Title General Counsel

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Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Petroleum Marketers Association

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

4/20/21
Meeting Date

856
Bill Number (if applicable)

Topic Express Preemption of Fuel Retailers and Related Transportation Infrastructure

Amendment Barcode (if applicable)

Name David Cullen

Job Title

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City *State* *Zip*

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Sierra Club Florida

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)

4-20-21
Meeting Date

4556
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Energy

Name Jessica Lewis

Job Title Lobbyists

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_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Floridians Against Fracking

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

The following Appearance Records were not read into the record by the Chair

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

856
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Express Preemption

Name Edward Bowman

Job Title Ex Director

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Tallahassee FL 32308
City *State* *Zip*

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Email Ned@FPMA.ORG

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FPMA

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)

4/20/21
Meeting Date

SB 856
Bill Number (if applicable)

Topic FUEL RETAILERS

Amendment Barcode (if applicable)

Name TRISH NEELY

Job Title DIRECTOR

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Phone 850 322 3317

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing LWV

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

4/20/2021
Meeting Date

856
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic State Preemption of Energy Infrastructure Regulations

Name Christopher Emmanuel

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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.

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S-001 (10/14/14)

Duplicate

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THE FLORIDA SENATE

APPEARANCE RECORD

4/20/2021
Meeting Date

856
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Express Preemption of Fuel Retailers and Related Transportation Infrastructure

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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.

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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 896
INTRODUCER:	Rules Committee; Regulated Industries Committee; and Senators Brodeur and Hutson
SUBJECT:	Renewable Energy
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sharon	Imhof	RI	**Fav/CS**
2.	Anderson	Rogers	EN	**Favorable**
3.	Sharon	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 896 creates s. 163.3205, F.S., relating to the solar facility approval process. The bill defines a "solar facility," as a production facility for electric power, which uses photovoltaic modules[1] to convert solar energy to electricity that may be stored on site, delivered to a transmission system, and consumed primarily offsite. It further provides the components of a solar facility.

The bill requires solar facilities to be a permitted use in all agricultural land use categories in a local government's comprehensive plan, all agricultural zoning districts within an unincorporated area.

The bill requires facilities to comply with setback and landscaped buffer area criteria for similar uses in the agricultural district and allows a county to adopt ordinances specifying buffer and landscaping requirements for facilities. Such requirements may not exceed those of similar uses involving construction of other facilities permitted in agricultural land use categories and zoning districts.

The bill amends s. 366.91, F.S., by adding the terms "biogas" and "renewable natural gas," and expanding the term "renewable energy."

[1] "Photovoltaic modules" colloquially referred to as are solar panels. They are units comprised of several photovoltaic cells, intended to generate direct current power under un-concentrated sunlight. *See* Open Energy Information, *Definition: PV module*, https://openei.org/wiki/Information (last visited Apr. 21, 2021).

The term "biogas" means a mixture of gases, largely comprised of carbon dioxide, hydrocarbons, and methane gas, that is produced by the biological decomposition of organic materials.

The term "renewable natural gas" (RNG) means anaerobically generated biogas, landfill gas, or wastewater treatment gas, which is refined to a methane content of 90 percent or more, that may be used as transportation fuel, for electric generation, or is of a quality capable of being injected into a natural gas pipeline.

The term "renewable energy," is expanded to mean electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced *or resulting* from energy sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power.

The bill provides that the Public Service Commission (PSC) may approve cost recovery by a gas public utility for RNG purchase contracts, in which the pricing provisions exceed the current market price of natural gas, but which are otherwise deemed reasonable and prudent by the PSC.

The bill is effective on July 1, 2021.

II. Present Situation:

Renewable Natural Gas and Biogas

Natural gas is a fossil energy source which forms beneath the earth's surface.[2] Natural gas contains many different compounds, the largest of which is methane.[3] Conventional natural gas is primarily extracted from subsurface porous rock reservoirs via gas and oil well drilling and hydraulic fracturing, commonly referred to as "fracking." The term renewable natural gas (RNG) refers to biogas that has been refined to use in place of conventional natural gas.[4]

Biogas used to produce RNG comes from various sources, including municipal solid waste landfills, digesters at water resource recovery facilities, livestock farms, food production facilities, and organic waste management operations.[5] Raw biogas has a methane content between 45 and 65 percent.[6] Once biogas is captured, it is treated in a process called conditioning or upgrading, which involves the removal of water, carbon dioxide, hydrogen sulfide, and other trace elements.[7] After this process, the nitrogen and oxygen content is reduced and the RNG has

[2] U.S. Energy Information Administration, *Natural gas explained*, https://www.eia.gov/energyexplained/natural-gas/ (last visited Apr. 21, 2021).
[3] U.S. Environmental Protection Agency (EPA), *An Overview of Renewable Natural Gas from Biogas* (July 2020), *available at* https://www.epa.gov/sites/production/files/2020-07/documents/lmop_rng_document.pdf (last visited Apr. 21, 2021).
[4] EPA, *Landfill Methane Outreach Program (LMOP): Renewable Natural Gas*, https://www.epa.gov/lmop/renewable-natural-gas (last visited Apr. 21, 2021).
[5] *Id*.
[6] *Id*.
[7] Florida Department of Agriculture and Consumer Services (DACS), *Bill Analysis for SB 896* (Feb. 15, 2021) (on file with the Senate Committee on Environment and Natural Resources).

a methane content of 90 percent or more.[8] RNG prepared for injection into a natural gas pipeline typically has a methane content between 96 and 98 percent.[9]

The expansion of RNG offers an opportunity to decarbonize traditional gas end uses such as transportation and heating.[10] RNG qualifies as an advanced biofuel under the Federal Renewable Fuel Standard Program.[11] This program was enacted by Congress in order to reduce greenhouse gas emissions by reducing reliance on imported oil and expanding the nation's renewable fuels sector.[12]

Nationally, there were 157 total confirmed operational RNG projects as of December 2020.[13] While there were at least two RNG projects reportedly under construction in Florida at the end of 2020, it is not confirmed whether any operational production has been achieved in the state.[14]

Florida Public Service Commission

Chapter 366, F.S., provides for the regulation of electric utilities by the Florida Public Service Commission (PSC). The PSC is an arm of the legislative branch of government and has rate-setting jurisdiction over electric and natural gas public utilities.[15] The role of the PSC is to ensure that Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.[16] In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: (1) rate or economic regulation; (2) market competition oversight; and/or (3) monitoring of safety, reliability, and service issues.[17] The PSC monitors the safety and reliability of the electric power grid[18] and may order the addition or repair of infrastructure as necessary.[19] Further, the PSC reviews applications to determine the need for certain new electrical power plants[20] and certain large transmission lines as part of the Department of Environmental Protection's siting process.[21]

A public utility includes any person or legal entity supplying electricity or gas, including natural, manufactured, or similar gaseous substance, to or for the public within the state.[22] Notably, courts have ruled that the sale of electricity to even a single customer makes the provider a "public utility," subjecting them to the PSC's regulatory jurisdiction, under s. 366.02(1), F.S.[23]

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[8] EPA, LMOP: Renewable Natural Gas, *supra* at n. 4.
[9] *Id*.
[10] DACS, *Bill Analysis*, *supra* at n. 7.
[11] *Id*.
[12] EPA, *Renewable Fuel Standard Program*, https://www.epa.gov/renewable-fuel-standard-program (last visited Apr. 21, 2021).
[13] DACS, *Bill Analysis*, *supra* at n. 7.
[14] *Id*.
[15] *See* ss. 350.001, 366.02, and 366.05, F.S.
[16] *See* Florida Public Service Commission (PSC), *The PSC's Role*, http://www.psc.state.fl.us (last visited Apr. 21, 2021).
[17] *Id*.
[18] Sections 366.04(5) and (6), F.S.
[19] Sections 366.05(1) and (8), F.S.
[20] Section 403.519, F.S.
[21] Section 403.537, F.S.
[22] Section 366.02(1), F.S.
[23] *Florida Public Service Com'n v. Bryson*, 569 So. 2d 1253, 1255 (Fla. 1990) (finding that even a property management company is a public utility within the PSC's regulatory jurisdiction); *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 284 (Fla.

The PSC's jurisdiction over public utilities is exclusive and superior to all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in cases of conflict, the PSC is to prevail.[24]

Investor-Owned Electric Utilities Companies

There are five investor-owned electric utility companies in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Corporation.[25] Investor-owned electric utility rates and revenues are regulated by the PSC.[26] These utilities must file periodic earnings reports, either monthly, quarterly, or semi-annually, depending upon each company's size. These more frequent company filings allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.[27]

Municipally-Owned Electric Utilities

A municipal electric utility is an electric utility system owned or operated by a municipality engaged in serving residential, commercial or industrial customers, usually within the boundaries of the municipality.[28] Municipally-owned utility rates and revenues are regulated by the applicable city commission.[29] As noted above, the PSC has limited jurisdiction over municipally-owned electric utilities.[30] There are 34 municipal electric companies in Florida.[31] Most municipal electric utilities are represented by the Florida Municipal Electric Association, which serves over three million Floridians.[32]

Natural Gas Utilities

Florida's natural gas network is comprised of four interstate pipelines and two intrastate pipelines.[33] These pipelines supply natural gas to five investor-owned natural gas utilities, 27 municipal natural gas utilities, and four special gas districts.[34] The PSC has regulatory authority over: investor-owned natural gas utilities in all aspects of operations, including safety; municipally-owned natural gas utilities, limited to safety and territorial boundary disputes; and special gas districts, limited to safety and territorial boundary disputes.[35]

1988) (finding that "to the public," as used in ch. 366, F.S., means "to any member of the public," rather than "to the general public").

[24] Section 366.04(1), F.S.

[25] DACS, *Electric Utilities*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities (last visited Apr. 21, 2021).

[26] *Id*.

[27] Florida Public Service Commission, 2020 FPSC Annual Report, available at http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf (last visited Apr. 21, 2021).

[28] DACS, *Electric Utilities*, *supra* at n. 25.

[29] *Id*.

[30] PSC, *2020 Annual Report*, *supra* at n. 27.

[31] DACS, *Electric Utilities*, *supra* at n. 25.

[32] Florida Municipal Electric Association, *About FMEA*, https://www.publicpower.com/about-us (last visited Apr. 21, 2021).

[33] DACS, *Natural Gas Utilities*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Natural-Gas-Utilities (last visited Apr. 21, 2021).

[34] *Id*.

[35] Chapter 366, F.S. *See also*, FPSC, *2020 Annual Report*, *supra* at n. 27.

Public Utility Regulatory Policies Act

In 1978, the federal government enacted the Public Utility Regulatory Policies Act (PURPA).[36] The PURPA requires promotion of energy efficiency and use of renewable energy.[37] Primarily, the PURPA was enacted to encourage:

- The conservation of electric energy;
- Increased efficiency in the use of facilities and resources by electric utilities;
- Equitable retail rates for electric consumers;
- Expeditious development of hydroelectric potential at existing small dams;
- Conservation of natural gas while ensuring that rates to natural gas consumers are equitable.[38]

The PURPA requires utilities to interconnect with and purchase power from "qualifying facilities," which fall into two categories: (1) qualifying small power production facilities and (2) qualifying cogeneration facilities.[39] Qualifying small power production facilities must produce less than 80 megawatts and use biomass, waste, renewable resources, geothermal resources, or any combination thereof, of which 75 percent or more of the total energy input must be from these sources.[40] Qualifying cogeneration facilities are entities that generate electricity as a byproduct of an industrial process, which is not intended fundamentally for sale to an electric utility.[41]

The PURPA directed the Federal Energy Regulatory Commission (FERC) to implement its provisions, which in turn, directed the states to implement these provisions. In response, the Legislature created s. 366.051, F.S., directing utilities to purchase power from cogenerators and small power producers and defining "full avoided costs."[42] "A utility's 'full avoided costs' are the incremental costs to the utility of the electric energy or capacity, or both, which, but for the purchase from cogenerators or small power producers, such utility would generate itself or purchase from another source."[43] Traditionally, the FERC has approved electric utilities power purchase contracts that include provisions for payment, capacity, and energy based upon either the utility's cost to construct and operate its next planned generating unit or the cost of purchasing capacity and energy from generating units owned by other utilities in the interchange market.[44]

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[36] Public L. No. 95-617 (HR 4018)(1978).
[37] *Id*.
[38] Federal Energy Regulatory Commission, *PURPA Qualifying Facilities*, https://www.ferc.gov/qf (last visited Apr. 21, 2021).
[39] *Id*.
[40] 18 C.F.R. 292.204.
[41] 18 C.F.R. 292.205.
[42] Ch. 89-292, Laws of Fla.
[43] Section 366.051(3) and (4), F.S.
[44] PSC, *States' Electric Restructuring Activities Update: Wholesale Sales* http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#4 (last visited Apr. 21, 2021); PSC, *States' Electric Restructuring Activities Update: Federal Legislation - Public Utilities Regulatory Policy Act* http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#5 (last visited Apr. 21, 2021).

Renewable Energy

In 2005, the Legislature created s. 366.91, F.S., to address renewable energy.[45] This section requires utilities to continuously offer a purchase contract to renewable energy producers for a minimum of 10 years and contains payment provisions for energy and capacity based upon the utility's full avoided costs.[46] It also includes municipal electric utilities and rural electric cooperatives whose annual sales exceed 2,000 gigawatt hours.[47] The term "renewable energy" means electrical energy produced from:

- Hydrogen produced from sources other than fossil fuels;[48]
- Biomass,
- Solar energy,
- Geothermal energy,
- Wind energy,
- Ocean energy,
- Hydroelectric power, and
- The alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.[49]

Land Use Implications of Different Forms of Energy Production

A utility-scale solar generation system requires larger quantities of land per unit of power produced than traditional power plants.[50] Solar generation facilities require "at least [ten] times as much land per unit of power produced than coal or natural gas-fired power plants."[51] As a result of the large scale nature of such projects and the fact that they must be located in a place where the natural resource is most available, such as less industrially-developed areas, siting such facilities can be challenging and viewed as unpopular by those that do not want these large projects near their homes.[52]

In Archer, Florida, a proposed solar power farm was opposed by Alachua County commissioners.[53] In evaluating the project, the commissioners took into consideration health,

[45] Ch. 2005-259, Laws of Fla.
[46] Section 366.91(3), F.S.
[47] Section 366.91(4), F.S.
[48] Section 366.91(2)(d), F.S. "Traditional fuel sources" is assumed to be limited to fossil fuels and fuels derived from fossil fuels. *See* U.S. Energy Information Administration, *What is energy? Sources of energy: Most of Our Energy is Nonrenewable*, https://www.eia.gov/energyexplained/what-is-energy/sources-of-energy.php (last visited Apr. 21, 2021) (listing petroleum, hydrocarbon gas liquids, natural gas, coal, and nuclear energy as the most common energy sources, in the U.S. and abroad).
[49] Section 366.91(2)(d), F.S.
[50] Samantha Gross, *Renewables, land use, and local opposition in the United States*, https://www.brookings.edu/research/renewables-land-use-and-local-opposition-in-the-united-states/ (last visited Apr. 21, 2021).
[51] *Id*.
[52] *Id*.
[53] Melissa Hernandez, *County says no to proposed solar power farm near Archer*, https://www.gainesville.com/story/news/local/2020/10/07/alachua-county-says-no-solar-power-farm-proposed-near-archer/5897167002/ (last visited Apr. 21, 2021).

environmental, and property value concerns to the historically black community.[54] As a result of the land's classification for agricultural land use, the county commissioners would have needed to approve a zoning variance.[55]

Local Land Development Regulations and Comprehensive Plans

The Community Planning Act (act) directs the manner in which local governments create and adopt their local comprehensive plans.[56] The act prescribes certain principles, guidelines, standards, and strategies to allow for an orderly and balanced future land development.[57] Section 163.3177, F.S., outlines the required and optional elements of a comprehensive plan and includes provisions which govern agricultural lands and practices.[58] The act does not specifically address how agricultural lands with solar electric generation facilities should be considered for purposes of local government comprehensive plans.

III. Effect of Proposed Changes:

CS/CS/SB 896 creates s. 163.3205, F.S., relating to the solar facility approval process. The bill defines a "solar facility," as a production facility for electric power, which uses photovoltaic modules to convert solar energy to electricity that may be stored on site, delivered to a transmission system, and consumed primarily offsite. The facility must principally consist of photovoltaic modules, a mounting or racking system, power inverters, transformers, collection systems, battery systems, fire suppression equipment, and associated components. The facility may include accessory administration or maintenance buildings, electric transmission lines, substations, energy storage equipment, and related accessory uses and structures.

The bill requires solar facilities to be a permitted use in all agricultural land use categories in a local government's comprehensive plan, all agricultural zoning districts within an unincorporated area.

The bill requires facilities to comply with setback and landscaped buffer area criteria for similar uses in the agricultural district and allows a county to adopt ordinances specifying buffer and landscaping requirements for facilities. Such requirements may not exceed those for similar uses involving construction of other facilities permitted in agricultural land use categories and zoning districts.

The bill amends s. 366.91, F.S., by adding the terms "biogas" and "renewable natural gas," and expanding the term "renewable energy."

The term "biogas" means a mixture of gases, largely comprised of carbon dioxide, hydrocarbons, and methane gas, that is produced by the biological decomposition of organic materials.

[54] *Id*.
[55] *Id*.
[56] Section 163.3167(2), F.S.
[57] *Id*.
[58] Section 163.3162, F.S.

The term "renewable natural gas" means anaerobically generated biogas, landfill gas, or wastewater treatment gas, which is refined to a methane content of 90 percent or more, that may be used as transportation fuel, for electric generation, or is of a quality capable of being injected into a natural gas pipeline.

The term "renewable energy," is expanded to mean electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced *or resulting* from energy sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power.

The bill provides that the Public Service Commission may approve cost recovery by a gas public utility for renewable natural gas purchase contracts, in which the pricing provisions exceed the current market price of natural gas, but which are otherwise deemed reasonable and prudent by the PSC.

The bill includes conforming changes in ss. 366.92, 373.236, and 403.973, F.S., to reflect the revised definition of "renewable energy."

The bill reenacts s. 288.9606(7), F.S., without modification, to incorporate the changes made to s. 366.91, F.S.

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:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 366.91, 366.92, 373.236, 403.973, and 288.9606.

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 Rules on April 20, 2021:
The committee substitute:

- Creates s. 163. 3205, F.S., relating to Solar facility approval process.
- Provides that the legislative intent is to encourage renewable solar electrical generation throughout the state; providing that it is essential for solar facilities and associated infrastructure to be constructed and maintained.
- Defines the term "solar facility" as a production facility for electric power which uses photovoltaic modules to convert solar energy to electricity that may be stored on site, delivered to a transmission system, and consumed primarily offsite; consisting principally of photovoltaic modules, a mounting or racking system, power inverters, transformers, collection systems, battery systems, fire suppression equipment, and associated components; and may include accessory administration or maintenance buildings, electric transmission lines, substations, energy storage equipment, and related accessory uses and structures.
- Provides that solar facilities must be a permitted use in all agricultural land use categories in a local government's comprehensive plan, all agricultural zoning

districts within an unincorporated area, and must comply with setback and landscaped buffer area criteria for similar uses in the agricultural district.
- Allows a county to adopt ordinances specifying buffer and landscaping requirements for solar facilities, which may not exceed requirements for similar uses involving construction of other facilities permitted in agricultural land use categories and zoning districts.

CS by Regulated Industries on March 16, 2021:
The committee substitute:
- Redefines "renewable energy" in s. 366.91, F.S., to include hydrogen *resulting from* sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power;
- Deletes the provision that includes energy created to displace traditional fuel sources from the definition of "renewable energy;"
- Maintains the definition of "renewable natural gas;"
- Amends the definition of "renewable energy," contained in s. 366.92, F.S., to include renewable natural gas;
- Authorizes the Florida Public Service Commission to approve cost recovery by a gas public utility for contracts for the purchase of renewable natural gas in which the pricing provisions exceed the current market price of natural gas, but are otherwise deemed reasonable and prudent by the commission.

B. Amendments:

None.

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

713270

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
	.	
	.	
	.	

The Committee on Rules (Gruters) recommended the following:

Senate Amendment (with title amendment)

Before line 16

insert:

Section 1. Section 163.3205, Florida Statutes, is created to read:

163.3205 Solar facility approval process.—

(1) It is the intent of the Legislature to encourage renewable solar electrical generation throughout this state. It is essential that solar facilities and associated electric infrastructure be constructed and maintained in various

713270

locations throughout this state in order to ensure the availability of renewable energy production, which is critical to this state's energy and economic future.

(2) As used in this section, the term "solar facility" means a production facility for electric power which:

(a) Uses photovoltaic modules to convert solar energy to electricity that may be stored on site, delivered to a transmission system, and consumed primarily offsite.

(b) Consists principally of photovoltaic modules, a mounting or racking system, power inverters, transformers, collection systems, battery systems, fire suppression equipment, and associated components.

(c) May include accessory administration or maintenance buildings, electric transmission lines, substations, energy storage equipment, and related accessory uses and structures.

(3) A solar facility shall be a permitted use in all agricultural land use categories in a local government comprehensive plan and all agricultural zoning districts within an unincorporated area and must comply with the setback and landscaped buffer area criteria for other similar uses in the agricultural district.

(4) A county may adopt an ordinance specifying buffer and landscaping requirements for solar facilities. Such requirements may not exceed the requirements for similar uses involving the construction of other facilities that are permitted uses in agricultural land use categories and zoning districts.

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

And the title is amended as follows:

713270

Delete line 2

and insert:

An act relating to renewable energy; creating s. 163.3205, F.S.; providing legislative intent; defining the term "solar facility"; providing that solar facilities are a permitted use in local government comprehensive plan agricultural land use categories and certain agricultural zoning districts; requiring solar facilities to comply with specified criteria; authorizing counties to adopt ordinances that meet certain requirements; amending s.

By the Committee on Regulated Industries; and Senator Brodeur

580-02948-21 2021896c1

A bill to be entitled

An act relating to renewable natural gas; amending s. 366.91, F.S.; defining and redefining terms; authorizing the Florida Public Service Commission to approve cost recovery by a gas public utility for certain contracts for the purchase of renewable natural gas; amending ss. 366.92, 373.236, and 403.973, F.S.; conforming cross-references; reenacting s. 288.9606(7), F.S., relating to the issuance of revenue bonds, to incorporate the amendment made to s. 366.91, F.S., in a reference thereto; providing an effective date.

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

Section 1. Present paragraphs (a) through (d) of subsection (2) of section 366.91, Florida Statutes, are redesignated as paragraphs (b) through (e), respectively, a new paragraph (a) and paragraph (f) are added to that subsection, present paragraph (d) of that subsection is amended, and subsection (9) is added to that section, to read:

366.91 Renewable energy.—

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

(a) "Biogas" means a mixture of gases produced by the biological decomposition of organic materials which is largely comprised of carbon dioxide, hydrocarbons, and methane gas.

(e)~~(d)~~ "Renewable energy" means electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from sources

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

580-02948-21 2021896c1

other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

(f) "Renewable natural gas" means anaerobically generated biogas, landfill gas, or wastewater treatment gas refined to a methane content of 90 percent or greater which may be used as a transportation fuel or for electric generation or is of a quality capable of being injected into a natural gas pipeline.

(9) The commission may approve cost recovery by a gas public utility for contracts for the purchase of renewable natural gas in which the pricing provisions exceed the current market price of natural gas, but which are otherwise deemed reasonable and prudent by the commission.

Section 2. Paragraph (b) of subsection (2) of section 366.92, Florida Statutes, is amended to read:

366.92 Florida renewable energy policy.—

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

(b) "Renewable energy" includes ~~means~~ renewable energy and renewable natural gas as those terms are defined in s. 366.91(2) ~~s. 366.91(2)(d)~~.

Section 3. Subsection (7) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(7) A permit approved for a renewable energy generating facility or the cultivation of agricultural products on lands consisting of 1,000 acres or more for use in the production of

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

renewable energy, as defined in s. 366.91(2)(e) ~~s. 366.91(2)(d)~~, shall be granted for a term of at least 25 years at the applicant's request based on the anticipated life of the facility if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; otherwise, a permit may be issued for a shorter duration that reflects the longest period for which such reasonable assurances are provided. Such a permit is subject to compliance reports under subsection (4).

Section 4. Paragraph (f) of subsection (3) and paragraph (b) of subsection (19) of section 403.973, Florida Statutes, are amended to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)

(f) Projects resulting in the production of biofuels cultivated on lands that are 1,000 acres or more or in the construction of a biofuel or biodiesel processing facility or a facility generating renewable energy, as defined in s. 366.91(2)(e) ~~s. 366.91(2)(d)~~, are eligible for the expedited permitting process.

(19) The following projects are ineligible for review under this part:

(b) A project, the primary purpose of which is to:

1. Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.

2. Produce electrical power, unless the production of electricity is incidental and not the primary function of the project or the electrical power is derived from a fuel source

for renewable energy as defined in s. 366.91(2)(e) ~~s. 366.91(2)(d)~~.

3. Extract natural resources.

4. Produce oil.

5. Construct, maintain, or operate an oil, petroleum, or sewage pipeline.

Section 5. For the purpose of incorporating the amendment made by this act to section 366.91, Florida Statutes, in a reference thereto, subsection (7) of section 288.9606, Florida Statutes, is reenacted to read:

288.9606 Issue of revenue bonds.—

(7) Notwithstanding any provision of this section, the corporation in its corporate capacity may, without authorization from a public agency under s. 163.01(7), issue revenue bonds or other evidence of indebtedness under this section to:

(a) Finance the undertaking of any project within the state that promotes renewable energy as defined in s. 366.91 or s. 377.803;

(b) Finance the undertaking of any project within the state that is a project contemplated or allowed under s. 406 of the American Recovery and Reinvestment Act of 2009; or

(c) If permitted by federal law, finance qualifying improvement projects within the state under s. 163.08.

Section 6. This act shall take effect July 1, 2021.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JASON BRODEUR
9th District

COMMITTEES:
Environment and Natural Resources, *Chair*
Health Policy, *Vice Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs
Community Affairs

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

JOINT COMMITTEE:
Joint Administrative Procedures Committee

March 30, 2021

Honorable Kathleen Passidomo
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Passidomo,

I am writing to request that **SB 896, Renewable Natural Gas**, be placed on the agenda to be heard in the Committee on Rules.

I appreciate your consideration in this matter.

Sincerely,

Jason Brodeur

Jason Brodeur

Cc: John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
❒ 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

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)

4/20/21
Meeting Date

896
Bill Number (if applicable)

713270
Amendment Barcode (if applicable)

Topic _____

Name Kim Ross

Job Title Executive Dir

Address 603 N. MLK Jr Blvd
Street

Phone 850-888-2515

Tallahassee FL 32301
City *State* *Zip*

Email admin@reth.renewableenergyflorida.org

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. (unpaid)

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

S-001 (10/14/14)

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4/20/2021
Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

896
Bill Number (if applicable)

713270
Amendment Barcode (if applicable)

Topic Renewable Natural Gas

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.
Street

Tallahassee | Fl | 32301
City | *State* | *Zip*

Phone 850-321-9386

Email fcfep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fl Center for Fiscal and Economic 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.

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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)

4/20/2021
Meeting Date

896
Bill Number (if applicable)

713270
Amendment Barcode (if applicable)

Topic _____

Name Leighanne Boone

Job Title _____

Address 300 S. Duval St. Phone _____
Street

Tallahassee FL 32301 Email Leighanne.Boone@gmail.com
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

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

Representing ReThink Energy 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)

THE FLORIDA SENATE

APPEARANCE RECORD

4/20/21
Meeting Date

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

896
Bill Number (if applicable)

713276
Amendment Barcode (if applicable)

Topic Natural gas

Name Ida V. Eskamani

Job Title

Address 126 N. Mills Ave
Street

Orlando FL 32801
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 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)

4/21/20
Meeting Date

896
Bill Number (if applicable)

713270
Amendment Barcode (if applicable)

Topic NATURAL GAS

Name REV DR RUSSELL MEYER

Job Title EXEC DIR

Address 1308 WINDSOR PL
Street

JAX FL 32205
City *State* *Zip*

Phone 813 763 3610

Email rmeyer@floridachurches.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL COUNCIL OF CHURCHES

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)

4/20/21
Meeting Date

896
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Renewable Energy

Name Jonas Walker

Job Title Landowner / Attorney

Address 4532 Brown Rd
Street

Defuniak Springs FL 32433
City *State* *Zip*

Phone 850-419-7424

Email jonas@jonaswalker.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/20/2021
Meeting Date

896
Bill Number (if applicable)

713270
Amendment Barcode (if applicable)

Topic Renewable Natural Gas

Name Jonathan Webber

Job Title Deputy Director

Address 1700 N. Monroe St. #11-286
Street

Phone 954-593-4449

Tallahassee — *City* | FL — *State* | 32303 — *Zip*

Email jwebber@fcvoters.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Conservation Voters

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/20/21
Meeting Date

896
Bill Number (if applicable)

713270
Amendment Barcode (if applicable)

Topic Renewable Natural Gas - amendment solar facilities

Name DAVID CULLEN

Job Title

Address 1439 SHELBY CT
Street

TALLAHASSEE FL 32303
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☑ Information

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

Representing ~~Self~~ SIERRA CLUB FL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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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)

03/20/2021
Meeting Date

SB 896
Bill Number (if applicable)

Topic SB 896 Renewable Natural Gas

Amendment Barcode (if applicable)

Name Michele L. Suarez

Job Title organizer, activist, human rights advocate

Address 3162 little Sound Drive
Street

Phone 321-442-7777

Orlando FL 32827
City *State* *Zip*

Email mearths15e gmail.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)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/20/21
Meeting Date

SB 896
Bill Number (if applicable)

713270
Amendment Barcode (if applicable)

Topic _____

Name Jeff Scala

Job Title Associate Director of Public Policy

Address 100 South Monroe Street
Street

Phone (850) 922-4300

Tallahassee FL 32301
City *State* *Zip*

Email jscala@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)

4-20-21
Meeting Date

896
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Dale Calhoun

Job Title Executive Director

Address 201 S Monroe St Unit A
Street

Phone 850 681 0496

Tallahassee FL 32302
City *State* *Zip*

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Natural Gas Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/20/2021
Meeting Date

896
Bill Number (if applicable)

929598
Amendment Barcode (if applicable)

Topic Renewable Natural Gas

Name Michael Cassel

Job Title AVP, Regulatory & Government Affairs

Address 208 Wildlight Ave
Street

Yulee FL 32097
City *State* *Zip*

Phone 561.252.0250

Email mcassel@chpk.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Chesapeake Utilities Corporation

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

4/20/21
Meeting Date

896
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Renewable Natural Gas

Name David Cullen

Job Title

Address 1934 Shelby Court
Street

Phone 941-323-2404

Tallahassee — *City* | FL — *State* | 32308 — *Zip*

Email cullenasea@gmail.com

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.

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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

4/20/2021
Meeting Date

896
Bill Number (if applicable)

Topic Renewable Natural Gas

Amendment Barcode (if applicable)

Name Jonathan Webber

Job Title Deputy Director

Address 1700 N. Monroe St. #11-286
Street

Phone 954-593-4449

Tallahassee FL 32303
City *State* *Zip*

Email jwebber@fcvoters.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Conservation Voters

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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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)

4/21/20
Meeting Date

896
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Natural Gas

Name Rev Dr Russell Meyer

Job Title Exec Director

Address 1308 Windsor Pl
Street

Jax FL 32205
City *State* *Zip*

Phone 813 763 3610

Email rmeyer@floridachurches.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Council of Churches

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 following Appearance Records were not read into the record by the Chair

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

SB 96
Bill Number (if applicable)

713270
Amendment Barcode (if applicable)

Topic Solar Facilities

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address 301 S. Bronough St #300
Street

Phone 850-701-3613

Tallahassee FL 32301
City *State* *Zip*

Email ROhara@FLCities.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

896
Bill Number (if applicable)

713270
Amendment Barcode (if applicable)

Topic Renewable natural gas

Name Gianna Facile

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 The CLEO 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.

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)

4/20/21
Meeting Date

SB 896
Bill Number (if applicable)

Topic RENEWABLE ENERGY

Amendment Barcode (if applicable)

Name KEYNA CORY

Job Title

Address 730 EAST PARK AVE
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850 681 1065

Email Keynacory@gmconsultants.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing BRIGHTMARK

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

4-20-21
Meeting Date

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

SB 896
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Renewable natural gas

Name Amanda Weems

Job Title

Address 3404 Cedarwood Trail
Street
Tallahassee FL 32312
City *State* *Zip*

Phone 850-590-7154

Email amandaw1098@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tallahassee Community Action Committee

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 954
INTRODUCER:	Rules Committee; Judiciary Committee; and Senator Bean
SUBJECT:	Attorney Compensation
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ravelo	Cibula	JU	**Fav/CS**
2.	McMillan	McKay	CM	**Favorable**
3.	Ravelo	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 954 creates a series of disclosures an attorney must provide when seeking to represent a personal representative in a probate proceeding or a trustee during the initial administration of a trust administration.

Current law establishes a presumption that an attorney's compensation for services for probate or trust proceedings are reasonable if the compensation conforms to a calculation based on a percentage of the value of the estate or trust. A judge, however, may increase or decrease the compensation of the attorney upon petition by an interested party.

The bill provides that when an attorney seeks compensation based on the fee schedule, the attorney must disclose, among other things, that the fee is not required to be based on the value of the estate or trust, is subject to negotiation, and that selection of the attorney is at the discretion of the personal representative or trustee.

The bill takes effect October 1, 2021.

II. Present Situation:

Probate Administration

Probate is a court supervised process for identifying and gathering the assets of a deceased person, paying his or her debts, and distributing those assets to beneficiaries.[1] A personal representative is appointed to execute this process, and the representative may retain an attorney using funds from the estate.[2]

Section 733.6171, F.S., provides that an attorney for the personal representative is entitled to reasonable compensation for his or her services payable from the estate without a court order. The attorney, the personal representative, and the heirs to the estate may agree to the specific compensation of the attorney. Section 733.6171, F.S., identifies a schedule of fees for the attorney which are presumed to be reasonable, as follows:

Compensable Value of the Estate	Reasonable Compensation
$40,000 or less	$1,500
$40,000 - $70,000	$2,250
$70,000 - $100,000	$3,000
> $100,000	$3,000 + 3% on the next $900,000
$1,000,000 - $3,000,000	2.5% for all above $1 million and not exceeding $3 million
$3,000,000 - $5,000,000	2% for all above $3 million and not exceeding $5 million
$5,000,000 – $10,000,000	1.5% for all above $5 million and not exceeding $10 million
> $10,000,000	1% for all above $10 million

An attorney for the personal representative may receive further compensation for any extraordinary service. What constitutes an extraordinary service may depend on a number of factors like the size of the estate and the number of beneficiaries. Extraordinary services may include, but are not limited to:

- A will contest;
- Will drafting and construction;
- A proceeding for the determination of beneficiaries;
- A contested claim;
- An elective share proceeding;
- Apportionment of estate taxes;
- An adversarial proceeding;
- Litigation by or against the estate;
- Representation during an audit;
- Tax advice on post mortem planning;
- Review of estate tax return and preparation of other associated returns;

[1] The Florida Bar, *Consumer Pamphlet: Probate in Florida*, What is Probate? *available at* https://www.floridabar.org/public/consumer/pamphlet026/#whatisprobate (last visited Mar. 26, 2021).
[2] Section 733.106(2) & (3), F.S.

- Preparation of the estate's federal tax return;
- Purchase, sale, lease, or encumbrance of real property by the personal representative;
- Legal advice regarding the decedent's business or commercial activity;
- Legal advice regarding claims for damage to environment or similar proceedings;
- Legal advice related to homestead status of real property;
- Involvement in fiduciary, employee, or attorney compensation disputes; or
- Administration of assets not subject to administration in Florida.[3]

Upon the petition of any interested party, the court may increase or decrease the compensation for ordinary services of the attorney or award compensation for the performance of extraordinary services. When making a determination regarding reasonable compensation, the court must consider the:

- Promptness, efficiency, and skill with which the administration was handled by the attorney;
- Responsibilities assumed by and the potential liabilities of the attorney;
- Nature and value of the assets;
- Benefits or detriments resulting to the estate or interested parties from the attorney's services;
- Complexity or simplicity of the administration and the novelty of the issues presented;
- Attorney's participation in tax planning for the estate and the estate's beneficiaries and tax return preparation, review, or approval;
- Nature of the probate, nonprobate, and exempt asset, the expenses of administration, the liabilities of the decedent, and the compensation paid to other professionals and fiduciaries;
- Delay in payment of the compensation after the services were furnished; and
- Other relevant factors the court deems appropriate.[4]

Fees and costs awarded under s. 733.106, F.S., are payable from the estate. The court has the discretion to assess the burden of the fees paid from the estate to the part of the estate of the person who should be equitably charged for the fees.[5] However, the assessment is limited to the value of that person's interest in the estate. If the fees and costs awarded are in excess of the person's share of the estate, there is no personal liability for the fees and costs on the part of such person.[6]

Trust Administration

Section 736.1007, F.S., authorizes the trustee of a revocable trust to retain an attorney in connection with the initial administration of the trust,[7] and the attorney is entitled to reasonable compensation for the legal services provided, payable from the assets of the trust, without a court order.[8] Current law also provides that a trustee and the attorney may agree to compensation

[3] Section 733.6171(4), F.S.
[4] Section 733.6171(5), F.S.
[5] Section 733.106(4), F.S.
[6] *Dourado v. Chousa,* 604 So. 2d 864, 866 (Fla. 5th DCA 1992).
[7] Section 736.1007(8), F.S., defines "initial trust administration" to mean administration of a revocable trust during the period that begins with the death of the settlor and ends on the final distribution of trust assets outright or to continuing trusts created under the trust agreement but, if an estate tax return is required, not until after issuance of an estate tax closing letter or other evidence of termination of the estate tax proceeding. This initial period is not intended to include continued regular administration of the trust.
[8] Section 736.1007(1), F.S., is subject to s. 736.0802(10), F.S.

outside of the manner or amount provided under s. 736.1007, F.S., and the agreement is not binding on a person who bears the impact of the compensation unless that person is a party to or otherwise consents to be bound by the agreement.[9]

For ordinary services of all attorneys employed to advise a trustee concerning the trustee's duties in the initial trust administration, compensation is presumed to be reasonable if it is based on the value of the trust assets immediately following the settlor's death and the income earned by the trust during initial administration at the rate of 75 percent of the schedule provided in s. 733.6171(3)(a)-(h).[10]

Ordinary services of the attorney in an initial trust administration include legal advice and representation concerning the trustee's duties relating to the following:

- Review of the trust instrument and each amendment for legal sufficiency and interpretation;
- Implementation of substitution of the successor trustee;
- Persons who must or should be served with required notices and the method and timing of such service;
- The obligation of a successor to require a former trustee to provide an accounting;
- The trustee's duty to protect, insure, and manage trust assets and the trustee's liability relating to these duties;
- The trustee's duty regarding investments imposed by the prudent investor rule;
- The trustee's obligation to inform and account to beneficiaries and the method of satisfaction of such obligations, the liability of the trust and trustee to the settlor's creditors, and the advisability or necessity for probate proceedings to bar creditors;
- Contributions due to the personal representative of the settlor's estate for payment of expenses of administration and obligations of the settlor's estate;
- Identifying tax returns required to be filed by the trustee, the trustee's liability for payment of taxes, and the due date of returns;
- Filing a nontaxable affidavit, if not filed by a personal representative;
- Order of payment of expenses of administration of the trust and order and priority of abatement of trust distributions;
- Distribution of income or principal to beneficiaries or funding of further trusts provided in the governing instrument;
- Preparation of any legal documents required to effect distribution;
- Fiduciary duties, avoidance of self-dealing, conflicts of interest, duty of impartiality, and obligations to beneficiaries;
- If there is a conflict of interest between a trustee who is a beneficiary and other beneficiaries of the trust, advice to the trustee on limitations of certain authority of the trustee regarding discretionary distributions or exercise of certain powers and alternatives for appointment of an independent trustee and appropriate procedures; and
- Procedures for the trustee's discharge from liability for administration of the trust on termination or resignation.[11]

[9] Section 736.1007(1), F.S. The statute provides that the agreement may provide that the trustee is not individually liable for the attorney fees and costs.
[10] Section 736.1007(2), F.S.
[11] Section 736.1007(4), F.S.

For extraordinary services, the attorney for the trustee must be allowed further reasonable compensation.[12] Extraordinary services may include the following:[13]

- Involvement in a trust contest, trust construction, a proceeding for determination of beneficiaries, a contested claim, elective share proceedings, apportionment of estate taxes, or other adversary proceedings or litigation by or against the trust;
- Representation of the trustee in an audit or any proceeding for adjustment, determination, or collection of any taxes;
- Tax advice on postmortem tax planning;[14]
- Review of an estate tax return and preparation or review of other tax returns required to be filed by the trustee;
- Preparation of decedent's federal estate tax return;[15]
- Purchase, sale, lease, or encumbrance of real property by the trustee or involvement in zoning, land use, environmental, or other similar matters;
- Legal advice regarding carrying on of decedent's business or conducting other commercial activity by the trustee;
- Legal advice regarding claims for damage to the environment or related procedures;
- Legal advice regarding homestead status of trust real property or proceedings involving the status;
- Involvement in fiduciary, employee, or attorney compensation disputes; and
- Considerations of special valuation of trust assets, including discounts for blockage, minority interests, lack of marketability, and environmental liability.[16]

The court may increase or decrease the compensation for ordinary services of the attorney or award compensation for extraordinary services if the facts or particular circumstances warrant.[17] In determining reasonable compensation, the court must consider all of the following factors:

- The promptness, efficiency, and skill with which the initial administration was handled by the attorney;
- The responsibilities assumed by, and potential liabilities of, the attorney;
- The nature and value of the assets that are affected by the decedent's death;
- The benefits or detriments resulting to the trust or the trust's beneficiaries from the attorney's services;
- The complexity or simplicity of the administration and the novelty of issues presented;

[12] *See* Section 736.1007(5), F.S.
[13] *Id*.
[14] Section 736.1007(5)(c), F.S., provides that tax advice on postmortem tax planning, includes, but is not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse QTIP election, allocation of GST exemption, qualification for Internal Revenue Code ss. 303 and 6166 privileges,1 deduction of last illness expenses, distribution planning, asset basis considerations, throwback rules, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuation, handling employee benefit or retirement proceeds, prompt assessment request, or request for release from personal liability for payment of tax.
[15] Section 736.1007(5)(e), F.S., provides that if the estate tax return is prepared by the attorney, a fee of one-half of 1 percent up to a value of $10 million and one-fourth of 1 percent on the value in excess of $10 million, of the gross estate as finally determined for federal estate tax purposes, is presumed to be reasonable compensation for the attorney for this service. These fees shall include services for routine audit of the return, not beyond the examining agent level, if required.
[16] *See* Section 736.1007(5), F.S.
[17] *See* Section 736.1007(6), F.S.

- The attorney's participation in tax planning for the estate, the trust, and the trust's beneficiaries and tax return preparation or review and approval;
- The nature of the trust assets, the expenses of administration, and the claims payable by the trust and the compensation paid to other professionals and fiduciaries;
- Any delay in payment of the compensation after the services were furnished; and
- Any other relevant factors.[18]

If a separate written agreement regarding compensation exists between the attorney and the settlor, the attorney must furnish a copy to the trustee prior to the commencement of employment and, if employed, must promptly serve a copy on all interested persons.[19] The trustee is not obligated to employ the attorney and the attorney is not obligated to accept representation but, if the attorney who is a party to the agreement or who drafted the trust is employed, the compensation paid must not exceed the amount provided in the agreement.[20]

Other Rules

Attorneys are also bound by the Rules Regulating the Florida Bar when considering compensation from any client.[21] Under the Bar rules, an attorney may not charge a clearly excessive fee or cost.

> A fee or cost is clearly excessive when:
>
> (1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or
> (2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a nonclient party, or any court, as to either entitlement to, or amount of, the fee.[22]

Reasonable fees, according to the Bar rules, are determined by taking into account:
- The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly;
- The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- The fee customarily charged in the locality for similar legal services;
- The amount involved and the results obtained;
- The time limitations imposed by the client or by the circumstances;
- The nature and length of the professional relationship with the client;
- The experience, reputation, and ability of the lawyer or lawyers performing the services; and

[18] *Id*.
[19] *See* Section 736.1007(7), F.S.
[20] *Id*.
[21] Fla. Bar Code Prof. Resp. 4-1.5.
[22] *Id*.

- Whether the fee is fixed or contingent.[23]

Reasonable costs, such as witness costs, may be considered by taking into account:
- The nature and extent of the disclosure made to the client about the costs;
- Whether a specific agreement exists between the lawyer and client as to the costs a client is expected to pay and how a cost is calculated that is charged to a client;
- The actual amount charged by third party providers of services to the attorney;
- Whether specific costs can be identified and allocated to an individual client or a reasonable basis exists to estimate the costs charged;
- The reasonable charges for providing in-house service to a client if the cost is an in-house charge for services; and
- The relationship and past course of conduct between the lawyer and the client.[24]

Background

In 1988, Florida passed legislation that covered the reasonable compensation of personal representatives as well as attorneys, accountants, appraisers, and other agents employed by the personal representative.[25] The statute provided that reasonable compensation must be based on one or more of the following:
- The time and labor required;
- The novelty and the difficulty of the questions involved, and the skill requisite to perform the service properly;
- The likelihood that the acceptance of the particular employment will preclude other employment by the person;
- The fee customarily charged in the locality for similar services;
- The nature and value of the assets of the estate, the amount of income earned by the estate, and the responsibilities and potential labilities assumed by the person;
- The final results obtained;
- The time limitations imposed by the circumstances;
- The nature and length of the professional relationship with the decedent; and
- The experience, reputation, diligence, and ability of the person performing the service.[26]

In 1993, the Legislature created s. 733.6171, F.S., to differentiate the compensation of attorneys from others retained by a personal representative covered separately in s. 733.617, F.S.[27] In contrast to the 1988 compensation structure, the new legislation allowed for attorney compensation to be based on the value of the estate along with the work hours contributed.[28] Additionally, the statute allowed for two types of compensations: ordinary and extraordinary.[29] The statute provided that an attorney's compensation based on the above standard could be increased or decreased by a court upon petition by an interested party. In determining reasonable

[23] Fla. Bar Code Prof. Resp. 4-1.5(b)(1).
[24] Fla. Bar Code Prof. Resp. 4-1.5(b)(2).
[25] *See* ch. 88-340, Laws of Fla.
[26] *Id*.
[27] *See* ch. 93-257, Laws of Fla.
[28] *Id*.
[29] *Id*.

compensation, the court weighed factors that were similar to those in the 1988 statute. Thus, although a fee determined using the above guidelines was presumed reasonable, it was not definitive.[30]

In 1995, the Legislature amended s. 733.6171, F.S., to provide a fee structure. Specifically, compensation based on the value of the estate and the income earned by the estate was presumed reasonable based on a fee schedule similar to the current schedule.[31]An attorney could be further compensated for any "extraordinary services," such as more complex estates that may involve tax preparation or contested claims.[32] The amendment still provided that compensation may be increased or decreased by a court upon petition by an interested party.[33]

III. Effect of Proposed Changes:

Under current law, a fee for an attorney for probate or trust administration services is presumed reasonable if it conforms to a calculation based on the percentage of the value of the estate. This fee structure is presumed reasonable regardless of the hours or complexity of work conducted for the estate or trust.

Under the bill, an attorney must provide a series of disclosures to the personal representative or trustee if the attorney intends to charge a fee using the statutory fee schedule. These disclosures state that:

- There is not a mandatory statutory attorney fee for estate or trust administration;
- The attorney fee is not required to be based on the size of the estate or trust and that the presumption of reasonableness may not be appropriate to every estate administration;
- The fee is subject to negotiation between the personal representative or trustee and the attorney;
- The selection of the attorney is made at the discretion of the personal representative or trustee, who is not required to select the attorney who prepared the will or trust; and
- The personal representative or trustee shall be entitled to a summary of ordinary and extraordinary services rendered for the fees agreed upon at the conclusion of the representation. The summary shall be provided by counsel and shall consist of the total hours devoted to the representation or a detailed summary of the services performed during the representation.

Additionally, the attorney is required to obtain a timely signature acknowledging these disclosures. If the attorney does not make the disclosures required under the bill, the attorney may not be paid for legal services without prior court approval or the written consent of the interested parties to an estate proceeding or the written consent of the trustee and all qualified beneficiaries of a trust.

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[30] One court, for example, awarded $60,000 as opposed to $265,236.57 as calculated under the statute. The court reasoned "the statute's only requirement is that attorneys receive reasonable compensation" and that the higher fee included under the calculation may not be reasonable considering the amount of time and skill required for the estate in question. *See Sitomer v. First of Am. Bank-Cent., 667 So. 2d 456, 458 (Fla. 4th DCA 1996).*

[31] *See* ch. 95-401, Laws of Fla.

[32] *Id*.

[33] *Id*.

Under current law, an interested person may petition a court to increase or decrease an attorney's compensation for ordinary services or award additional compensation based on extraordinary services. Under the bill, a court may consider any agreement relating the attorney's compensation and whether the above disclosures were made to the personal representative or trustee in a timely manner in order to determine reasonable compensation.

The bill provides that the complexity of an estate or trust may be considered when determining additional compensation based on an attorney's extraordinary services during the estate or trust administration.

The bill provides that it applies to initial estate and initial trust administrations commenced on or after October 1, 2021.

The bill takes effect October 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:

The bill may impact consumers involved in probate and estate administrations. By requiring certain disclosures which inform consumers of potential fee negotiations, the bill may encourage negotiated fees or fees based on the work necessary to execute the estate as opposed to the value of the estate or trust.

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: 733.6171 and 736.1007

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 20, 2021:
The committee substitute changes the bill by:

- Retains the statutory attorney fee schedule under current law for a probate or trust administration along with its presumption of reasonableness.
- Provides that written agreements regarding attorney compensation in a probate or trust administration may be considered when a judge is determining reasonable compensation.
- Potentially requiring court approval to recover attorney fees if the required disclosures were not made by the attorney.

CS by Judiciary on March 15, 2021:
The committee substitute changes the bill by:

- Repealing the statutory attorney fee schedule for formal estate administration along with its presumption of reasonableness.
- Creating a fee disclosure statement that requires an attorney to make certain disclosures regarding fees when representing an estate in probate.

B. Amendments:

None.

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

387788

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
	.	
	.	
	.	

The Committee on Rules (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 733.6171, Florida Statutes, is amended to read:

733.6171 Compensation of attorney for the personal representative.—

(1) Except as provided in paragraph (2)(d), attorneys for personal representatives are ~~shall be~~ entitled to reasonable compensation payable from the estate assets without court order.


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(2)(a) The attorney, the personal representative, and persons bearing the impact of the compensation may agree to compensation determined in a different manner than provided in this section. Compensation may also be determined in a different manner than provided in this section if the manner is disclosed to the parties bearing the impact of the compensation and if no objection is made as provided for in the Florida Probate Rules.

(b) An attorney representing a personal representative in an estate administration who intends to charge a fee based upon the schedule set forth in subsection (3) shall make the following disclosures in writing to the personal representative:

1. There is not a mandatory statutory attorney fee for estate administration.

2. The attorney fee is not required to be based on the size of the estate, and the presumed reasonable fee provided in subsection (3) may not be appropriate in all estate administrations.

3. The fee is subject to negotiation between the personal representative and the attorney.

4. The selection of the attorney is made at the discretion of the personal representative, who is not required to select the attorney who prepared the will.

5. The personal representative shall be entitled to a summary of ordinary and extraordinary services rendered for the fees agreed upon at the conclusion of the representation. The summary shall be provided by counsel and shall consist of the total hours devoted to the representation or a detailed summary of the services performed during the representation.

(c) The attorney shall obtain the personal representative's



timely signature acknowledging the disclosures.

(d) If the attorney does not make the disclosures required by this section, the attorney may not be paid for legal services without prior court approval of the fees or the written consent of all interested parties.

(3) Subject to subsection (2), compensation for ordinary services of attorneys in a formal estate administration is presumed to be reasonable if based on the compensable value of the estate, which is the inventory value of the probate estate assets and the income earned by the estate during the administration as provided in the following schedule:

(a) One thousand five hundred dollars for estates having a value of $40,000 or less.

(b) An additional $750 for estates having a value of more than $40,000 and not exceeding $70,000.

(c) An additional $750 for estates having a value of more than $70,000 and not exceeding $100,000.

(d) For estates having a value in excess of $100,000, at the rate of 3 percent on the next $900,000.

(e) At the rate of 2.5 percent for all above $1 million and not exceeding $3 million.

(f) At the rate of 2 percent for all above $3 million and not exceeding $5 million.

(g) At the rate of 1.5 percent for all above $5 million and not exceeding $10 million.

(h) At the rate of 1 percent for all above $10 million.

(4) Subject to subsection (2), in addition to fees for ordinary services, the attorney for the personal representative shall be allowed further reasonable compensation for any



extraordinary service. What is an extraordinary service may vary depending on many factors, including the size and complexity of the estate. Extraordinary services may include, but are not limited to:

(a) Involvement in a will contest, will construction, a proceeding for determination of beneficiaries, a contested claim, elective share proceeding, apportionment of estate taxes, or any adversarial proceeding or litigation by or against the estate.

(b) Representation of the personal representative in audit or any proceeding for adjustment, determination, or collection of any taxes.

(c) Tax advice on postmortem tax planning, including, but not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse QTIP election, allocation of GST exemption, qualification for Internal Revenue Code ss. 6166 and 303 privileges, deduction of last illness expenses, fiscal year planning, distribution planning, asset basis considerations, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuation, handling employee benefit or retirement proceeds, prompt assessment request, or request for release of personal liability for payment of tax.

(d) Review of estate tax return and preparation or review of other tax returns required to be filed by the personal representative.

(e) Preparation of the estate’s federal estate tax return. If this return is prepared by the attorney, a fee of one-half of



1 percent up to a value of $10 million and one-fourth of 1 percent on the value in excess of $10 million of the gross estate as finally determined for federal estate tax purposes, is presumed to be reasonable compensation for the attorney for this service. These fees shall include services for routine audit of the return, not beyond the examining agent level, if required.

(f) Purchase, sale, lease, or encumbrance of real property by the personal representative or involvement in zoning, land use, environmental, or other similar matters.

(g) Legal advice regarding carrying on of the decedent's business or conducting other commercial activity by the personal representative.

(h) Legal advice regarding claims for damage to the environment or related procedures.

(i) Legal advice regarding homestead status of real property or proceedings involving that status and services related to protected homestead.

(j) Involvement in fiduciary, employee, or attorney compensation disputes.

(k) Proceedings involving ancillary administration of assets not subject to administration in this state.

(5) Upon petition of any interested person, the court may increase or decrease the compensation for ordinary services of the attorney or award compensation for extraordinary services if the facts and circumstances of the particular administration warrant. In determining reasonable compensation, the court shall consider all of the following factors, giving weight to each as it determines to be appropriate:

(a) The promptness, efficiency, and skill with which the


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administration was handled by the attorney.

(b) The responsibilities assumed by and the potential liabilities of the attorney.

(c) The nature and value of the assets that are affected by the decedent’s death.

(d) The benefits or detriments resulting to the estate or interested persons from the attorney’s services.

(e) The complexity or simplicity of the administration and the novelty of issues presented.

(f) The attorney’s participation in tax planning for the estate and the estate’s beneficiaries and tax return preparation, review, or approval.

(g) The nature of the probate, nonprobate, and exempt assets, the expenses of administration, the liabilities of the decedent, and the compensation paid to other professionals and fiduciaries.

(h) Any delay in payment of the compensation after the services were furnished.

(i) Any agreement relating to the attorney’s compensation and whether written disclosures were made to the personal representative in a timely manner under the circumstances pursuant to subsection (2).

(j) Any other relevant factors.

(6) If a separate written agreement regarding compensation exists between the attorney and the decedent, the attorney shall furnish a copy to the personal representative prior to commencement of employment, and, if employed, shall promptly file and serve a copy on all interested persons. ~~Neither~~ A separate agreement or ~~nor~~ a provision in the will suggesting or

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directing that the personal representative retain a specific attorney does not ~~will~~ obligate the personal representative to employ the attorney or obligate the attorney to accept the representation, but if the attorney who is a party to the agreement or who drafted the will is employed, the compensation paid shall not exceed the compensation provided in the agreement or in the will.

Section 2. Present paragraph (i) of subsection (6) of section 736.1007, Florida Statutes, is redesignated as paragraph (j), a new paragraph (i) is added to that subsection, and subsections (1), (2), (3), and (5) of that section are amended, to read:

736.1007 Trustee's attorney fees.—

(1)(a) Except as provided in paragraph (d), if the trustee of a revocable trust retains an attorney to render legal services in connection with the initial administration of the trust, the attorney is entitled to reasonable compensation for those legal services, payable from the assets of the trust, subject to s. 736.0802(10), without court order. The trustee and the attorney may agree to compensation that is determined in a manner or amount other than the manner or amount provided in this section. The agreement is not binding on a person who bears the impact of the compensation unless that person is a party to or otherwise consents to be bound by the agreement. The agreement may provide that the trustee is not individually liable for the attorney fees and costs.

(b) An attorney representing a trustee in the initial administration of the trust who intends to charge a fee based upon the schedule set forth in subsection (2) shall make the


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following disclosures in writing to the trustee:

1. There is not a mandatory statutory attorney fee for trust administration.

2. The attorney fee is not required to be based on the size of the trust, and the presumed reasonable fee provided in subsection (2) may not be appropriate in all trust administrations.

3. The fee is subject to negotiation between the trustee and the attorney.

4. The selection of the attorney is made at the discretion of the trustee, who is not required to select the attorney who prepared the trust.

5. The trustee shall be entitled to a summary of ordinary and extraordinary services rendered for the fees agreed upon at the conclusion of the representation. The summary shall be provided by counsel and shall consist of the total hours devoted to the representation or a detailed summary of the services performed during the representation.

(c) The attorney shall obtain the trustee's timely signature acknowledging the disclosures.

(d) If the attorney does not make the disclosures required by this section, the attorney may not be paid for legal services without prior court approval of the fees or the written consent of the trustee and all qualified beneficiaries.

(2) Unless otherwise agreed and subject to subsection (1), compensation based on the value of the trust assets immediately following the settlor's death and the income earned by the trust during initial administration at the rate of 75 percent of the schedule provided in s. 733.6171(3)(a)-(h) is presumed to be

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reasonable total compensation for ordinary services of all attorneys employed generally to advise a trustee concerning the trustee's duties in the initial trust administration.

(3) Subject to subsection (1), an attorney who is retained to render only limited and specifically defined legal services shall be compensated as provided in the retaining agreement. If the amount or method of determining compensation is not provided in the agreement, the attorney is entitled to a reasonable fee, taking into account the factors set forth in subsection (6).

(5) Subject to subsection (1), in addition to the attorney's fees for ordinary services, the attorney for the trustee shall be allowed further reasonable compensation for any extraordinary service. What constitutes an extraordinary service may vary depending on many factors, including the size and complexity of the trust. Extraordinary services may include, but are not limited to:

(a) Involvement in a trust contest, trust construction, a proceeding for determination of beneficiaries, a contested claim, elective share proceedings, apportionment of estate taxes, or other adversary proceedings or litigation by or against the trust.

(b) Representation of the trustee in an audit or any proceeding for adjustment, determination, or collection of any taxes.

(c) Tax advice on postmortem tax planning, including, but not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse QTIP election, allocation of GST exemption, qualification for



Internal Revenue Code ss. 303 and 6166 privileges, deduction of last illness expenses, distribution planning, asset basis considerations, throwback rules, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuation, handling employee benefit or retirement proceeds, prompt assessment request, or request for release from personal liability for payment of tax.

(d) Review of an estate tax return and preparation or review of other tax returns required to be filed by the trustee.

(e) Preparation of decedent's federal estate tax return. If this return is prepared by the attorney, a fee of one-half of 1 percent up to a value of $10 million and one-fourth of 1 percent on the value in excess of $10 million, of the gross estate as finally determined for federal estate tax purposes, is presumed to be reasonable compensation for the attorney for this service. These fees shall include services for routine audit of the return, not beyond the examining agent level, if required.

(f) Purchase, sale, lease, or encumbrance of real property by the trustee or involvement in zoning, land use, environmental, or other similar matters.

(g) Legal advice regarding carrying on of decedent's business or conducting other commercial activity by the trustee.

(h) Legal advice regarding claims for damage to the environment or related procedures.

(i) Legal advice regarding homestead status of trust real property or proceedings involving the status.

(j) Involvement in fiduciary, employee, or attorney compensation disputes.

(k) Considerations of special valuation of trust assets,

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including discounts for blockage, minority interests, lack of marketability, and environmental liability.

(6) Upon petition of any interested person in a proceeding to review the compensation paid or to be paid to the attorney for the trustee, the court may increase or decrease the compensation for ordinary services of the attorney for the trustee or award compensation for extraordinary services if the facts and circumstances of the particular administration warrant. In determining reasonable compensation, the court shall consider all of the following factors giving such weight to each as the court may determine to be appropriate:

(i) Any agreement relating to the attorney's compensation and whether written disclosures were made to the trustee in a timely manner under the circumstances pursuant to paragraph (1)(b).

Section 3. This act applies to initial estate and initial trust administrations commenced on or after October 1, 2021.

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 attorney compensation; amending s. 733.6171, F.S.; requiring an attorney representing a personal representative in an estate administration who intends to charge a certain fee to make specified written disclosures; requiring the attorney to obtain

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a certain signature; prohibiting an attorney who does not make such disclosures from being paid for legal services except in certain circumstances; providing that the complexity of an estate may be considered when determining what is an extraordinary service; requiring a court to consider certain agreements and written disclosures when determining reasonable compensation of an attorney upon petition of an interested person; amending s. 736.1007, F.S.; requiring an attorney representing a trustee in the initial administration of a trust who intends to charge a certain fee to make specified written disclosures; requiring the attorney to obtain a certain signature; prohibiting an attorney who does not make such disclosures from being paid for legal services except in certain circumstances; providing that the complexity of a trust may be considered when determining what is an extraordinary service; requiring a court to consider certain agreements and written disclosures when determining reasonable compensation of an attorney upon petition of an interested person; providing applicability; providing an effective date.

By the Committee on Judiciary; and Senator Bean

590-02877-21 2021954c1

A bill to be entitled

An act relating to attorney compensation; amending s. 733.6171, F.S.; requiring an attorney who accepts certain engagements to obtain a fee disclosure statement signed by the person responsible for administering an estate; requiring that such disclosure statement contain certain statements; deleting provisions relating to the determination of reasonable compensation for attorneys of personal representatives; deleting provisions relating to petitions to increase or decrease compensation for such attorneys; amending s. 736.1007, F.S.; deleting provisions relating to the determination of reasonable compensation for attorneys of trustees; deleting provisions relating to petitions to increase or decrease compensation for such attorneys; amending ss. 733.106 and 736.1005, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 733.6171, Florida Statutes, is amended to read:

733.6171 Compensation of attorney for the personal representative.—

(1) Attorneys for personal representatives are ~~shall be~~ entitled to reasonable compensation payable from the estate assets without court order. An attorney accepting an engagement to represent an estate in probate or other administration must

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obtain a fee disclosure statement signed by the person responsible for administering the estate. Such statement must specify all of the following:

(a) The attorney fee for representing the estate in probate matters is not set by law and is not required to be based on the size of the estate.

(b) The fee is subject to negotiation between the personal representative and the attorney.

(c) The selection of the attorney to represent the estate is at the discretion of the personal representative, and the personal representative is not required to select the attorney who drafted the will.

~~(2) The attorney, the personal representative, and persons bearing the impact of the compensation may agree to compensation determined in a different manner than provided in this section. Compensation may also be determined in a different manner than provided in this section if the manner is disclosed to the parties bearing the impact of the compensation and if no objection is made as provided for in the Florida Probate Rules.~~

~~(3) Compensation for ordinary services of attorneys in formal estate administration is presumed to be reasonable if based on the compensable value of the estate, which is the inventory value of the probate estate assets and the income earned by the estate during the administration as provided in the following schedule:~~

~~(a) One thousand five hundred dollars for estates having a value of $40,000 or less.~~

~~(b) An additional $750 for estates having a value of more than $40,000 and not exceeding $70,000.~~

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~~(c) An additional $750 for estates having a value of more than $70,000 and not exceeding $100,000.~~

~~(d) For estates having a value in excess of $100,000, at the rate of 3 percent on the next $900,000.~~

~~(e) At the rate of 2.5 percent for all above $1 million and not exceeding $3 million.~~

~~(f) At the rate of 2 percent for all above $3 million and not exceeding $5 million.~~

~~(g) At the rate of 1.5 percent for all above $5 million and not exceeding $10 million.~~

~~(h) At the rate of 1 percent for all above $10 million.~~

~~(4) In addition to fees for ordinary services, the attorney for the personal representative shall be allowed further reasonable compensation for any extraordinary service. What is an extraordinary service may vary depending on many factors, including the size of the estate. Extraordinary services may include, but are not limited to:~~

~~(a) Involvement in a will contest, will construction, a proceeding for determination of beneficiaries, a contested claim, elective share proceeding, apportionment of estate taxes, or any adversarial proceeding or litigation by or against the estate.~~

~~(b) Representation of the personal representative in audit or any proceeding for adjustment, determination, or collection of any taxes.~~

~~(c) Tax advice on postmortem tax planning, including, but not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse~~

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~~QTIP election, allocation of GST exemption, qualification for Internal Revenue Code ss. 6166 and 303 privileges, deduction of last illness expenses, fiscal year planning, distribution planning, asset basis considerations, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuation, handling employee benefit or retirement proceeds, prompt assessment request, or request for release of personal liability for payment of tax.~~

~~(d) Review of estate tax return and preparation or review of other tax returns required to be filed by the personal representative.~~

~~(e) Preparation of the estate's federal estate tax return. If this return is prepared by the attorney, a fee of one-half of 1 percent up to a value of $10 million and one-fourth of 1 percent on the value in excess of $10 million of the gross estate as finally determined for federal estate tax purposes, is presumed to be reasonable compensation for the attorney for this service. These fees shall include services for routine audit of the return, not beyond the examining agent level, if required.~~

~~(f) Purchase, sale, lease, or encumbrance of real property by the personal representative or involvement in zoning, land use, environmental, or other similar matters.~~

~~(g) Legal advice regarding carrying on of the decedent's business or conducting other commercial activity by the personal representative.~~

~~(h) Legal advice regarding claims for damage to the environment or related procedures.~~

~~(i) Legal advice regarding homestead status of real property or proceedings involving that status and services~~

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~~related to protected homestead.~~

~~(j) Involvement in fiduciary, employee, or attorney compensation disputes.~~

~~(k) Proceedings involving ancillary administration of assets not subject to administration in this state.~~

~~(5) Upon petition of any interested person, the court may increase or decrease the compensation for ordinary services of the attorney or award compensation for extraordinary services if the facts and circumstances of the particular administration warrant. In determining reasonable compensation, the court shall consider all of the following factors, giving weight to each as it determines to be appropriate:~~

~~(a) The promptness, efficiency, and skill with which the administration was handled by the attorney.~~

~~(b) The responsibilities assumed by and the potential liabilities of the attorney.~~

~~(c) The nature and value of the assets that are affected by the decedent's death.~~

~~(d) The benefits or detriments resulting to the estate or interested persons from the attorney's services.~~

~~(e) The complexity or simplicity of the administration and the novelty of issues presented.~~

~~(f) The attorney's participation in tax planning for the estate and the estate's beneficiaries and tax return preparation, review, or approval.~~

~~(g) The nature of the probate, nonprobate, and exempt assets, the expenses of administration, the liabilities of the decedent, and the compensation paid to other professionals and fiduciaries.~~

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~~(h) Any delay in payment of the compensation after the services were furnished.~~

~~(i) Any other relevant factors.~~

(2)~~(6)~~ If a separate written agreement regarding compensation exists between the attorney and the decedent, the attorney must ~~shall~~ furnish a copy to the personal representative prior to commencement of employment, and, if employed, must ~~shall~~ promptly file and serve a copy on all interested persons. ~~Neither~~ A separate agreement or ~~nor~~ a provision in the will suggesting or directing that the personal representative retain a specific attorney does not ~~will~~ obligate the personal representative to employ the attorney or obligate the attorney to accept the representation, but if the attorney who is a party to the agreement or who drafted the will is employed, the compensation paid may ~~shall~~ not exceed the compensation provided in the agreement or in the will.

Section 2. Section 736.1007, Florida Statutes, is amended to read:

736.1007 Trustee's attorney fees.—

(1) If the trustee of a revocable trust retains an attorney to render legal services in connection with the initial administration of the trust, the attorney is entitled to reasonable compensation for those legal services, payable from the assets of the trust, subject to s. 736.0802(10), without court order. ~~The trustee and the attorney may agree to compensation that is determined in a manner or amount other than the manner or amount provided in this section. The agreement is not binding on a person who bears the impact of the compensation unless that person is a party to or otherwise consents to be~~

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~~bound by the agreement. The agreement may provide that the trustee is not individually liable for the attorney fees and costs.~~

~~(2) Unless otherwise agreed, compensation based on the value of the trust assets immediately following the settlor's death and the income earned by the trust during initial administration at the rate of 75 percent of the schedule provided in s. 733.6171(3)(a)-(h) is presumed to be reasonable total compensation for ordinary services of all attorneys employed generally to advise a trustee concerning the trustee's duties in initial trust administration.~~

~~(3) An attorney who is retained to render only limited and specifically defined legal services shall be compensated as provided in the retaining agreement. If the amount or method of determining compensation is not provided in the agreement, the attorney is entitled to a reasonable fee, taking into account the factors set forth in subsection (6).~~

~~(4) Ordinary services of the attorney in an initial trust administration include legal advice and representation concerning the trustee's duties relating to:~~

~~(a) Review of the trust instrument and each amendment for legal sufficiency and interpretation.~~

~~(b) Implementation of substitution of the successor trustee.~~

~~(c) Persons who must or should be served with required notices and the method and timing of such service.~~

~~(d) The obligation of a successor to require a former trustee to provide an accounting.~~

~~(e) The trustee's duty to protect, insure, and manage trust~~

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~~assets and the trustee's liability relating to these duties.~~

~~(f) The trustee's duty regarding investments imposed by the prudent investor rule.~~

~~(g) The trustee's obligation to inform and account to beneficiaries and the method of satisfaction of such obligations, the liability of the trust and trustee to the settlor's creditors, and the advisability or necessity for probate proceedings to bar creditors.~~

~~(h) Contributions due to the personal representative of the settlor's estate for payment of expenses of administration and obligations of the settlor's estate.~~

~~(i) Identifying tax returns required to be filed by the trustee, the trustee's liability for payment of taxes, and the due date of returns.~~

~~(j) Filing a nontaxable affidavit, if not filed by a personal representative.~~

~~(k) Order of payment of expenses of administration of the trust and order and priority of abatement of trust distributions.~~

~~(l) Distribution of income or principal to beneficiaries or funding of further trusts provided in the governing instrument.~~

~~(m) Preparation of any legal documents required to effect distribution.~~

~~(n) Fiduciary duties, avoidance of self-dealing, conflicts of interest, duty of impartiality, and obligations to beneficiaries.~~

~~(o) If there is a conflict of interest between a trustee who is a beneficiary and other beneficiaries of the trust, advice to the trustee on limitations of certain authority of the~~

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~~trustee regarding discretionary distributions or exercise of certain powers and alternatives for appointment of an independent trustee and appropriate procedures.~~

~~(p) Procedures for the trustee's discharge from liability for administration of the trust on termination or resignation.~~

~~(5) In addition to the attorney's fees for ordinary services, the attorney for the trustee shall be allowed further reasonable compensation for any extraordinary service. What constitutes an extraordinary service may vary depending on many factors, including the size of the trust. Extraordinary services may include, but are not limited to:~~

~~(a) Involvement in a trust contest, trust construction, a proceeding for determination of beneficiaries, a contested claim, elective share proceedings, apportionment of estate taxes, or other adversary proceedings or litigation by or against the trust.~~

~~(b) Representation of the trustee in an audit or any proceeding for adjustment, determination, or collection of any taxes.~~

~~(c) Tax advice on postmortem tax planning, including, but not limited to, disclaimer, renunciation of fiduciary commission, alternate valuation date, allocation of administrative expenses between tax returns, the QTIP or reverse QTIP election, allocation of GST exemption, qualification for Internal Revenue Code ss. 303 and 6166 privileges, deduction of last illness expenses, distribution planning, asset basis considerations, throwback rules, handling income or deductions in respect of a decedent, valuation discounts, special use and other valuation, handling employee benefit or retirement

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~~proceeds, prompt assessment request, or request for release from personal liability for payment of tax.~~

~~(d) Review of an estate tax return and preparation or review of other tax returns required to be filed by the trustee.~~

~~(e) Preparation of decedent's federal estate tax return. If this return is prepared by the attorney, a fee of one-half of 1 percent up to a value of $10 million and one-fourth of 1 percent on the value in excess of $10 million, of the gross estate as finally determined for federal estate tax purposes, is presumed to be reasonable compensation for the attorney for this service. These fees shall include services for routine audit of the return, not beyond the examining agent level, if required.~~

~~(f) Purchase, sale, lease, or encumbrance of real property by the trustee or involvement in zoning, land use, environmental, or other similar matters.~~

~~(g) Legal advice regarding carrying on of decedent's business or conducting other commercial activity by the trustee.~~

~~(h) Legal advice regarding claims for damage to the environment or related procedures.~~

~~(i) Legal advice regarding homestead status of trust real property or proceedings involving the status.~~

~~(j) Involvement in fiduciary, employee, or attorney compensation disputes.~~

~~(k) Considerations of special valuation of trust assets, including discounts for blockage, minority interests, lack of marketability, and environmental liability.~~

~~(6) Upon petition of any interested person in a proceeding to review the compensation paid or to be paid to the attorney for the trustee, the court may increase or decrease the

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~~compensation for ordinary services of the attorney for the trustee or award compensation for extraordinary services if the facts and circumstances of the particular administration warrant. In determining reasonable compensation, the court shall consider all of the following factors giving such weight to each as the court may determine to be appropriate:~~

~~(a) The promptness, efficiency, and skill with which the initial administration was handled by the attorney.~~

~~(b) The responsibilities assumed by, and potential liabilities of, the attorney.~~

~~(c) The nature and value of the assets that are affected by the decedent's death.~~

~~(d) The benefits or detriments resulting to the trust or the trust's beneficiaries from the attorney's services.~~

~~(e) The complexity or simplicity of the administration and the novelty of issues presented.~~

~~(f) The attorney's participation in tax planning for the estate, the trust, and the trust's beneficiaries and tax return preparation or review and approval.~~

~~(g) The nature of the trust assets, the expenses of administration, and the claims payable by the trust and the compensation paid to other professionals and fiduciaries.~~

~~(h) Any delay in payment of the compensation after the services were furnished.~~

~~(i) Any other relevant factors.~~

(2) ~~(7)~~ If a separate written agreement regarding compensation exists between the attorney and the settlor, the attorney must ~~shall~~ furnish a copy to the trustee prior to commencement of employment and, if employed, must ~~shall~~ promptly

file and serve a copy on all interested persons. A separate agreement or a provision in the trust suggesting or directing the trustee to retain a specific attorney does not obligate the trustee to employ the attorney or obligate the attorney to accept the representation but, if the attorney who is a party to the agreement or who drafted the trust is employed, the compensation paid may ~~shall~~ not exceed the compensation provided in the agreement.

~~(8) As used in this section, the term "initial trust administration" means administration of a revocable trust during the period that begins with the death of the settlor and ends on the final distribution of trust assets outright or to continuing trusts created under the trust agreement but, if an estate tax return is required, not until after issuance of an estate tax closing letter or other evidence of termination of the estate tax proceeding. This initial period is not intended to include continued regular administration of the trust.~~

Section 3. Subsection (4) of section 733.106, Florida Statutes, is amended to read:

733.106 Costs and attorney fees.—

(4) If costs and attorney fees are to be paid from the estate under this section, ~~s. 733.6171(4),~~ s. 736.1005, or s. 736.1006, the court, in its discretion, may direct from what part of the estate they shall be paid.

(a) If the court directs an assessment against a person's part of the estate and such part is insufficient to fully pay the assessment, the court may direct payment from the person's part of a trust, if any, if a pour-over will is involved and the matter is interrelated with the trust.

(b) All or any part of the costs and attorney fees to be paid from the estate may be assessed against one or more persons' part of the estate in such proportions as the court finds to be just and proper.

(c) In the exercise of its discretion, the court may consider the following factors:

1. The relative impact of an assessment on the estimated value of each person's part of the estate.

2. The amount of costs and attorney fees to be assessed against a person's part of the estate.

3. The extent to which a person whose part of the estate is to be assessed, individually or through counsel, actively participated in the proceeding.

4. The potential benefit or detriment to a person's part of the estate expected from the outcome of the proceeding.

5. The relative strength or weakness of the merits of the claims, defenses, or objections, if any, asserted by a person whose part of the estate is to be assessed.

6. Whether a person whose part of the estate is to be assessed was a prevailing party with respect to one or more claims, defenses, or objections.

7. Whether a person whose part of the estate is to be assessed unjustly caused an increase in the amount of costs and attorney fees incurred by the personal representative or another interested person in connection with the proceeding.

8. Any other relevant fact, circumstance, or equity.

(d) The court may assess a person's part of the estate without finding that the person engaged in bad faith, wrongdoing, or frivolousness.

Section 4. Subsection (2) of section 736.1005, Florida Statutes, is amended to read:

736.1005 Attorney fees for services to the trust.—

(2) If attorney fees are to be paid from the trust under subsection (1)~~, s. 736.1007(5)(a),~~ or s. 733.106(4)(a), the court, in its discretion, may direct from what part of the trust the fees shall be paid.

(a) All or any part of the attorney fees to be paid from the trust may be assessed against one or more persons' part of the trust in such proportions as the court finds to be just and proper.

(b) In the exercise of its discretion, the court may consider the following factors:

1. The relative impact of an assessment on the estimated value of each person's part of the trust.

2. The amount of attorney fees to be assessed against a person's part of the trust.

3. The extent to which a person whose part of the trust is to be assessed, individually or through counsel, actively participated in the proceeding.

4. The potential benefit or detriment to a person's part of the trust expected from the outcome of the proceeding.

5. The relative strength or weakness of the merits of the claims, defenses, or objections, if any, asserted by a person whose part of the trust is to be assessed.

6. Whether a person whose part of the trust is to be assessed was a prevailing party with respect to one or more claims, defenses, or objections.

7. Whether a person whose part of the trust is to be

assessed unjustly caused an increase in the amount of attorney fees incurred by the trustee or another person in connection with the proceeding.

8. Any other relevant fact, circumstance, or equity.

(c) The court may assess a person's part of the trust without finding that the person engaged in bad faith, wrongdoing, or frivolousness.

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

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 24, 2021

I respectfully request that **Senate Bill #954**, relating to Attorney Compensation, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Problem being solved: The fee schedule and presumption of reasonable that exists in our statutes involving probate work and estates has led to fees higher than what they might be otherwise. This bill seeks to address the issue through a free-market approach.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

SB 954

The following Appearance Records were not read into the record by the Chair

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

SB 954
Bill Number (if applicable)

387788
Amendment Barcode (if applicable)

Topic Attorney Compensation

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste 201
Street

Phone 850-509-8020

Tallahassee FL 32301
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.

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

S-001 (10/14/14)

Duplicate

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/20/21
Meeting Date

954
Bill Number (if applicable)

387788
Amendment Barcode (if applicable)

Topic Attorney Compensation (Rules Committee)

Name Martha Edenfield

Job Title

Address 106 E. College Ave #1200
Street

Phone 950-999-4100

Tallahassee FL 32301
City *State* *Zip*

Email medenfield@deanmead.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Real Property, Probate and Trust Law Section of the Florida Bar

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.	Candelaria	McVaney	GO	**Fav/CS**
2.	Candelaria	Phelps	RC	**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 personnel[1] 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 employees[3] collectively negotiate with their public employer[4] 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 compromised 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.

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

162200

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

447.301 Public employees' rights; organization and representation.—

(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. If an employee must complete a form to request revocation of membership from the employee organization, the form may not require a reason for the employee's decision to revoke his or her membership.

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.—

(1) Except as authorized in subsection (2), an employee



organization that has been certified as a bargaining agent may not have its dues and uniform assessments deducted by the employer from the salaries of those employees in the unit. Public employees may pay their dues and uniform assessments directly to the employee organization that has been certified as their bargaining agent.

(2)(a) An ~~Any~~ employee organization that ~~which~~ has been certified as a bargaining agent to 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 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. 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.

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

(c) 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.

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

Section 3. Section 447.305, Florida Statutes, is amended to read:



447.305 Registration of employee organization.—

(1) Every employee organization seeking to become a certified bargaining agent for public employees shall register with the commission pursuant to the procedures set forth in s. 120.60 prior to requesting recognition by a public employer for purposes of collective bargaining and prior to submitting a petition to the commission requesting certification as an exclusive bargaining agent. Further, if such employee organization is not registered, it may not participate in a representation hearing, participate in a representation election, or be certified as an exclusive bargaining agent. The application for registration required by this section shall be under oath and in such form as the commission may prescribe and shall include:

(a) The name and address of the organization and of any parent organization or organization with which it is affiliated.

(b) The names and addresses of the principal officers and all representatives of the organization.

(c) The amount of the initiation fee and of the monthly dues which members must pay.

(d) The current annual financial statement of the organization.

(e) 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.

(f) 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.

(g) A copy of the current constitution and bylaws of the employee organization.

(h) 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 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.

(2) A registration granted to an employee organization pursuant to the provisions of this section shall run for 1 year from the date of issuance. A registration shall be renewed annually by filing application for renewal under oath with the commission, which application shall reflect any changes in the information provided to the commission in conjunction with the employee organization's preceding application for registration or previous renewal, whichever is applicable. Each application for renewal of registration shall include a current annual financial report, signed by its president and treasurer or corresponding principal officers, containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year and in such categories as the commission may prescribe:

(a) Assets and liabilities at the beginning and end of the fiscal year;

(b) Receipts of any kind and the sources thereof;

(c) Salary, allowances, and other direct or indirect



disbursements, including reimbursed expenses, to each officer and also to each employee who, during such fiscal year, received more than $10,000 in the aggregate from such employee organization and any other employee organization affiliated with it or with which it is affiliated or which is affiliated with the same national or international employee organization;

(d) Direct and indirect loans made to any officer, employee, or member which aggregated more than $250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment; and

(e) Direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment.

(3) In addition to subsection (2), an employee organization that has been certified as the bargaining agent for public employees 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 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.

(c) Documentation provided by the public employer verifying the information provided in paragraphs (a) and (b).

(d) Documentation provided by the public employer verifying that it was provided a copy of the employee organization's



application for renewal of registration.

(4) An application for renewal of registration is incomplete and is not eligible for consideration by the commission if it does not include all of the information and documentation required in subsection (3). The commission shall notify the employee organization if the application is incomplete. An incomplete application must be dismissed if the required information and documentation are not provided within 10 days after the employee organization receives such notice.

(5) 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 subsection (2). The certification of an employee organization that does not comply with this section is revoked.

(6) The public employer or a bargaining unit employee may challenge an employee organization’s application for renewal of registration if the public employer or employee 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.

(7) Subsections (3) through (6) do not apply to an employee



organization that has been certified as the bargaining agent representing 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.

(8) ~~(3)~~ A registration fee shall accompany each application filed with the commission. The amount charged for an application for registration or renewal of registration shall not exceed $15. All such money collected by the commission shall be deposited in the General Revenue Fund.

(9) ~~(4)~~ Every employee organization shall keep accurate accounts of its income and expenses, which accounts shall be open for inspection at all reasonable times by any member of the organization or by the commission.

Section 4. Paragraph (c) of subsection (4) of section 1012.2315, Florida Statutes, is amended to read:

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.~~

~~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.~~

~~2. 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 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.~~

Section 5. 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 6. 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:



162200

A bill to be entitled

An act relating to employee organizations; 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; providing that a revocation form may not require an employee to state a reason for the revocation; providing nonapplicability with respect to employee organizations that represent certain employees; amending s. 447.303, F.S.; prohibiting an employee organization from having its dues and uniform assessments deducted and collected by an employer; allowing public employees to pay their dues and uniform assessments directly to the employee organization; providing that an employee organization that represents certain employees has the right to have its dues and uniform assessments deducted and collected by the employer; amending s. 447.305, F.S.; revising the information and documentation required to be included in an application for renewal of registration of an employee organization; providing that an application for renewal is incomplete and is not eligible for consideration by the Public Employees Relations Commission in certain instances; requiring the commission to notify an employee organization if its application is incomplete; providing that an



incomplete application must be dismissed in certain instances; requiring certain employee organizations to recertify as bargaining agents; allowing an employer or a bargaining unit employee to challenge an employee organization's application for renewal of registration; requiring the commission or its designated agent to review the application; requiring the commission to revoke the registration and certification in certain instances; providing for nonapplicability with respect to employee organizations that represent certain employees; amending s. 1012.2315, F.S.; removing duplicative provisions; 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.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Stargel) recommended the following:

Senate Substitute for Amendment (162200) (with title amendment)

Delete everything after the enacting clause and insert:

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

447.301 Public employees' rights; organization and representation.—

(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. If an employee must complete a form to request revocation of membership from the employee organization, the form may not require a reason for the employee's decision to revoke his or her membership.

3. This paragraph does not apply to members of an employee organization that has been certified as a bargaining agent to 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.—

(1) Except as authorized in subsection (2), an employee organization that has been certified as a bargaining agent may not have its dues and uniform assessments deducted by the employer from the salaries of those employees in the unit. Public employees may pay their dues and uniform assessments directly to the employee organization that has been certified as their bargaining agent.

(2)(a) An ~~Any~~ employee organization that ~~which~~ has been certified as a bargaining agent to 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 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. 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.

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

(c) 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.

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



Section 3. Section 447.305, Florida Statutes, is amended to read:

447.305 Registration of employee organization.—

(1) Every employee organization seeking to become a certified bargaining agent for public employees shall register with the commission pursuant to the procedures set forth in s. 120.60 prior to requesting recognition by a public employer for purposes of collective bargaining and prior to submitting a petition to the commission requesting certification as an exclusive bargaining agent. Further, if such employee organization is not registered, it may not participate in a representation hearing, participate in a representation election, or be certified as an exclusive bargaining agent. The application for registration required by this section shall be under oath and in such form as the commission may prescribe and shall include:

(a) The name and address of the organization and of any parent organization or organization with which it is affiliated.

(b) The names and addresses of the principal officers and all representatives of the organization.

(c) The amount of the initiation fee and of the monthly dues which members must pay.

(d) The current annual financial statement of the organization.

(e) 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.

(f) 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.

(g) A copy of the current constitution and bylaws of the employee organization.

(h) 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 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.

(2) A registration granted to an employee organization pursuant to the provisions of this section shall run for 1 year from the date of issuance. A registration shall be renewed annually by filing application for renewal under oath with the commission, which application shall reflect any changes in the information provided to the commission in conjunction with the employee organization's preceding application for registration or previous renewal, whichever is applicable. Each application for renewal of registration shall include a current annual financial report, signed by its president and treasurer or corresponding principal officers, containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year and in such categories as the commission may prescribe:

(a) Assets and liabilities at the beginning and end of the fiscal year;



(b) Receipts of any kind and the sources thereof;

(c) Salary, allowances, and other direct or indirect disbursements, including reimbursed expenses, to each officer and also to each employee who, during such fiscal year, received more than $10,000 in the aggregate from such employee organization and any other employee organization affiliated with it or with which it is affiliated or which is affiliated with the same national or international employee organization;

(d) Direct and indirect loans made to any officer, employee, or member which aggregated more than $250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment; and

(e) Direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment.

(3) In addition to subsection (2), an employee organization that has been certified as the bargaining agent for public employees 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 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.

(c) Documentation provided by the public employer verifying the information provided in paragraphs (a) and (b).



(d) Documentation provided by the public employer verifying that it was provided a copy of the employee organization's application for renewal of registration.

(4) An application for renewal of registration is incomplete and is not eligible for consideration by the commission if it does not include all of the information and documentation required in subsection (3). The commission shall notify the employee organization if the application is incomplete. An incomplete application must be dismissed if the required information and documentation are not provided within 10 days after the employee organization receives such notice.

(5) 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 subsection (2). The certification of an employee organization that does not comply with this section is revoked.

(6) The public employer or a bargaining unit employee may challenge an employee organization's application for renewal of registration if the public employer or employee 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


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certification of the employee organization.

(7) Subsections (3) through (6) do not apply to an employee organization that has been certified as a bargaining agent representing 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.

(8) ~~(3)~~ A registration fee shall accompany each application filed with the commission. The amount charged for an application for registration or renewal of registration shall not exceed $15. All such money collected by the commission shall be deposited in the General Revenue Fund.

(9) ~~(4)~~ Every employee organization shall keep accurate accounts of its income and expenses, which accounts shall be open for inspection at all reasonable times by any member of the organization or by the commission.

Section 4. Paragraph (c) of subsection (4) of section 1012.2315, Florida Statutes, is amended to read:

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.~~

~~b. The number of employees who are represented by the employee organization, specifying the number of members who pay~~



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~~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 membership 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.~~

Section 5. 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 6. 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 employee organizations; 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; providing that a revocation form may not require an employee to state a reason for the revocation; providing nonapplicability with respect to employee organizations that represent certain employees; amending s. 447.303, F.S.; prohibiting an employee organization from having its dues and uniform assessments deducted and collected by an employer; allowing public employees to pay their dues and uniform assessments directly to the employee organization; providing that an employee organization that represents certain employees has the right to have its dues and uniform assessments deducted and collected by the employer; amending s. 447.305, F.S.; revising the information and documentation required to be included in an application for renewal of registration of an employee organization; providing that an application for renewal is incomplete and is not eligible for consideration by the Public Employees Relations Commission in certain instances; requiring


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the commission to notify an employee organization if its application is incomplete; providing that an incomplete application must be dismissed in certain instances; requiring certain employee organizations to recertify as bargaining agents; allowing an employer or a bargaining unit employee to challenge an employee organization's application for renewal of registration; requiring the commission or its designated agent to review the application; requiring the commission to revoke the registration and certification in certain instances; providing for nonapplicability with respect to employee organizations that represent certain employees; amending s. 1012.2315, F.S.; removing duplicative provisions; 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.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Stargel) recommended the following:

Senate Amendment to Substitute Amendment (225434)

Delete lines 155 - 156

and insert:

(c) Documentation provided by a certified public accountant employed or retained by the employee organization which verifies the information provided in paragraphs (a) and (b).

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

585-02994-21 20211014c1

A bill to be entitled

An act relating to employee organizations; amending s. 1012.2315, F.S.; revising the information that employee organizations that have been certified as the bargaining agent for a unit of instructional personnel must report in applications for renewal of registration; requiring certain employee organizations to petition the Public Employees Relations Commission for recertification; authorizing the commission to conduct an investigation to confirm the validity of certain information; authorizing the commission to require an employee organization to submit certain information as part of such investigation; providing for the revocation of an employee organization's certification if it fails to meet certain requirements; requiring the commission to adopt rules; prohibiting an employee organization from having its dues and uniform assessments deducted and collected by a district school board; requiring certain instructional personnel to sign and submit a specified form to the employee organization by a certain date and annually thereafter before the employee organization may collect dues or uniform assessments for the upcoming school year; creating s. 1012.8552, F.S.; 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; providing that

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

585-02994-21 20211014c1

certain applications are incomplete; providing procedures for incomplete applications; requiring certain employee organizations to petition the commission for recertification; authorizing a Florida College System institution to challenge an employee organization's application; requiring the commission to review a challenged application and revoke an employee organization's registration and certification in certain circumstances; creating s. 1012.916, F.S.; 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; providing that certain applications are incomplete; providing procedures for incomplete applications; requiring certain employee organizations to petition the commission for recertification; authorizing a State University System institution to challenge an employee organization's application; requiring the commission to review a challenged application and revoke an employee organization's registration and certification in certain circumstances; providing an effective date.

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

Section 1. Paragraph (c) of subsection (4) of section 1012.2315, Florida Statutes, is amended, and paragraphs (d) and (e) are added to that subsection, to read:

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

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

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

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

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

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.

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

Section 3. Section 1012.916, Florida Statutes, is created to read:

1012.916 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 State University 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 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 State University 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.

Section 4. 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/HB 1055
INTRODUCER:	Government Operations Subcommittee and Representative Gregory and others
SUBJECT:	Pub. Rec./Trade Secrets
DATE:	April 19, 2021
REVISED:	04/20/21

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	Phelps	RC	**Fav/1 amendment**

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

CS/HB 1055 creates s. 688.01, F.S., within the Uniform Trade Secret Act, to make a trade secret held by an agency confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The bill defines the term "trade secret" to have the same meaning as in s. 688.002, F.S.[1] The bill requires a person submitting a record to an agency to which a claim of trade secret attaches to provide notice of trade secret at the time such record is submitted. Failure to provide notice constitutes a waiver of any claim to trade secret.

The bill requires a person who submits a record claimed to contain a trade secret to an agency to mark the record clearly with the words "trade secret" and to submit with the record a notice verifying, under penalty of perjury, that the record contains a trade secret.

The bill authorizes an agency to disclose a trade secret, together with the notice of trade secret, to an officer or employee of another agency or governmental entity whose use of the trade secret is within the scope of his or her lawful duties and responsibilities.

[1] Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that: (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The bill specifies that an agency employee who, while acting in good faith and in the performance of his or her duties, releases records pursuant to the process created by the bill is not liable, civilly or criminally, for release of the records.

The bill provides for repeal of the exemption on October 2, 2026, unless reviewed and saved form repeal through reenactment by the Legislature.

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.[2] 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.[3]

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.[4] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[5] 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.[6]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[7] The Florida Supreme Court has interpreted the statutory definition of

[2] Fla. Const. art. I, s. 24(a).
[3] *Id*.
[4] *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).
[5] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[6] 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."
[7] 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."

"public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[8]

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.[9] A violation of the Public Records Act may result in civil or criminal liability.[10]

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.[11] 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.[12]

General exemptions from the public records requirements are contained in the Public Records Act.[13] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[14]

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.[15] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[16]

Open Government Sunset Review Act

The Open Government Sunset Review Act[17] (the Act) prescribes a legislative review process for newly created or substantially amended[18] public records or open meetings exemptions, with specified exceptions.[19] It requires the automatic repeal of such exemption on October 2nd of the

[8] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[9] Section 119.07(1)(a), F.S.
[10] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[11] FLA. CONST. art. I, s. 24(c).
[12] *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).
[13] *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).
[14] *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).
[15] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[16] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[17] Section 119.15, F.S.
[18] 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.
[19] 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.

fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[20]

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.[21]

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;[22]
- 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;[23] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[24]

The Act also requires specified questions to be considered during the review process.[25] 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.[26] 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.[27]

[20] Section 119.15(3), F.S.
[21] Section 119.15(6)(b), F.S.
[22] Section 119.15(6)(b)1., F.S.
[23] Section 119.15(6)(b)2., F.S.
[24] Section 119.15(6)(b)3., F.S.
[25] 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?

[26] *See generally* s. 119.15, F.S.
[27] Section 119.15(7), F.S.

Trade Secrets

Florida law contains a variety of provisions that make trade secret information exempt or confidential and exempt[28] from public record requirements. Many of these exemptions cite to one of the two primary statutory definitions of trade secret rather than providing a definition within the exemption provision.

Section 812.081(1)(c), F.S., defines trade secret as

> the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be: (1) Secret; (2) Of value; (3) For use or in use by the business; and (4) Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.

The Florida Uniform Trade Secrets Act (FUTSA) defines "trade secret" to mean:

> information, including a formula, pattern, compilation, program, device, method, technique, or process that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[29]

[28] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

[29] Section 688.002(4), F.S.

The following are examples of public record exemptions for trade secrets:

Exemptions citing "trade secret" as defined in 688.002, F.S.	**Exemptions citing "trade secret" as defined in 812.081, F.S.**
Section 624.4212, F.S., makes filings and related documents held by the Office of Insurance Regulation that include proprietary business information, including trade secrets, confidential and exempt.	Section 119.071(1)(f), F.S., exempts data processing software that is a trade secret and obtained by an agency under a licensing agreement that prohibits its disclosure, and agency produced data processing software that is sensitive.
Section 215.4401, F.S., makes proprietary confidential business information, including trade secrets, held by the State Board of Administration confidential and exempt.	Section 125.0104(9)(d)3, F.S., exempts trade secret information held by a county tourism promotion agency.
Section 395.3035, F.S., makes records and information including trade secrets of any hospital subject to chapter 119 and s. 24(a), Art. I of the State Constitution confidential and exempt.	Section 331.326, F.S., makes trade secrets held by Space Florida or discussed by Space Florida's board confidential and exempt.
Section 288.9627, F.S., makes proprietary confidential business information, including trade secrets, provided to the Institute for Commercialization of Florida Technology confidential and exempt.	Section 815.04(3), F.S., makes data, programs, and supporting documentation that is a trade secret and resides or exist internal or external to a computer, computer system, computer network, or electronic device and that is held by an agency confidential and exempt.

In *SePRO v. Fla. Dep't of Envtl. Prot.,* 839 So. 2d 781, (Fla. 1st DCA 2003), the First District Court of Appeal considered the definition of trade secret in s. 688.022(4), F.S., as well as s. 812.081, F.S., in determining whether certain information was exempt from the Public Records Act. Under *SePRO,* to preserve a claim that information submitted to a public entity contains trade secret, a trade secret owner must label the trade secret as such or otherwise specify in writing to the entity that the information is exempt.[30]

Many statutory exemptions incorporate a *SePRO* notice process for a trade secret owner submitting trade secret information to an agency. Additionally, some provisions impose certain duties on an agency receiving trade secret information. For example, s. 381.83, F.S., requires a person submitting trade secret information to the Department of Health (DOH) to request that it be kept confidential and inform the DOH of the basis for the claim of trade secret. This section further authorizes the DOH, upon notice and opportunity for hearing, to determine whether the information, or portions thereof, claimed to be trade secret is or is not a trade secret.

Section 624.4213, F.S., requires a party submitting trade secret information to the Office of Insurance Regulation (OIR) or the Department of Financial Services (DFS) to provide notice, to

[30] *SePRO*, 839 So. 2d at 784.

mark each page of a trade secret document as such, and submit an affidavit meeting specific requirements. Additionally, this section provides that failure to provide a notice of trade secret constitutes a waiver of trade secret.[31] If the OIR or the DFS receives a public records request for a document or information that is marked and certified as a trade secret, the agency must promptly notify the person that certified the document as a trade secret. The person has 30 days following receipt of such notice to file an action in circuit court seeking a determination whether the document in question contains trade secrets and an order barring public disclosure of the document. The failure to file an action within 30 days constitutes a waiver of any claim of confidentiality, and the office or department shall release the document as requested.

Document Verification via Section 92.525, Florida Statutes

When it is authorized or required by law, by rule of an administrative agency, or by a rule or order of court that a document be verified by a person, the verification may be accomplished either:

- Under oath or affirmation taken or administered by or before a court officer, notary public, or other officer authorized by s. 92.50, F.S., to administer oaths;[32]
- Under oath or affirmation taken or administered by a law enforcement or correctional officer authorized under s. 117.10, F.S., to administer oaths;[33]or
- By the signing of a written declaration.[34]

A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration. Where a verification on information or belief is permitted by law, the words "to the best of my knowledge and belief" may be added.[35] The written declaration must be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.[36]The verification requirement means that the document must be signed or executed by a person and that the person must state under oath or affirm that the facts or matters stated or recited in the document are true, or words of that import or effect.[37]

III. Effect of Proposed Changes:

Section 1 creates s. 688.01, F.S., to make a trade secret held by an agency confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

This section applies to any “agency” as defined in s. 119.011, F.S.[38]

[31] Section 624.4213(1), F.S.
[32] Section 92.525(1)(a), F.S.
[33] Section 92.525(1)(b), F.S.
[34] Section 92.525(1)(c), F.S.
[35] Section 92.525(2), F.S.
[36] *Id*.
[37] Section 92.525(4)(c), F.S.
[38] Section 119.011(2), F.S., defines the term “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 chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of

The term "trade secret" is defined to have the same meaning as in s. 688.002, F.S. Section 688.002(4), F.S., defines a "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The bill requires a person who submits a record claimed to contain a trade secret to an agency also to submit at the same time a notice of trade secret. Failure to provide this notice to the agency constitutes a waiver of any claim by such a person that the record contains a trade secret. This section requires the notice to include the name, telephone number, and mailing address of the person claiming the record contains a trade secret. Such person is responsible for updating his or her contact information with the agency.

This section requires each page of a record or specific portion of a record that contains a trade secret must be clearly marked with the words "trade secret." When submitting a notice of trade secret to the agency, the submitting party must also verify to the agency, via a written declaration, in the manner provided in s. 92.525, F.S., the following:

> [...I have/my company has...] read the definition of a trade secret in s. 688.002, Florida Statutes, and [...I believe/my company believes...] the information contained in this record is a trade secret as defined in s. 688.002, Florida Statutes.
>
> [...I have/my company has...] taken measures to prevent the disclosure of the record or specific portion of the record claimed to be a trade secret to anyone other than those who have been selected to have access for limited purposes, and [...I intend/my company intends...] to continue to take such measures.
>
> The record or specific portion of the record claimed to be a trade secret is not, and has not been, reasonably obtainable without [...my/our...] consent by other persons by use of legitimate means.
>
> The record or specific portion of the record claimed to be a trade secret is not publicly available elsewhere.

The bill authorizes an agency to disclose a trade secret, together with the notice of trade secret, to an officer or employee of another agency or governmental entity whose use of the trade secret is within the scope of his or her lawful duties and responsibilities.

Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency

The bill specifies that an agency employee who, while acting in good faith and in the performance of his or her duties, releases records pursuant to the process created by the bill is not liable, civilly or criminally, for release of the records.

The bill provides for repeal of the exemption on October 2, 2026, unless reviewed and saved form repeal through reenactment by the Legislature.

Sections 2 and 3 amend ss. 688.001 and 668.006, F.S., respectively, to conform cross references.

Section 4 provides a public necessity statement as required by the Florida Constitution, specifying that the public record exemption is necessary to protect trade secret information created by an agency in furtherance of the agencies duties and responsibilities and that disclosure of such information would be detrimental to the effective and efficient operation of the agency. If the trade secret information were made available to the public, the agency could suffer great economic harm. In addition, the exemption is necessary to protect trade secret information provided to an agency by an individual or business and disclosure of such information would be detrimental to those businesses.

Section 5 provides the bill takes effect upon becoming a law.

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 state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

No Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for trade secrets held by an

agency. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

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 bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to creation of the public record exemption. In addition, agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 688.01.

This bill amends the following sections of the Florida Statutes: 688.001 and 688.006.

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:

Barcode 418456 by Rules on April 20, 2021:
The amendment (WITH TITLE AMENDMENT):

- Creates a general public records exemption for a trade secret held by an agency as defined in chapter 119, F.S.
- Defines the term "trade secret" to have the same meaning as in s. 688.002, F.S.,[39] part of the Uniform Trade Secrets Act.
- Authorizes an agency to disclose a trade secret to an officer or employee of another agency or governmental entity whose use of the trade secret is within the scope of his or her lawful duties and responsibilities.
- Provides that an agency employee who, while acting in good faith and in the performance of his or her duties, releases records pursuant to the process created by the bill is not liable, civilly or criminally, for release of the records.
- Provides for repeal of the exemption on October 2, 2026, unless reviewed and saved form repeal through reenactment by the Legislature.
- Provides a public necessity statement as required by the Florida Constitution, specifying that the public record exemption is necessary to protect trade secret information (i) created by an agency and (ii) submitted by an individual or business to an agency.

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

[39]Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that: (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

128754

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2021	.	
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	.	

The Committee on Rules (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 119.0715, Florida Statutes, is created to read:

119.0715 Trade secrets held by an agency.—

(1) "Trade secret" has the same meaning as in s. 688.002.

(2) PUBLIC RECORD EXEMPTION.—A trade secret held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

128754

(3) SUBMISSION OF TRADE SECRET TO AN AGENCY.—

(a) If a person who submits records to an agency claims that such submission contains a trade secret, such person shall submit to the agency a notice of trade secret at the time he or she submits such records to the agency. Failure to do so constitutes a waiver of any claim by such person that the record contains a trade secret. The notice must provide the name, telephone number, and mailing address of the person claiming the record contains a trade secret, and a specific description of the information contained in the record claimed to be a trade secret. Such person is responsible for updating his or her contact information with the agency.

(b) *Duty to Mark.*

1. Each page of a record or specific portion of a record that contains a trade secret must be clearly marked with the words "trade secret."

2. For voluminous records or records in electronic data format which prohibit or make page by page marking unduly burdensome, the initial page of such record must be clearly marked with the words "trade secret."

(c) When submitting a notice of trade secret to the agency, the submitting party must verify to the agency through a written declaration in the manner provided in s. 92.525 the following:

[...I have/my company has...] read the definition of a trade secret in s. 688.002, Florida Statutes, and [...I believe/my company believes...] the information contained in this record is a trade secret as defined in s. 688.002, Florida Statutes.

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[...I have/my company has...] taken measures to prevent the disclosure of the record or specific portion of the record claimed to be a trade secret to anyone other than those who have been selected to have access for limited purposes, and [...I intend/my company intends...] to continue to take such measures.

The record or specific portion of the record claimed to be a trade secret is not, and has not been, reasonably obtainable without [...my/our...] consent by other persons by use of legitimate means.

The record or specific portion of the record claimed to be a trade secret is not publicly available elsewhere.

(4) AGENCY ACCESS.—An agency may disclose a trade secret, together with the notice of trade secret, to an officer or employee of another agency or governmental entity whose use of the trade secret is within the scope of his or her lawful duties and responsibilities.

(5) LIABILITY.—An agency employee who, while acting in good faith and in the performance of his or her duties, releases a record containing a trade secret pursuant to this act is not liable, civilly or criminally, for such release.

(6) OPEN GOVERNMENT SUNSET REVIEW.—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 trade secrets held by an agency be made confidential and exempt from s. 119.07(1), Florida Statutes, and



s. 24(a), Article I of the State Constitution. The Legislature recognizes that an agency may create trade secret information in furtherance of the agency's duties and responsibilities and that disclosure of such information would be detrimental to the effective and efficient operation of the agency. If such trade secret information were made available to the public, the agency could suffer great economic harm. In addition, the Legislature recognizes that in many instances, individuals and businesses provide trade secret information for regulatory or other purposes to an agency and that disclosure of such information to competitors of those businesses would be detrimental to the businesses. Without the public record exemption, those entities would hesitate to cooperate with an agency, which would impair the effective and efficient administration of governmental functions. As such, the Legislature's intent is to protect trade secret information of a confidential nature that includes a formula, pattern, compilation, program, device, method, technique, or process used that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. Therefore, the Legislature finds that the need to protect trade secrets is sufficiently compelling to override this state's public policy of open government and that the protection of such information cannot be accomplished without this exemption.

Section 3. This act shall take effect upon becoming a law.

========== 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 public records; amending s. 119.011, F.S.; providing a definition for "trade secret"; creating s. 119.0715, F.S.; providing an exemption from public records requirements for a trade secret held by an agency; providing notice requirements; providing marking requirements; providing an exception to the marking requirements; providing an exception to the exemption; providing that an agency employee is not liable for the release of certain records; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

418456

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/21/2021	.	
Floor: 1/AD/2R	.	Floor: C
04/28/2021 10:56 AM	.	04/28/2021 08:47 PM
	.	

The Committee on Rules (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 119.0715, Florida Statutes, is created to read:

119.0715 Trade secrets held by an agency.—

(1) "Trade secret" has the same meaning as in s. 688.002.

(2) PUBLIC RECORD EXEMPTION.—A trade secret held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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(3) AGENCY ACCESS.—An agency may disclose a trade secret to an officer or employee of another agency or governmental entity whose use of the trade secret is within the scope of his or her lawful duties and responsibilities.

(4) LIABILITY.—An agency employee who, while acting in good faith and in the performance of his or her duties, releases a record containing a trade secret pursuant to this chapter is not liable, civilly or criminally, for such release.

(5) OPEN GOVERNMENT SUNSET REVIEW.—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 trade secrets held by an agency be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature recognizes that an agency may create trade secret information in furtherance of the agency's duties and responsibilities and that disclosure of such information would be detrimental to the effective and efficient operation of the agency. If such trade secret information were made available to the public, the agency could suffer great economic harm. In addition, the Legislature recognizes that in many instances, individuals and businesses provide trade secret information for regulatory or other purposes to an agency and that disclosure of such information to competitors of those businesses would be detrimental to the businesses. Without the public record exemption, those entities would hesitate to cooperate with an agency, which would impair

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the effective and efficient administration of governmental functions. As such, the Legislature's intent is to protect trade secret information of a confidential nature that includes a formula, pattern, compilation, program, device, method, technique, or process used that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. Therefore, the Legislature finds that the need to protect trade secrets is sufficiently compelling to override this state's public policy of open government and that the protection of such information cannot be accomplished without this exemption.

Section 3. This act shall take effect upon becoming a law.

========== 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 public records; creating s. 119.0715, F.S.; providing an exemption from public records requirements for a trade secret held by an agency; providing that an agency employee is not liable for the release of certain records; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

418456

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/21/2021	.	
Floor: 1/AD/2R	.	Floor: C
04/28/2021 10:56 AM	.	04/28/2021 08:47 PM
	.	

The Committee on Rules (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 119.0715, Florida Statutes, is created to read:

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(1) "Trade secret" has the same meaning as in s. 688.002.

(2) PUBLIC RECORD EXEMPTION.—A trade secret held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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(3) AGENCY ACCESS.—An agency may disclose a trade secret to an officer or employee of another agency or governmental entity whose use of the trade secret is within the scope of his or her lawful duties and responsibilities.

(4) LIABILITY.—An agency employee who, while acting in good faith and in the performance of his or her duties, releases a record containing a trade secret pursuant to this chapter is not liable, civilly or criminally, for such release.

(5) OPEN GOVERNMENT SUNSET REVIEW.—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 trade secrets held by an agency be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature recognizes that an agency may create trade secret information in furtherance of the agency's duties and responsibilities and that disclosure of such information would be detrimental to the effective and efficient operation of the agency. If such trade secret information were made available to the public, the agency could suffer great economic harm. In addition, the Legislature recognizes that in many instances, individuals and businesses provide trade secret information for regulatory or other purposes to an agency and that disclosure of such information to competitors of those businesses would be detrimental to the businesses. Without the public record exemption, those entities would hesitate to cooperate with an agency, which would impair

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the effective and efficient administration of governmental functions. As such, the Legislature's intent is to protect trade secret information of a confidential nature that includes a formula, pattern, compilation, program, device, method, technique, or process used that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. Therefore, the Legislature finds that the need to protect trade secrets is sufficiently compelling to override this state's public policy of open government and that the protection of such information cannot be accomplished without this exemption.

Section 3. This act shall take effect upon becoming a law.

========== 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 public records; creating s. 119.0715, F.S.; providing an exemption from public records requirements for a trade secret held by an agency; providing that an agency employee is not liable for the release of certain records; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

A bill to be entitled

An act relating to public records; creating s. 688.01, F.S.; providing definitions; providing an exemption from public records requirements for a trade secret held by an agency; providing notice requirements; providing an exception to the exemption; providing that an agency employee is not liable for the release of certain records; providing for future legislative review and repeal of the exemption; amending ss. 688.001 and 688.006, F.S.; conforming cross-references; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 688.01, Florida Statutes, is created to read:

688.01 Trade secret exemption from inspecting or copying public records.—

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

(a) "Agency" has the same meaning as in s. 119.011.

(b) "Trade secret" has the same meaning as in s. 688.002.

(2) PUBLIC RECORD EXEMPTION.—A trade secret held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

FLORIDA HOUSE OF REPRESENTATIVES

CS/HB 1055 2021

(3) SUBMISSION OF TRADE SECRET TO AN AGENCY.—

(a) If a person who submits records to an agency claims that such submission contains a trade secret, such person shall submit to the agency a notice of trade secret at the time he or she submits such records to the agency. Failure to do so constitutes a waiver of any claim by such person that the record contains a trade secret. The notice must provide the name, telephone number, and mailing address of the person claiming the record contains a trade secret. Such person is responsible for updating his or her contact information with the agency.

(b) Each page of a record or specific portion of a record that contains a trade secret must be clearly marked with the words "trade secret."

(c) When submitting a notice of trade secret to the agency, the submitting party must verify to the agency through a written declaration in the manner provided in s. 92.525 the following:

[...I have/my company has...] read the definition of a trade secret in s. 688.01, Florida Statutes, and [...I believe/my company believes...] the information contained in this record is a trade secret as defined in s. 688.01, Florida Statutes.

[...I have/my company has...] taken measures to prevent the disclosure of the record or specific portion of the record

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

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claimed to be a trade secret to anyone other than those who have been selected to have access for limited purposes, and [...I intend/my company intends...] to continue to take such measures.

The record or specific portion of the record claimed to be a trade secret is not, and has not been, reasonably obtainable without [...my/our...] consent by other persons by use of legitimate means.

The record or specific portion of the record claimed to be a trade secret is not publicly available elsewhere.

(4) AGENCY ACCESS.—An agency may disclose a trade secret, together with the notice of trade secret, to an officer or employee of another agency or governmental entity whose use of the trade secret is within the scope of his or her lawful duties and responsibilities.

(5) LIABILITY.—An agency employee who, while acting in good faith and in the performance of his or her duties, releases a record containing a trade secret pursuant to this act is not liable, civilly or criminally, for such release.

(6) OPEN GOVERNMENT SUNSET REVIEW.—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. Section 688.001, Florida Statutes, is amended

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

FLORIDA HOUSE OF REPRESENTATIVES

CS/HB 1055 2021

to read:

688.001 Short title.—Sections 688.001-688.01 ~~Sections 688.001-688.009~~ may be cited as the "Uniform Trade Secrets Act."

Section 3. Section 688.006, Florida Statutes, is amended to read:

688.006 Preservation of secrecy.—In an action under ss. 688.001-688.01 ~~ss. 688.001-688.009~~, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

Section 4. The Legislature finds that it is a public necessity that trade secrets held by an agency be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature recognizes that an agency may create trade secret information in furtherance of the agency's duties and responsibilities and that disclosure of such information would be detrimental to the effective and efficient operation of the agency. If such trade secret information were made available to the public, the agency could suffer great economic harm. In addition, the Legislature recognizes that in many instances, individuals and businesses provide trade secret information for regulatory or other

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purposes to an agency and that disclosure of such information to competitors of those businesses would be detrimental to the businesses. Without the public record exemption, those entities would hesitate to cooperate with an agency, which would impair the effective and efficient administration of governmental functions. As such, the Legislature's intent is to protect trade secret information of a confidential nature that includes a formula, pattern, compilation, program, device, method, technique, or process used that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. Therefore, the Legislature finds that the need to protect trade secrets is sufficiently compelling to override this state's public policy of open government and that the protection of such information cannot be accomplished without this exemption.

Section 5. 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/CS/SB 1076
INTRODUCER:	Rules Committee; Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senator Brodeur
SUBJECT:	Public Works Projects
DATE:	April 20, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	**Fav/CS**
2.	Hackett	Ryon	CA	**Fav/CS**
3.	Ponder	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1076 prohibits a state college, county, municipality, school district, or other political subdivision of the state from using a local ordinance or regulation to prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier from participating in the bidding process based upon:

- Maintaining an office or place of business within a particular local jurisdiction;
- Hiring employees or subcontractors from within a particular local jurisdiction; or
- Prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

Current law provides that for a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon: (1) the contractor's maintaining an office or place of business within a particular local jurisdiction; (2) the contractor's hiring employees or subcontractors from within a particular local jurisdiction; or (3) the contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

The bill removes the 50 percent or more threshold. It also removes the local preference prohibition in favor of a prohibition against a local ordinance or regulation that prevents the participation of specified entities in the bidding process based on certain criteria (see above).

With the removal of the 50 percent or more threshold, the new prohibition in the bill applies to all solicitations that will be paid for with any state-appropriated funds.

The bill amends the definition of the term "public works project" to remove the 50 percent or more cost threshold and to provide that the term applies to activities exceeding $1 million in value which are paid for with any state-appropriated funds. Additionally, this definition is amended to remove the limitation to appropriations at the time of the competitive solicitation.

The bill prohibits the state or any political subdivision that contracts for public works projects, except as required by federal or state law, from preventing a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based on the geographic location of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier submitting a bid on a public works project or the residence of an employee of such contractor, subcontractor, or material supplier or carrier.

The bill also prohibits the state or any political subdivision from prohibiting a contractor, subcontractor, or material supplier or carrier who is qualified, licensed, or certified by state or local law – from receiving information about public works opportunities.

The bill provides that these restrictions do not apply to projects funded by the Charter County and Regional Transportation System Surtax.

The bill may have an indeterminate fiscal impact on local governments.

The bill takes effect on July 1, 2021.

II. Present Situation:

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., authorizes the Department of Management Services to adopt rules for bidding on building construction contracts. These rules must establish:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.[1]

[1] Section 255.29, F.S.; *See* Rule 60D-5.001 et seq., Florida Administrative Code.

State contracts for construction projects that are projected to cost in excess of $200,000 must be competitively bid.[2] A county, municipality, special district as defined in chapter 189, or other political subdivision seeking to construct or improve a public building must competitively award to an appropriately licensed contractor each project that is estimated to cost more than $300,000.[3]

Section 255.0525(1), F.S., requires the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than $200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening. If the cost of the construction project is projected to exceed $500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening, and at least once in a newspaper of general circulation in the county where the project is located at least 30 days prior to the bid opening.[4] Similar publishing requirements apply to counties, municipalities, and political subdivisions under s. 255.0525(2), F.S.

Florida Preference to State Residents

Florida law provides a preference for the employment of state residents in construction contracts funded by state funds.[5] Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have "substantially equal qualifications"[6] to those of non-residents.[7] A contract for construction funded by local funds may contain such a provision but is not required to be included.[8] A contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.[9]

Prohibited Local Government Preferences

Section 255.0991, F.S., prohibits a local ordinance or regulation from giving preference to a local contractor in certain circumstances. For a competitive solicitation[10] for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:

- The contractor's maintaining an office or place of business within a particular local jurisdiction;
- The contractor's hiring employees or subcontractors from within a particular local jurisdiction; or

[2] Section 255.0525, F.S.,
[3] Section 255.20, F.S.
[4] Section 255.0525(1), F.S.
[5] Section 255.099(1), F.S.
[6] Section 255.099(1)(a), F.S., defines the term "substantially equal qualifications" to mean the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.
[7] Section 255.099(1), F.S.
[8] *Id.*
[9] Section 255.099(1)(b), F.S.
[10] Section 255.248(2), F.S., defines "competitive solicitation" to mean an invitation to bid, a request for proposals, or an invitation to negotiate.

- The contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.[11]

When 50 percent or more of the costs will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision must disclose in the solicitation document the amount of such funds or the percentage of such funds as compared to the anticipated total cost of the construction services.[12] If less than 50 percent of the costs for the construction services will be funded from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision is not prevented from awarding a contract to a contractor in accordance with applicable state laws or local ordinances or regulations.[13]

Public Works Projects

In 2017, the Legislature created s. 255.0992, F.S., addressing limitations with respect to public works contracts - except for contracts issued by the Department of Transportation (DOT) under ch. 337, F.S.[14] This section defines the terms "political subdivision" and "public works project." A political subdivision is defined to mean:

> [A] separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works.

The term "public works project" means:

> [A]n activity of which 50 percent or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

Except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not require a contractor, subcontractor, or material supplier or carrier engaged in the project to:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;

[11] Section 255.0991(2), F.S.
[12] Section 255.0991(3), F.S.
[13] Section 255.0991(4), F.S.
[14] Chapter 2017-113, L.O.F.

- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.[15]

The state or any political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier able to perform such work who is qualified, licensed, or certified as required by state law to perform such work from submitting a bid on the public works project.[16] This provision does not apply to vendors listed on the convicted and discriminatory vendor list.

Federal Labor and Wage Laws

The National Labor Relations Act of 1935[17] and the Labor Management Relations Act of 1947[18] constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

The Fair Labor Standards Act (FLSA or act) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.[19] A state may set the rate higher than the federal minimum, but not lower.[20] The act also requires employers to pay time and a half to their employees for overtime hours worked,[21] and establishes standards for recordkeeping[22] and child labor.[23] Over 135 million workers are covered under the act;[24] most, but not all, jobs are covered by the FLSA. In addition, some jobs covered by the act are considered "exempt" from the FLSA overtime requirements.[25]

On February 12, 2014, President Obama signed Executive Order 13658, which establishes a minimum wage for certain federal contractors.[26] The Executive Order requires parties who contract with the federal government to pay workers performing work on or in connection with covered federal contracts at least $10.10 per hour beginning January 1, 2015. Beginning

[15] Section 255.0992(2)(a), F.S.
[16] Section 255.099(2)(b), F.S.
[17] 29 U.S.C. ss. 151-169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).
[18] 29 U.S.C. ss. 141-197 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).
[19] 29 U.S.C. s. 206 .
[20] 29 U.S.C. s. 218(a).
[21] 29 U.S.C. s. 207(a)(1).
[22] 29 U.S.C. s. 211.
[23] 29 U.S.C. s. 212.
[24] United States Department of Labor, *Wage and Hour Division: Resources for Workers*, available at http://www.dol.gov/whd/workers.htm (last visited February 22, 2021).
[25] 29 U.S.C. s. 213; United States Department of Labor, *Fact Sheet #14: Coverage Under the Fair Labor Standards Act (FLSA)*, www.dol.gov/whd/regs/compliance/whdfs14.pdf (last visited February 22, 2021).
[26] 30 Exec. Order 13658, 79 Fed. Reg. 9851 (Feb. 12, 2014), available at http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors (last visited February 22, 2021).

January 1, 2016, and annually thereafter, such workers must be paid an amount determined by the Secretary of Labor in accordance with the Executive Order. The order stated that "[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs."[27] The Executive Order hourly minimum wage in effect from January 1, 2021, through December 31, 2021, is $10.95.[28]

The Davis-Bacon Act[29] applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.[30] Contractors and subcontractors subject to the Davis-Bacon Act are required to pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area, as determined by the Department of Labor.[31] The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts.[32] Many federal laws that authorize federal assistance for construction through grants, loans, loan guarantees, and insurance are referred to as Davis-Bacon "related Acts."[33] The "related Acts" include provisions that require the prevailing wage provisions of the Davis-Bacon Act to apply to most federally assisted construction.[34]

State Labor and Wage Regulations

The State Constitution protects the right for workers to collectively bargain, including public sector employees.[35] It provides, in pertinent part, that "[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged." The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.[36]

In addition, the State Constitution provides that "[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to

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[27] *Id.*

[28] 85 Fed. Reg. 53850 (August 31, 2020), available at https://www.federalregister.gov/documents/2020/08/31/2020-19037/establishing-a-minimum-wage-for-contractors-notice-of-rate-change-in-effect-as-of-january-1-2021 (last visited February 22, 2021).

[29] Davis-Bacon Act, 40 U.S.C. s. 3141-3148.

[30] United States Department of Labor, *Wage and Hour Division: Davis-Bacon and Related Acts*, available at http://www.dol.gov/whd/govcontracts/dbra.htm (last visited February 24, 2021).

[31] *Id.*

[32] *Id.*

[33] United States Department of Labor, *Fact Sheet #66: The Davis-Bacon and Related Acts (DBRA)*, http://www.dol.gov/whd/regs/compliance/whdfs66.pdf (last visited February 24, 2021). Examples of "related Acts" are the Federal Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.

[34] *Id.*

[35] Art. I, s. 6, FLA. CONST.

[36] *See Hillsborough Cnty. Gov't Emps. Ass'n, Inc. v. Hillsborough Cnty. Aviation Auth*., 522 So. 2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm'n*, 410 So. 2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass'n v. Legislature of Fla.*, 269 So. 2d 684 (Fla. 1972).

rely on taxpayer-funded public services in order to avoid economic hardship."[37] Employers must pay employees no less than the minimum wage for all hours worked in Florida.[38] The current state minimum wage is $8.65 per hour,[39] which is higher than the federal rate.[40]

Department of Transportation Construction Projects

Chapter 337, F.S., governs contracting by DOT. Any person who wants to bid for a construction contract in excess of $250,000 must be certified by DOT as qualified.[41] Certification is also required to bid on road, bridge, or public transportation construction projects of more than $250,000.[42] The purpose of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders "with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification."[43]

Home Rule

Counties

A county without a charter has such power of self-government as provided by general[44] or special law, and may enact county ordinances not inconsistent with general law.[45] Counties operating under county charters have all the powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.[46] General law authorizes counties "the power to carry on county government"[47] and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."[48]

Municipalities

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,[49] acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.[50] Chapter 166, F.S.,

[37] Art. X, s. 24(a), FLA. CONST.
[38] Art. X, s. 24(c), FLA. CONST.
[39] Department of Economic Opportunity, *Display Posters and Required Notices*, https://floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2021-minimum-wage/poster-fl-minimum-wage-2021-english.pdf?sfvrsn=74a4bb0_2 (last visited February 2, 2021).
[40] The federal minimum wage is $7.25 per hour. For more information about federal minimum wage provisions, *see* http://www.dol.gov/whd/minimumwage.htm (last visited February 24, 2021).
[41] Section 337.14(1), F.S.
[42] Section 337.14(2), F.S.
[43] Section 337.14(1), F.S.
[44] Chapter 125, Part I, F.S.
[45] FLA. CONST. art. VIII, s. 1(f).
[46] FLA. CONST. art. VIII, s. 1(g).
[47] Section 125.01(1), F.S.
[48] Section 125.01(1)(w), F.S.
[49] Section 166.011, F.S.
[50] Florida House of Representatives, Publications, The Local Government Formation Manual 2018-2020, p. 16, *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Se

provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the Florida Constitution, applicable laws, and county charters.[51]

Section 166.221, F.S., authorizes municipalities to levy 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.

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. Where state preemption applies, it precludes a local government from exercising authority in that particular area.[52] Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[53] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[54] In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.[55,56]

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.[57] Implied preemption is actually a decision by a court to create preemption in the absence of an explicit legislative directive.[58] 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.[59] Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.[60]

Charter County and Regional Transportation System Surtax

Any county that has adopted a home rule charter, any county government that has consolidated with one or more municipalities, and any county that is within or under an interlocal agreement with a regional transportation or transit authority created under ch. 343 or 349, F.S., may levy a transportation system sales surtax at a rate of up to 1 percent, subject to approval by a majority

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ssion=2020&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual.pdf.

[51] Section 166.021(4), F.S.

[52] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

[53] *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).

[54] *Mulligan*, 934 So.2d at 1243.

[55] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

[56] 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.

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

[58] *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

[59] *Id*.

[60] *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

vote of the county's electorate or a charter amendment approved by a majority vote of the county's electorate.[61]

Based on these criteria, 31 counties are eligible to levy the surtax, and, only two of the 31 eligible counties (Duval and Miami-Dade) levy this surtax, each at a rate of 0.5 percent.

Generally, the surtax proceeds are used for the development, construction, operation, and maintenance of fixed guideway rapid transit systems; bus systems; on-demand transportation services; and roads and bridges.[62] Counties eligible to levy the surtax may also use up to 25 percent of the proceeds for nontransit purposes.[63]

The Charter County and Regional Transportation System Surtax is estimated to produce $554.8 million in Fiscal Year 2020-2021.[64]

III. Effect of Proposed Changes:

Section 1 amends s. 255.0991, F.S., to prohibit a state college, county, municipality, school district, or other political subdivision of the state - for any competitive solicitation for construction services paid for with state-appropriated funds- from using a local ordinance or regulation to prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier from participating in the bidding process based upon:

- Maintaining an office or place of business within a particular local jurisdiction;
- Hiring employees or subcontractors from within a particular local jurisdiction; or
- Prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

Section 2 amends s. 255.0992, F.S., to modify the definition of the term "public works project" to remove the 50 percent or more cost threshold and provide that the term applies to activities valued over $1 million which is paid for with any state-appropriated funds. Additionally, this definition is amended to remove the limitation to appropriations at the time of the competitive solicitation.

This section prohibits the state or any political subdivision that contracts for public works projects, except as required by federal or state law, from preventing a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based on the geographic location of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier submitting a bid on a public works project or the residence of an employee of such contractor, subcontractor, or material supplier or carrier.

The state or any political subdivision may not prohibit a contractor, subcontractor, or material supplier or carrier who is qualified, licensed, or certified – by state or local law – to perform such work, from receiving information about public works opportunities.

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[61] Section 212.055(1), F.S. *See also* Florida Revenue Estimating Conference, *2020 Florida Tax Handbook*, p. 233, *available at* http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2020.pdf (last visited April 1, 2021).
[62] Section 212.055(1)(d), F.S.
[63] Section 212.055(1)(d)3., F.S.
[64] *See supra* note 61.

The bill provides that the restrictions in s. 255.0992, F.S., do not apply to a project funded by the Charter County and Regional Transportation System Surtax, as provided in s. 212.055(1), F.S.

Section 3 provides that the bill takes effect on 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 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.

B. Private Sector Impact:

The bill may have a positive indeterminate impact to the extent fewer contractors, subcontractors, or material suppliers or carriers will no longer be required to meet certain pre-bid requirements.

C. Government Sector Impact:

The bill will have an indeterminate fiscal impact on local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 255.0991 and 255.0992 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/CS by Rules on April 20, 2021:
The CS:

- Provides that specified entities may not use a local ordinance or regulation to prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier from participating in the bidding process for certain construction services.
- Revises the definition of the term "public works project" to provide that the pre-bid prohibitions apply to activities that exceed $1 million in value instead of $300,000.
- Revises the prohibition regarding geographic location to specify that certain entities that contract for a public works project may not prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier from participating in the bidding process based on the geographic location of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier submitting a bid on a public works project or of the residence of an employee of such contractor, subcontractor, or material supplier or carrier.
- Provides that a contractor, subcontractor, or material supplier or carrier engaged in a public works project may not be required to train employees from a designated, or single source.

CS/CS by Community Affairs on March 30, 2021:
The underlying bill prohibited local governments from providing certain preferences in competitive solicitations. The CS reframes this provision to prohibit a local government from imposing certain penalties during the bidding process based on the same factors.

The CS also provides that the provisions of the bill do not apply to projects valued at $300,000 or less, those projects wholly funded with locally-appropriated funds, or projects funded by the Charter County and Regional Transportation System Surtax.

CS by Governmental Oversight and Accountability on March 10, 2021:
The CS removes unnecessary language and provides that specified entities may offer incentives or award point preferences – except as otherwise prohibited - to a contractor in the bidding process so long as acceptance of any such incentive or preference does not impose any fine, penalty, or other sanction on a contractor.

B. Amendments:

None.

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

579782

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
	.	
	.	
	.	

The Committee on Rules (Brodeur) recommended the following:

Senate Amendment

Delete lines 21 - 69

and insert:

services paid for with any ~~in which 50 percent or more of the cost will be paid from~~ state-appropriated funds ~~which have been appropriated at the time of the competitive solicitation~~, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation to prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier from


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participating in the bidding process ~~that provides a preference~~ based upon:

(a) ~~The contractor's~~ Maintaining an office or place of business within a particular local jurisdiction;

(b) ~~The contractor's~~ Hiring employees or subcontractors from within a particular local jurisdiction; or

(c) ~~The contractor's~~ Prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

Section 2. Paragraph (b) of subsection (1) and subsection (2) of section 255.0992, Florida Statutes, are amended to read:

255.0992 Public works projects; prohibited governmental actions.—

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

(b) "Public works project" means an activity exceeding $1 million in value which is ~~of which 50 percent or more of the cost will be~~ paid for with any ~~from~~ state-appropriated funds ~~that were appropriated at the time of the competitive solicitation~~ and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

(2) ~~(a)~~ Except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not take the following actions:

(a) Prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier from

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participating in the bidding process based on the geographic location of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier submitting a bid on a public works project or of the residence of an employee of such contractor, subcontractor, or material supplier or carrier.

(b) Require that a contractor, subcontractor, or material supplier or carrier engaged in a public works ~~such~~ project:

1. Pay employees a predetermined amount of wages or prescribe any wage rate;

2. Provide employees a specified type, amount, or rate of employee benefits;

3. Control, Limit, or expand staffing; or

4. Recruit, train, or hire employees from a designated, restricted, or single source.

688082

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2021	.	
	.	
	.	
	.	

The Committee on Rules (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Between lines 83 and 84
insert:

Section 3. Paragraph (e) is added to subsection (1) of section 403.928, Florida Statutes, to read:

403.928 Assessment of water resources and conservation lands.—The Office of Economic and Demographic Research shall conduct an annual assessment of Florida's water resources and conservation lands.

(1) WATER RESOURCES.—The assessment must include all of the


688082

following:

(e) Beginning with the assessment due January 1, 2022, an analysis of the expenditures necessary to repair, replace, and expand water-related infrastructure. As part of this analysis, the office shall periodically survey public and private utilities.

Section 4. Section 403.9301, Florida Statutes, is created to read:

403.9301 Wastewater services projections.—

(1) The Legislature intends for each county, municipality, or special district providing wastewater services to create a 20-year needs analysis.

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

(a) "Domestic wastewater" has the same meaning as provided in s. 367.021.

(b) "Facility" means any equipment, structure, or other property, including sewerage systems and treatment works, used to provide wastewater services.

(c) "Treatment works" has the same meaning as provided in s. 403.031(11).

(d) "Wastewater services" means service to a sewerage system, as defined in s. 403.031(9), or service to domestic wastewater treatment works.

(3) By June 30, 2022, and every 5 years thereafter, each county, municipality, or special district providing wastewater services shall develop a needs analysis for its jurisdiction over the subsequent 20 years. In projecting such needs, each local government shall include the following:

(a) A detailed description of the facilities used to


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provide wastewater services.

(b) The number of current and projected connections and residents served, calculated in 5-year increments.

(c) The current and projected service area for wastewater services.

(d) The current and projected cost of providing wastewater services, calculated in 5-year increments.

(e) The estimated remaining useful life of each facility or its major components.

(f) The most recent 5-year history of annual contributions to, expenditures from, and balances of any capital account for maintenance or expansion of any facility or its major components.

(g) The local government's plan to fund the maintenance or expansion of any facility or its major components. The plan must include historical and estimated future revenues and expenditures with an evaluation of how the local government expects to close any projected funding gap.

(4) Upon completing the requirements of subsection (3), each municipality or special district shall submit its needs analysis, as well as the methodology and any supporting data necessary to interpret the results, to the county within which the largest portion of its service area is located. Each county shall compile all analyses submitted to it under this subsection into a single document and include its own analysis in the document. The county shall file the compiled document with the coordinator of the Office of Economic and Demographic Research no later than July 31, 2022, and every 5 years thereafter.

(5) The Office of Economic and Demographic Research shall

688082

evaluate the compiled documents from the counties for the purpose of developing a statewide analysis for inclusion in the assessment due January 1, 2023, pursuant to s. 403.928.

Section 5. Section 403.9302, Florida Statutes, is created to read:

403.9302 Stormwater management projections.—

(1) The Legislature intends for each county, municipality, or special district providing a stormwater management program or stormwater management system to create a 20-year needs analysis.

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

(a) "Facility" means any equipment, structure, or other property, including conveyance systems, used or useful in connection with providing a stormwater management program or stormwater management system.

(b) "Stormwater management program" has the same meaning as provided in s. 403.031(15).

(c) "Stormwater management system" has the same meaning as provided in s. 403.031(16).

(3) By June 30, 2022, and every 5 years thereafter, each county, municipality, or special district providing a stormwater management program or stormwater management system shall develop a needs analysis for its jurisdiction over the subsequent 20 years. In projecting such needs, each local government shall include the following:

(a) A detailed description of the stormwater management program or stormwater management system and its facilities and projects.

(b) The number of current and projected residents served, calculated in 5-year increments.

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(c) The current and projected service area for the stormwater management program or stormwater management system.

(d) The current and projected cost of providing services, calculated in 5-year increments.

(e) The estimated remaining useful life of each facility or its major components.

(f) The most recent 5-year history of annual contributions to, expenditures from, and balances of any capital account for maintenance or expansion of any facility or its major components.

(g) The local government's plan to fund the maintenance or expansion of any facility or its major components. The plan must include historical and estimated future revenues and expenditures with an evaluation of how the local government expects to close any projected funding gap.

(4) Upon completing the requirements of subsection (3), each municipality or special district shall submit its needs analysis, as well as the methodology and any supporting data necessary to interpret the results, to the county within which the largest portion of its stormwater management program or stormwater management system is located. Each county shall compile all analyses submitted to it under this subsection into a single document and include its own analysis in the document. The county shall file the compiled document with the Secretary of Environmental Protection and the coordinator of the Office of Economic and Demographic Research no later than July 31, 2022, and every 5 years thereafter.

(5) The Office of Economic and Demographic Research shall evaluate the compiled documents from the counties for the


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purpose of developing a statewide analysis for inclusion in the assessment due January 1, 2023, pursuant to s. 403.928.

Section 6. The Legislature determines and declares that this act fulfills an important state interest.

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

And the title is amended as follows:

Delete line 12

and insert:

applicability; amending s. 403.928, F.S.; requiring the Office of Economic and Demographic Research to include an analysis of certain expenditures in its annual assessment; creating s. 403.9301, F.S.; providing legislative intent; defining terms; requiring counties, municipalities, and special districts that provide wastewater services to develop a needs analysis that includes certain information by a specified date; requiring municipalities and special districts to submit such analyses to a specified county; requiring the county to file a compiled document with the coordinator of the Office of Economic and Demographic Research by a specified date and periodically thereafter; requiring the office to evaluate the document and include an analysis in its annual assessment; creating s. 403.9302, F.S.; providing legislative intent; defining terms; requiring counties, municipalities, and special districts that provide stormwater management to develop a needs analysis that includes certain

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information by a specified date; requiring municipalities and special districts to submit such analyses to a specified county; requiring the county to file a compiled document with the Secretary of Environmental Protection and the coordinator of the Office of Economic and Demographic Research by a specified date and periodically thereafter; requiring the office to evaluate the document and include an analysis in its annual assessment; providing a determination and declaration of important state interest; providing an effective date.

By the Committees on Community Affairs; and Governmental Oversight and Accountability; and Senator Brodeur

578-03608-21 20211076c2

A bill to be entitled

An act relating to public works projects; amending s. 255.0991, F.S.; revising a prohibition relating to any solicitation for construction services paid for with state-appropriated funds; amending s. 255.0992, F.S.; revising the definition of the term "public works project"; prohibiting the state or any political subdivision that contracts for a public works project from taking specified action against certain entities that are engaged in a public works project or have submitted a bid for such a project; providing applicability; providing an effective date.

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

Section 1. Subsection (2) of section 255.0991, Florida Statutes, is amended to read:

255.0991 Contracts for construction services; prohibited local government preferences.—

(2) For any ~~a~~ competitive solicitation for construction services paid for with ~~in which 50 percent or more of the cost will be paid from~~ state-appropriated funds ~~which have been appropriated at the time of the competitive solicitation~~, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that imposes a penalty ~~provides a preference~~ based upon:

(a) The contractor's maintaining an office or place of business within a particular local jurisdiction;

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

578-03608-21 20211076c2

(b) The contractor's hiring employees or subcontractors from within a particular local jurisdiction; or

(c) The contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

Section 2. Paragraph (b) of subsection (1) and subsection (2) of section 255.0992, Florida Statutes, are amended to read:

255.0992 Public works projects; prohibited governmental actions.—

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

(b) "Public works project" means an activity exceeding $300,000 in value which is ~~of which 50 percent or more of the cost will be~~ paid for with any ~~from~~ state-appropriated funds ~~that were appropriated at the time of the competitive solicitation~~ and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

(2) ~~(a)~~ Except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not take the following actions:

(a) Impose a penalty during the bidding process based on the geographic location of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier submitting a bid on a public works project or the residences of employees of such contractor, subcontractor, or material supplier or carrier.

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

(b) Require that a contractor, subcontractor, or material supplier or carrier engaged in a public works ~~such~~ project:

1. Pay employees a predetermined amount of wages or prescribe any wage rate;

2. Provide employees a specified type, amount, or rate of employee benefits;

3. Control, limit, or expand staffing; ~~or~~

4. Recruit~~, train,~~ or hire employees from a designated, restricted, or single source; or

5. Train employees in designated programs with a restricted curriculum or from a single source.

(c)~~(b) The state or any political subdivision that contracts for a public works project may not~~ Prohibit any contractor, subcontractor, or material supplier or carrier able to perform such work which ~~who~~ is qualified, licensed, or certified as required by state or local law to perform such work from receiving information about public works opportunities or from submitting a bid on the public works project. This paragraph does not apply to vendors listed under ss. 287.133 and 287.134.

This section does not apply to a program authorized by s. 212.055(1) which is approved by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.

Section 3. This act shall take effect July 1, 2021.

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 31, 2021

I respectfully request that **Senate Bill 1076**, relating to **Public Works Projects**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Jason Brodeur

Senator Jason Brodeur
Florida Senate, District 9

File signed original with committee office

S-009 (03/2004)

Amendment

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

1076
Bill Number (if applicable)

579782
Amendment Barcode (if applicable)

Topic Public Works Projects

Name Carol Bowen

Job Title Chief Lobbyist - ABC of Florida

Address 3730 Coconut Creek Parkway, Ste 200
Street

Phone (954) 465-1684

Coconut Creek, FL 33066
City *State* *Zip*

Email cbowen@abcoffl.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.

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

4/20/21
Meeting Date

SB 2076
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic LOCAL HIRING

Name REV DR RUSSELL MEYER

Job Title EXEC DIR

Address 1308 WINDSOR PL
Street

Phone 8137633610

JAX FL 32205
City State Zip

Email rmeyer@floridachurches.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing COUNCIL OF FLORIDA CHURCHES

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)

4/20/21
Meeting Date

1076
Bill Number (if applicable)

Topic Public Works

Amendment Barcode (if applicable)

Name James Ingle

Job Title Electrician

Address 3509 NW 22nd Dr
Street

Phone 901-483-4800

Gainesville FL 32605
City *State* *Zip*

Email JwcwIg@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SCIF

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)

4/20/2021
Meeting Date

SB 1076
Bill Number (if applicable)

Topic Preemption of Local Hiring

Amendment Barcode (if applicable)

Name Lakey Love

Job Title

Address 1571 Melvin Street
Street

Phone 850-345-0018

Tallahassee FL 32301
City *State* *Zip*

Email lakey@lovejustwork.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Tallahassee Community Action Committee

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)

4/2021
Meeting Date

SB 1076
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Chief Lobbyist - ABC of FL

Address 3730 Coconut Creek Parkway, Ste 200
Street

Phone (954) 405-6811

Coconut Creek, FL 33066
City *State* *Zip*

Email cbowen@abcsouthflorida.com

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

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

Representing Associated Builders and Contractors of Florida

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

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-20-21 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1076

Meeting Date *Bill Number (if applicable)*

Topic PUBLIC WORKS *Amendment Barcode (if applicable)*

Name KARI HEBRANK

Job Title

Address 215 S. MONROE ST Phone 566-7824

Street

TALLAHASSEE FL 32301 Email KHebrank@cmtfirm.com

City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information Waive Speaking: [ ] In Support [ ] Against

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

Representing FP - NATIONAL UTILITY CONTRACTORS OF FL

Appearing at request of Chair: [ ] Yes [X] No Lobbyist registered with Legislature: [X] Yes [ ] No

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

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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)

4/20
Meeting Date

SB 1076
Bill Number (if applicable)

Topic Public works

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Job Title

Address 135 S. Monroe
Street

Phone 224-6926

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

4/20/21
Meeting Date

1076
Bill Number (if applicable)

Topic Preemption of Jack Hinn

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title

Address 126 N. Mills
Street

Phone

Orlando FL 32803
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)

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THE FLORIDA SENATE

APPEARANCE RECORD

April 20, 2021
Meeting Date

1076
Bill Number (if applicable)

Topic _____
Amendment Barcode (if applicable)

Name Leighanne Boone

Job Title _____

Address 300 S. Duval St.
Street

Phone _____

Tallahassee | FL | 32301
City | *State* | *Zip*

Email Leighanne.Boone@gmail.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

APPEARANCE RECORD

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

4/20/21
Meeting Date

1076
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Randall King

Job Title President

Address 5621 Harney Rd
Street

Phone 863-581-7630

Tampa FL 33527
City *State* *Zip*

Email RandallKing@IBEW915.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Gulf Coast Building Trades Council

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)

4/20/21
Meeting Date

1076
Bill Number (if applicable)

Topic Public Works Project

Amendment Barcode (if applicable)

Name Mike Kell

Job Title

Address 1707 Shannon St
Street

Phone 813-325-0611

Plant City FL 33563
City *State* *Zip*

Email Skyhook485@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/2021
Meeting Date

1076 (1076)
Bill Number (if applicable)

Topic Public Works

Amendment Barcode (if applicable)

Name Shawn McDonnell

Job Title Electrician

Address 3312 April Lane
Street

Phone 727-492-3555

Palm Harbor FL 34684
City *State* *Zip*

Email spmc13.mail@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

4-20-2021
Meeting Date

SB 1076
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Public Works

Name Jim Jurecko

Job Title Operating Engineer

Address 1404 S. Bay Villa Pl. #5
Street
Tampa, FL 33629
City *State* *Zip*

Phone 407-346-3525

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.20.21
Meeting Date

SB 1076
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Ken Williams

Job Title

Address 7411 Meadow Drive
Street

Tampa FL 33634
City *State* *Zip*

Phone 813-493-7685

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

1076
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Theresa King

Job Title President

Address 200 E College
Street

Phone 850-228-8940

Tallahassee FL 32302
City *State* *Zip*

Email tking@fbctc.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Building Trades

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The following Appearance Records were not read into the record by the Chair

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.20.21
Meeting Date

SB 1076
Bill Number (if applicable)

Topic Preemption of Local Hiring

Amendment Barcode (if applicable)

Name Irish Braun

Job Title Community & State Organizer

Address 1316 Levy Ave. Phone (850) 688-7153
Street

Tallahassee FL 32310 Email powerupfloridaus@gmail.com
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tallahassee Community Action Committee

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

4-20-21
Meeting Date

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

SB1076
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Preemption of local hiring

Name Amanda Weems

Job Title

Address 3404 Cedarwood Trail
Street

Tallahassee FL 32312
City *State* *Zip*

Phone 850-590-7154

Email amandaw1098@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tallahassee Community Action Committee

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

4/20/2021 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1076

Meeting Date *Bill Number (if applicable)*

Topic Preemption of Local Hiring *Amendment Barcode (if applicable)*

Name Isabel Ruano

Job Title Human Services

Address 2631 Yarmouth Lane Phone

Street

Tallahasse FL 32309 Email

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.

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

4-20-21
Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

1076
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jess M. McCarty

Job Title Executive Assistant County Attorney

Address 111 NW First Street, Suite 2810
Street

Phone 305-979-7110

Miami FL 33128
City *State* *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

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 1120
INTRODUCER:	Regulated Industries Committee and Senator Gibson and others
SUBJECT:	Telephone Solicitation
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Favorable**
2.	Sharon	Imhof	RI	**Fav/CS**
3.	Harmsen	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

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

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

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

The bill is effective July 1, 2021.

II. Present Situation:

Unsolicited Phone Calls

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

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

Federal Law

Telephone Consumer Protection Act[7]

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

The TCPA prohibits telephone solicitations that:

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

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[1] Federal Trade Commission, *Do Not Call Data Book 2020* (Oct. 2020), https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2020/dnc_data_book_2020.pdf (last visited Apr. 16, 2021).

[2] Federal Communications Commission, *Stop Unwanted Calls and Texts* (Mar. 2, 2021), https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts (last visited Apr. 16, 2021).

[3] "At the FCC, we use the term 'robocalls' to refer not to just prerecorded calls but also autodialed calls, regardless of whether the call is live or prerecorded." *Stopping Fraudulent Robocall Scams: Can More Be Done?*, Hearing Before the S. Subcomm. on Consumer Protection, Product Safety, and Insurance of the Comm. on Commerce, Science, and Transportation, 130th Cong. (July 10, 2013) (Statement of Eric J. Bash, Associate Chief, Enforcement Bureau, Federal Communications Commission) https://www.govinfo.gov/content/pkg/CHRG-113shrg85765/pdf/CHRG-113shrg85765.pdf (last visited Apr. 16, 2021).

[4] An "automatic telephone dialing system" or "autodialer" is equipment that has the capacity to produce or store phone numbers using a random or sequential number generator, and to call those phone numbers. 47 U.S.C. § 227(a)(1).

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

[6] Federal Communication Commission, Consumer and Governmental Affairs Bureau, *Report on Robocalls* (Feb. 2019), CG Docket No. 17-59, https://www.fcc.gov/document/fcc-issues-report-illegal-robocalls (last visited Apr. 16, 2021). *See also*, Federal Communications Commission, *Stop Unwanted Calls and Texts--Spoofing*, (Mar. 2, 2021) https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts (last visited Apr. 16, 2021).

[7] 47 U.S.C. § 227. *See also*, 47 CFR § 64.1200 (2012).

- Fail to provide the consumer with the solicitor's identity, including his or her true phone number via caller identification service,[8] and an opportunity to opt out of the current call, and all future calls, made by that solicitor;
- Send pre-recorded messages to a residential line without the consumer's prior express consent;[9] and
- Use an autodialer or pre-recorded messages to a cellular, emergency, or hospital room line without prior express consent. Any telemarketing calls made to a cellular telephone number require *written* prior express consent; all others require either oral or written consent.[10] This specific provision does not apply to residential phone lines.[11]

The TCPA's protections extend to text messaging in the same manner that they apply to telephone calls.[12]

The TCPA defines autodialers as "equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers."[13] The U.S. Supreme Court recently limited the effect of the TCPA by clarifying that it only regulates autodialers that have the capacity either to store, or to produce, a telephone number using a random or sequential number generator.[14] This limits the TCPA's regulations to the now obsolete sequential number dialer style of autodialer, versus the predictive dialing technology that most businesses use today.[15]

The TCPA grants a private right of action to pursue actual monetary damages or up to $500 per violation.[16] State attorneys general and the FCC also have jurisdiction to investigate and file civil claims based on violations of the TCPA.[17]

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[8] 47 C.F.R. § 64.1601(e). *See also*, Federal Communications Commission, *Public Notice: FCC's Caller ID Rules for Telemarketers Become Effective* (Jan. 29, 2004) https://apps.fcc.gov/edocs_public/attachmatch/DA-04-206A1.pdf (last visited Apr. 16, 2021).

[9] *See also*, 47 CFR § 64.1200(a)(7)(i)(B), (b)(3). Certain calls made to a residential line, such as those by a tax-exempt nonprofit organization or calls that are subject to HIPPA may be made without prior express consent.

[10] FCC, *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 7999, para. 4 (Jun. 18, 2015).

[11] In 2015, language was added to the TCPA to allow robocalls and autodialed calls to cell phones for the purpose of collecting a debt owed to the U.S. government. *See* 47 U.S.C. § 227(b)(1)(A)(iii). This provision was severed from the by the U.S. Supreme Court in 2020 based on their finding that it was a content-specific speech regulation in violation of the first amendment. The Court left the TCPA's prohibition of robocalls and autodialed calls to cell phones intact. *Barr v. American Assc. Of Political Consultants, Inc.*, 140 S. Ct. 2335 (2020). *See also*, 47 CFR § 64.1200(f)(8).

[12] FCC, *2015 TCPA Declaratory Ruling and Order*, 30 FCC Rcd at 7999, para. 2 (Jun. 18, 2015); FCC, *FCC Strengthens Consumer Protections Against Unwanted Calls and Texts* (Jun. 18, 2015) https://apps.fcc.gov/edocs_public/attachmatch/DOC-333993A1.pdf (last visited Apr. 16, 2021).

[13] 47 U.S.C. § 227(b)(1)(A).

[14] *Facebook, Inc. v. Duguid*, 141 S. Ct. 193 (2020).

[15] Amanda Shanor, SCOTUSblog, *Supreme Court Sides with Facebook in Narrowing the Federal Robocall Ban* (Apr. 1, 2021), https://www.scotusblog.com/2021/04/supreme-court-sides-with-facebook-in-narrowing-the-federal-robocall-ban/ (last visited Apr. 16, 2021).

[16] 47 U.S.C. § 227 (c)(5).

[17] 47 U.S.C. § 227 (f).

Federal Do Not Call Program[18]

The FTC, in concert with the FCC, administers the National Do Not Call Program.[19] Telephone solicitors may not contact a consumer who participates in the National Do Not Call Program, unless the calls are:[20]

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

Truth in Caller ID Act[21]

The Truth in Caller ID Act of 2009 protects consumers by prohibiting any person from transmitting misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value. The FCC investigates and prosecutes violations of the act under its rules.[22] The FCC has taken enforcement actions totaling $450 million in fines, in recent years against telemarketers for call spoofing violations—of note, the FCC imposed its largest fine ever against a Florida-based timeshare marketing operation.[23]

To protect individual privacy concerns, an individual caller may still request to hide his or her phone number when making a call.[24]

Florida Law

Florida Telemarketing Act[25]

The Florida Telemarketing Act (Telemarketing Act), requires commercial telephone sellers, usually a business entity, and their individual salespersons to obtain a license from the Department of Agriculture and Consumer Services (department). An applicant for licensure as a commercial telephone seller must submit, among other information:[26]

- Its criminal, civil, and administrative disciplinary background;
- All phone numbers from which the applicant will solicit business and the physical address at which the phones will be located;
- The script it will use during a solicitation, or any informational literature it will provide to a consumer; and

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[18] *See*, 15 U.S.C. § 6101.
[19] Federal Communications Commission, *Stop Unwanted Calls and Texts* (Mar. 2, 2021), https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts (last visited Apr. 16, 2021).
[20] 47 U.S.C. § 227(a)(4); *See also*, 47 C.F.R. § 64.1200 (2012).
[21] 47 U.S.C. § 227 (e).
[22] *See*, 47 CFR § 64.
[23] Federal Communications Commission, *The FCC's Push to Combat Robocalls & Spoofing,* https://www.fcc.gov/spoofed-robocalls (last visited Apr. 16, 2021). *See also*, Federal Communications Commission, *FCC Fines Massive Neighbor Spoofing Robocall Operation $120 Million* (May 10, 2018) https://www.fcc.gov/document/fcc-fines-massive-neighbor-spoofing-robocall-operation-120-million (last visited Apr. 16, 2021).
[24] 47 CFR § 64.1601.
[25] Part IV of ch. 501, F.S.
[26] Section 501.605, F.S.

- A bond, letter of credit, or certificate of deposit to serve as security in any future case of fraud, breach of contract, financial failure, or violation by the licensee.

As part of their licensure, individual salespersons, who are hired by commercial telephone sellers to act as their salespersons, undergo a similar review of their criminal, civil, administrative or regulatory disciplinary history, but they are not required to post a bond, letter of credit, or certificate of deposit.[27]

Many solicitors are exempt from licensure under the Telemarketing Act, including religious, charitable, political, or educational organizations that have a s. 501(c)(3) or (6) exemption from the Internal Revenue Code; licensed securities, commodities, or investment brokers and dealers; and newspaper or cable television sellers, among others.[28]

Licensed telephone sellers and solicitors must identify themselves to the consumer within 30 seconds of the beginning of the phone call.[29] To ensure that the department can conduct thorough investigations, when needed, a licensed telephone seller must also maintain copies of their business records for at least 2 years—including all of the names and telephone numbers that they contacted.[30]

All telephone sellers and solicitors, whether exempt or not, are prohibited from calling consumers outside of the hours between 8:00 a.m. and 9:00 p.m., local time, in the called person's time zone.[31] Additionally, all solicitors must allow their name or telephone number to be transmitted to the consumer if the equipment they use is capable.[32] This prevents solicitors from "spoofing' a different number or otherwise blocking their caller identification to induce a consumer to answer the phone.[33]

Florida Do Not Call Act

Do Not Call List

The department also administers the Florida Do Not Call Act (also called the "Do Not Call List"), which prohibits unsolicited phone calls and text messages.[34] Residents who do not wish to receive sales calls may request to have their residential, mobile, or paging device telephone number included on the department's list.[35]

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

- At the consumer's request;

[27] Section 501.607, F.S.
[28] *See*, s. 501.604, F.S.
[29] Section 501.613, F.S.
[30] Section 501.6175, F.S.
[31] Section 501.616(6). *See also*, s. 501.604, F.S., which provides a general exemption from the Telemarketing Act, "except ss. 501.608 and 501.616(6) and (7)."
[32] Section 501.616(7), F.S.
[33] Section 501.616(7), F.S.
[34] *See*, s. 501.059, F.S. Florida Department of Agriculture and Consumer Services, *Florida Do Not Call*, https://www.fdacs.gov/Consumer-Resources/Florida-Do-Not-Call (last visited Apr. 16, 2021).
[35] Section 501.059(3)-(4), F.S.

- By a charitable or political organization that is seeking donations;
- As part of a survey, or for the purpose of research seeking an opinion;
- In connection with an existing debt or contract for which payment is due; or
- By a newspaper publisher, or his or her agent or employee, in connection with the publisher's business.[36]

Continued Solicitations

Section 501.059, F.S., further prohibits a telephone solicitor[37] from calling, text messaging, sending a direct voicemail transmission, or using automated telephone equipment to contact any consumer who has previously communicated to the solicitor that he or she does not wish to receive a telephone call, whether or not he or she is part of the Do Not Call List. However, this prohibition applies only to calls made by or on behalf of a seller who offers goods or services or a charity that solicits a charitable contribution.

Automated Dialers and Recorded Messages

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

This section also prevents call spoofing (in cases of solicitation calls), where a telephone call, text message, or direct-to-voicemail transmission does not transmit the correct originating telephone number; and fraudulent attempts to disguise the caller's identity in order to defraud, confuse, or otherwise injure the call's recipient.

Penalties

A telephone solicitor who violates the provisions of the Florida Do Not Call Act is subject to a civil penalty with a maximum fine of $10,000 per violation, or an administrative fine with a maximum of $1,000 per violation, in addition to attorney's fees and costs.[38] The act does not provide for a private cause of action. The Department of Agriculture and Consumer Services and the Office of the Attorney General have exclusive enforcement authority.

III. Effect of Proposed Changes:

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

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

[36] Section 501.059(1)(h), F.S.
[37] Section 501.059(1)(f), F.S., defines a 'telephone solicitor' as a natural person or business that does business in this state by making or causing to be made a telephone sales call.
[38] Section 501.059(9), F.S.

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

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

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

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

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

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

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

The bill provides a private cause of action for violations to s. 501.059, F.S., which allow the aggrieved party to obtain an injunction and recover their actual monetary damages or $500, whichever is greater. It authorizes a court to increase the award for willful and knowing violations and revises the attorney fees and costs provision from being available to the prevailing party to only being available in favor of a prevailing plaintiff.

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

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

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

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

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Federal Preemption

The TCPA expressly permits state regulations that impose more restrictive *intrastate* requirements or regulations on, or which prohibit:

- The use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;
- The use of automatic telephone dialing systems;
- The use of artificial or prerecorded voice messages; or
- The making of telephone solicitations.[39]

In fact, it expressly disclaims a complete preemption of state laws that govern the regulation of unsolicited sales calls and the improper use of prerecorded messages claims.[40] A Florida district court of appeal determined that Florida's regulation of recorded messages and autodialers, although more stringent than the TCPA, was not preempted by the federal law because Congress had indicated that the TCPA was the "'minimum necessary to protect the public against the harm caused by' automated dialing machines."[41] The Court further reasoned that "[e]ven though it [Congress] recognized that states might not have jurisdiction over interstate communications, Congress thus provided language that specifically allows states to impose more restrictive measures in this area."[42]

[39] 47 U.S.C. § 227(e).
[40] 47 U.S.C. § 227(g)(6). *See also, TSA Stores, Inc. v. Dep't. of Ag. And Consumer Servs.*, 957 So.2d 25, 28 (Fla. 5th DCA 2007).
[41] *TSA Stores, Inc. v. Dep't. of Ag. And Consumer Servs.*, 957 So.2d 25, 30 (Fla. 5th DCA 2007), *quoting* S. Rep. No. 102-178 at 5 (1991).
[42] *Id*. at 31, citing *FreeEats.Com, Inc. v. Indiana*, 2006 WL 3025810 (S.D.Ind. Oct. 24, 2006).

Additionally, the TCPA clearly contemplates that state attorneys general or other designated state official has authority to bring civil actions on behalf of the state's residents to enjoin calls that violate the TCPA and to recover damages.[43]

Commercial Speech Regulations

In *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, the Supreme Court held that commercial speech should receive First Amendment protections.[44] The Court based its opinion on the public's right to receive a free flow of commercial information.[45] Although commercial speech does receive protection, it is below the protection provided to completely protected speech, and states retain the ability to regulate commercial speech that is inherently misleading or that has proven to be misleading in practice.[46]

In *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, the Supreme Court established a four-part test for analyzing the limitations of advertising regulations.[47] Under the *Central Hudson* test, a state must show that any commercial speech regulation is aimed at regulating lawful and "non-misleading" commercial speech in service of a substantial state interest, in a manner that directly advances that interest, and that is no more extensive than necessary to serve that interest.[48] Although commercial speech regulations must meet the *Central Hudson* test, in *Bates v. State Bar of Arizona*, the Supreme Court held that reasonable time, place, and manner restrictions on advertising are authorized if the content or subject matter is not regulated.[49]

Content-Based Speech Regulations

A government may impose reasonable time, place, and manner restrictions on speech. However, Content-based laws are subject to strict scrutiny.[50] A law is a content-based regulation of speech if it, on its face, draws distinctions based on the message a speaker conveys or singles out specific subject matter for differential treatment.[51]

A 2015 amendment to the TCPA allowed robocalls and prerecorded messages to be made to cellphone users to collect government debt. The U.S. Supreme Court determined this to be an invalid, content-based regulation of speech. The Court invalidated the 2015 amendment that allowed the government debt collection calls, and left the overall ban on robocalls and prerecorded messages intact.[52]

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[43] 47 U.S.C. § 227 (g).
[44] *See Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 96 S. Ct. 1817 (1976).
[45] *Id*.
[46] *See In re R.M.J.*, 102 S. Ct. 929 (1982).
[47] *See Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, 100 S. Ct. 2343 (1980).
[48] *Id*.
[49] *See Bates v. State Bar of Arizona*, 97 S. Ct. 2691 (1977).
[50] *Id*.
[51] *Reed v. Town of Gilbert*, 576 U.S. 155, 163-169, 135 S. Ct. 2218 (2015).
[52] *Barr v. American Association of Political Consultants, Inc.*, 140 S. Ct. 2335, 2345-2346 (2020).

Commerce Clause

A state law that has the practical effect of regulating commerce that occurs entirely outside of the State's borders is invalid under the Commerce Clause of the of the U.S. Constitution, regardless of its intent to reach outside of the state's borders.[53] Conversely, the dormant commerce clause prohibits states from enacting laws that unduly burden interstate commerce.[54]

A Florida law that prohibited persons from causing false information to be displayed on the call recipient's caller ID system was found to regulate commerce wholly outside of Florida by making it impossible for parties to use or offer caller ID spoofing services anywhere.[55] The Court reasoned that the law affected interstate commerce because the increased use of mobile phones and call forwarding make it impossible to be certain where the parties one calls are located.

> For example, a business located in New York might place a call, using caller ID spoofing services, to a telephone number with an Ohio area code. Because of call forwarding and the mobility of cellular telephones, the recipient of that call might be present in Florida, and the New York business would be criminally liable for violating [the law] when they called the Ohio telephone number. … The logical consequence of this impossibility is that Plaintiffs are unable to offer caller ID spoofing services anywhere in the country without risking criminal liability under Florida's statute.[56]

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Businesses that make telephonic sales calls, text messages, or direct-to-voicemail transmissions either with an autodialer or for the purpose of playing a recorded message to a Florida consumer or to a phone with a Florida-based area code may have to adjust their businesses to accommodate this restriction.

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[53] *Healy v. Beer Institute, Inc.*, 491 U.S. 324, 332 (1989). *See also*, U.S. CONST. art. 1 § 8, cl. 3.
[54] *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S.Ct. 844 (1970).
[55] *Taltech Systems, Inc. v. McCollum*, 2009 WL 10626585 (S.D. Fla. July 16, 2009).
[56] *Id*.

C. Government Sector Impact:

The bill adds prohibited acts to the Florida Telemarketing Act. The department, as enforcing authority of the act, estimates that is may see an increase in consumer complaints and prosecutions as a result; it also states that it will be required to expand its rulemaking to allow for implementation of these changes. The department states that this may result in an indeterminate costs to the department.[57]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 501.059 and 501.616, F.S.

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

IX. Additional Information:

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

CS by Regulated Industries on March 9, 2021:
The Committee Substitute:

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

B. Amendments:

None.

[57] Department of Agriculture and Consumer Services, *SB 1120 Agency Analysis* (Feb. 24, 2021) (on file with the Senate Committee on Commerce and Tourism).

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

By the Committee on Regulated Industries; and Senators Gibson and Powell

580-03275-21 20211120c1

A bill to be entitled

An act relating to telephone solicitation; amending s. 501.059, F.S.; defining terms; prohibiting certain telephonic sales calls without the prior express written consent of the called party; removing provisions authorizing the use of certain automated telephone dialing systems; providing a rebuttable presumption for certain calls made to any area code in this state; providing a cause of action for aggrieved called parties; authorizing a court to increase an award for willful and knowing violations; revising awards of attorney fees and costs for violations to authorize only a prevailing plaintiff to receive such an award; amending s. 501.616, F.S.; prohibiting a commercial telephone seller or salesperson from using automated dialing or recorded messages to make certain commercial telephone solicitation phone calls; revising the timeframe during which a commercial telephone seller or salesperson may make commercial solicitation phone calls; prohibiting commercial telephone sellers or salespersons from making a specified number of commercial telephone solicitation phone calls to a person over a specified timeframe; reenacting s. 501.604, F.S., relating to exemptions to the Florida Telemarketing Act, to incorporate the amendment made to s. 501.616, F.S., in a reference thereto; reenacting s. 648.44(1)(c), F.S., relating to prohibitions regarding bail bond agent telephone solicitations, to incorporate the amendment made to s.

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

580-03275-21 20211120c1

501.616, F.S., in a reference thereto; providing an effective date.

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

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

501.059 Telephone solicitation.—

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

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

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

1. Bears the signature of the called party;

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

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

4. Includes a clear and conspicuous disclosure informing

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

the called party that:

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

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

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

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

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

~~solicitation calls" listing or any unlisted telephone number, or if the calls made concern goods or services that have been previously ordered or purchased.~~

~~(c)~~ It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to fail to transmit or cause not to be transmitted the originating telephone number and, when made available by the telephone solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. However, it is ~~shall~~ not ~~be~~ a violation to substitute, for the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours. If a telephone number is made available through a caller identification service as a result of a telephonic sales call, the solicitor must ensure that telephone number is capable of receiving telephone calls and must connect the original call recipient, upon calling such number, to the telephone solicitor or to the seller on behalf of which a telephonic sales call was placed. For purposes of this section, the term "caller identification service" means a service that allows a telephone subscriber to have the telephone number and, where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone.

(c)~~(d)~~ It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be

made to intentionally alter the voice of the caller in an attempt to disguise or conceal the identity of the caller in order to defraud, confuse, or financially or otherwise injure the recipient of a telephonic sales call or in order to obtain personal information from the recipient of a telephonic sales call which may be used in a fraudulent or unlawful manner.

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

(10)(a) A called party who is aggrieved by a violation of this section may bring an action to:

1. Enjoin such violation.

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

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

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

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

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

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

(e) In any civil litigation initiated by the department or the Department of Legal Affairs, the court may award to the prevailing party reasonable attorney ~~attorney's~~ fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.

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

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

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

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

Section 2. Subsection (6) of section 501.616, Florida Statutes, is amended to read:

501.616 Unlawful acts and practices.—

(6) A commercial telephone seller or salesperson may not make any of the following types of phone calls, including calls made through automated dialing or recorded messages:

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

(a) A commercial telephone solicitation phone call before 8 a.m. or after 8 ~~9~~ p.m. local time in ~~at~~ the called person's time zone ~~location~~.

(b) More than three commercial telephone solicitation phone calls from any number to a person over a 24-hour period on the same subject matter or issue, regardless of the phone number used to make the call.

Section 3. For the purpose of incorporating the amendment made by this act to section 501.616, Florida Statutes, in a reference thereto, section 501.604, Florida Statutes, is reenacted to read:

501.604 Exemptions.—The provisions of this part, except ss. 501.608 and 501.616(6) and (7), do not apply to:

(1) A person engaging in commercial telephone solicitation where the solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature.

(2) A person soliciting for religious, charitable, political, or educational purposes. A person soliciting for other noncommercial purposes is exempt only if that person is soliciting for a nonprofit corporation and if that corporation is properly registered as such with the Secretary of State and is included within the exemption of s. 501(c)(3) or (6) of the Internal Revenue Code.

(3) A person who does not make the major sales presentation during the telephone solicitation and who does not intend to, and does not actually, complete or obtain provisional acceptance of a sale during the telephone solicitation, but who makes the major sales presentation and completes the sale at a later face-

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

(4) A licensed securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license, or a licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license. As used in this section, "licensed securities, commodities, or investment broker, dealer, or investment adviser" means a person subject to license or registration as such by the Securities and Exchange Commission, by the Financial Industry Regulatory Authority or other self-regulatory organization as defined by the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, or by an official or agency of this state or of any state of the United States. As used in this section, "licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser" means an associated person registered or licensed by the Financial Industry Regulatory Authority or other self-regulatory organization as defined by the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, or by an official or agency of this state or of any state of the United States.

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

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

arrangement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

150,000.

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

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

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

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

(16) An issuer or a subsidiary of an issuer that has a class of securities which is subject to s. 12 of the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, and which is either registered or exempt from registration under paragraph (A), paragraph (B), paragraph (C), paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of subsection (g)(2) of that section.

(17) A business soliciting exclusively the sale of telephone answering services provided that the telephone answering services will be supplied by the solicitor.

(18) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. ss. 1 et seq., and the registration or license has not expired or been suspended or revoked.

(19) A person soliciting the sale of food or produce as defined in chapter 500 or chapter 504 if the solicitation neither intends to result in, or actually results in, a sale which costs the purchaser in excess of $500.

(20) A person who is registered pursuant to part XI of chapter 559 and who is soliciting within the scope of the registration.

(21) A person soliciting business from prospective consumers who have an existing business relationship with or who have previously purchased from the business enterprise for which the solicitor is calling, if the solicitor is operating under the same exact business name.

(22) A person who has been operating, for at least 1 year, a retail business establishment under the same name as that used in connection with telemarketing, and both of the following occur on a continuing basis:

(a) Either products are displayed and offered for sale or services are offered for sale and provided at the business establishment.

(b) A majority of the seller's business involves the buyer

obtaining such products or services at the seller's location.

(23) A person who is a registered developer or exchange company pursuant to chapter 721 and who is soliciting within the scope of the chapter.

(24) Any person who has been lawfully providing telemarketing sales services continuously for at least 5 years under the same ownership and control and who derives 75 percent of its gross telemarketing sales revenues from contracts with persons exempted in this section.

(25) A person licensed pursuant to chapter 475 and who is soliciting within the scope of the chapter.

(26) A publisher, or an agent of a publisher by written agreement, who solicits the sale of his or her periodical or magazine of general, paid circulation. The term "paid circulation" shall not include magazines that are only circulated as part of a membership package or that are given as a free gift or prize from the publisher or agent of the publisher by written agreement.

(27) A person who is a licensed operator or an identification cardholder as defined in chapter 482, and who is soliciting within the scope of the chapter.

(28) A licensee, or an affiliate of a licensee, regulated under chapter 560, the Money Transmitters' Code, for foreign currency exchange services.

Section 4. For the purpose of incorporating the amendment made by this act to section 501.616, Florida Statutes, in a reference thereto, paragraph (c) of subsection (1) of section 648.44, Florida Statutes, is reenacted to read:

648.44 Prohibitions; penalty.—

(1) A bail bond agent or temporary bail bond agent may not:

(c) Initiate in-person or telephone solicitation after 9:00 p.m. or before 8:00 a.m., in the case of domestic violence cases, at the residence of the detainee or the detainee's family. Any solicitation not prohibited by this chapter must comply with the telephone solicitation requirements in ss. 501.059(2) and (4), 501.613, and 501.616(6).

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
6th District

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

JOINT COMMITTEE:
Joint Legislative Budget Commission

March 23, 2021

Senator Kathleen Passidomo, Chair
Committee on Rules
402 Senate Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Passidomo:

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

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

Thank you for your kind and consideration.

Sincerely,

Audrey Gibson
State Senator
District 6

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

1120
Bill Number (if applicable)

Topic Phone Calls

Amendment Barcode (if applicable)

Name Rev Dr Russell Meyer

Job Title

Address 1308 Windsor Pl
Street

Phone 813 763 3610

Jax FL 32205
City *State* *Zip*

Email rmeyer@floridachurches.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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/CS/SB 1128
INTRODUCER:	Rules Committee; Community Affairs Committee; Regulated Industries Committee; and Senator Hutson
SUBJECT:	Preemption Over Restriction of Utility Services
DATE:	April 21, 2021 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1128 prohibits municipalities, counties, special districts, or other political subdivisions from enacting or enforcing a resolution, ordinance, rule, code, or policy that restricts or prohibits the types or the fuel sources of energy production used, delivered, converted, or supplied to customers by a public, electric, or natural gas utility, natural gas transmission company, certain entities created pursuant to an interlocal agreement, category I liquefied petroleum gas dealer, a category II liquefied petroleum gas dispenser, or a category III liquefied petroleum gas cylinder exchange operator.

The bill expressly states that that a municipality's board or a governmental entity is not prevented from passing rules, regulations, or policies governing a utility that it owns or operates and directly controls.

The bill does not expand or alter the jurisdiction of the Public Service Commission over public or electric utilities.

The bill voids any resolutions, ordinances, rules, codes, policies, or actions by any municipality, county, special district, or political subdivision charter, existing on or before the bill's effective date, which are preempted by this bill.

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]

In Florida, special districts are separate governmental entities created for a special purpose that have jurisdiction to operate within a limited geographic boundary.[4] Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.[5] Throughout the state there are over 1,770 active special districts encompassing more than 80 specialized governmental functions.[6]

Interlocal Cooperation and the Florida Municipal Power Agency

The Florida Interlocal Cooperation Act of 1969 (Act) allows local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.[7] The Act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.[8] Under such an agreement, the local governmental units may create a separate legal or administrative entity "to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities."[9]

In 1978, the Florida Municipal Power Agency (FMPA) was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric utilities. FMPA is currently owned by 31 municipalities.[10] Through various joint power supply

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[1] FLA. CONST. art. VIII, s. 1(f).
[2] FLA. CONST. art. VIII, s. 1(g).
[3] FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.
[4] Section 189.012(6), F.S.
[5] *Id*.
[6] *See* Florida Department of Economic Opportunity, *Introduction to Special Districts*, https://floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/florida-special-district-handbook-online/introduction-to-special-districts (last visited Mar. 5, 2021).
[7] Section 163.01(2), F.S.
[8] Section 163.01(5), F.S.
[9] Section 163.01(2), F.S.
[10] Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. Florida Municipal Power Agency, *Members*, http://fmpa.com/about/members/ (last visited Mar. 5, 2021).

projects,[11] the FMPA supplies all of the electrical power needs of 13 member utilities and a part of the power needs for seven other member utilities.[12] Through these projects, FMPA members maintain ownership interests in various electrical power plants throughout Florida. FMPA manages the transmission of electrical power over facilities owned by FMPA or its members.[13]

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.[14]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[15] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[16] In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.[17]

In cases determining the validity of ordinances in violation of state preemption, the effect has been to find such ordinances null and void.[18] 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."[19] 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.[20] Implied preemption is found where

[11] Section 361.12, F.S., authorizes any electric utility, or any organization, association, or separate legal entity whose membership consists only of electric utilities, to join with any other such entity to finance, acquire, construct, manage, operate, or own an electric power supply project for the joint generation or transmission of electrical energy, or both. Further, s. 361.13, F.S., authorizes any such entity to purchase capacity or energy, or both, in an agreed upon quantity from any project in which the purchaser has an ownership interest.
[12] *See* Florida Municipal Power Agency, *Projects*, https://fmpa.com/power-supply-projects/ (last visited Mar. 5, 2021).
[13] *See* Florida Municipal Power Agency, *Value of Public Power*, https://fmpa.com/value-of-public-power/ (last visited Mar. 5, 2021).
[14] *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. 5, 2021).
[15] *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).
[16] *Mulligan*, 934 So. 2d at 1243.
[17] *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.
[18] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So. 2d 504 (Fla. 3d DCA 2002).
[19] *Phantom of Clearwater, Inc.*, 894 So. 2d at 1019.
[20] *Id*.

the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.[21]

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.[22] The role of the PSC is to ensure that Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.[23] In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: (1) Rate or economic regulation; (2) Market competition oversight; and/or (3) Monitoring of safety, reliability, and service issues.[24] The PSC monitors the safety and reliability of the electric power grid[25] and may order the addition or repair of infrastructure as necessary.[26] Further, the PSC reviews applications to determine the need for certain new electrical power plants[27] and certain large transmission lines as part of the Department of Environmental Protection's siting process.[28]

The PSC does not fully regulate publicly owned municipal electric utilities.[29] However, it does have jurisdiction over municipally owned electric systems with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.[30] Additionally, the PSC has jurisdiction over 27 municipally owned natural gas utilities and four gas districts with regard to territorial boundaries, safety, and safety authority over all electric and natural gas systems operating in the state.[31]

A public utility includes any person or legal entity supplying electricity or gas, including natural, manufactured, or similar gaseous substance, to or for the public within the state.[32] Notably, courts have ruled that the sale of electricity to even a single customer makes the provider a "public utility" subjecting them to the PSC's regulatory jurisdiction, under s. 366.02(1), F.S.[33] The PSC's jurisdiction over public utilities is exclusive and superior to all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in cases of conflict the PSC is to prevail.[34]

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[21] *Sarasota Alliance for Fair Elections, Inc.*, 28 So. 3d at 886.
[22] Section 350.001 F.S.
[23] *See* Florida Public Service Commission, *The PSC's Role*, http://www.psc.state.fl.us (last visited Mar. 5, 2021).
[24] *Id*.
[25] Sections 366.04(5) and (6), F.S.
[26] Sections 366.05(1) and (8), F.S.
[27] Section 403.519, F.S.
[28] Section 403.537, F.S.
[29] Florida Public Service Commission, *2020 FPSC Annual Report*, available at http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf (last visited Mar. 5, 2021).
[30] *Id*.
[31] *Id*.
[32] Section 366.02(1), F.S.
[33] *Florida Public Service Com'n v. Bryson*, 569 So. 2d 1253, 1255 (Fla. 1990) (finding that even a property management company is a public utility within the PSC's regulatory jurisdiction); *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 284 (Fla. 1988) (finding that "to the public," as used in ch. 366, F.S., means "to any member of the public," rather than "to the general public").
[34] Section 366.04 (1), F.S.

Investor-Owned Electric Utilities Companies

There are five investor-owned electric utility companies in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Corporation.[35] Investor-owned electric utility rates and revenues are regulated by the Florida Public Service Commission.[36] Accordingly, these utilities must file periodic earnings reports, either monthly, quarterly, or semi-annually, depending upon each company's size. These more frequent company filings allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.[37]

Municipally Owned Electric Utilities

A municipal electric utility is an electric utility system owned or operated by a municipality engaged in serving residential, commercial or industrial customers, usually within the boundaries of the municipality.[38] Municipally owned utility rates and revenues are regulated by their city commission.[39] As noted above, the PSC does have limited jurisdiction over municipally owned electric utilities.[40] In total there are 34 municipal electric companies in Florida.[41] Most municipal electric utilities are represented by the Florida Municipal Electric Association which serves over three million Floridians.[42]

Natural Gas Utilities

Florida's natural gas network is comprised of four interstate pipelines and two intrastate pipelines.[43] The two intrastate pipelines, falling within the definition of a "natural gas transmission company," pursuant to s. 368.103(4), F.S., are Peninsular Pipeline Company, Inc. and SeaCoast Gas Transmission LLC.[44] Florida's natural gas network supplies natural gas to five investor-owned natural gas utilities, 27 municipal natural gas utilities, and four special gas districts.[45]

Pursuant to ch. 366, F.S., the PSC has regulatory authority over the investor-owned natural gas utilities in all aspects of operations, including safety; authority over municipally-owned natural gas utilities that is limited to safety and territorial boundary disputes; and authority over special gas districts that is limited to safety and territorial boundary disputes.[46]

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[35] *Id*.
[36] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities (last visited Mar. 5, 2021).
[37] FPSC, *2020 Annual Report*, *supra* at n. 29.
[38] FDACS, *Electric Utilities*, *supra* at n. 36.
[39] *Id*.
[40] FPSC, *2020 Annual Report*, *supra* at n. 29.
[41] FDACS, *Electric Utilities*, *supra* at n. 36.
[42] Florida Municipal Electric Association, *About FMEA*, https://www.publicpower.com/about-us (last visited Mar. 5, 2021).
[43] Florida Department of Agriculture and Consumer Services, *Natural Gas Utilities*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Natural-Gas-Utilities (last visited Mar. 5, 2021).
[44] *Id*.
[45] *Id*.
[46] FPSC, *2020 Annual Report*, *supra* at n. 29.

Florida Department of Agriculture and Consumer Services

The Florida Department of Agriculture and Consumer Services (DACS) is responsible for the administration of a number of programs relating to energy infrastructure and houses the Office of Energy.[47] The DACS is also responsible for licensing individuals and businesses that sell, transport, dispense or store liquefied petroleum (LP) gas and that manufacture, install, service or repair LP gas containers, systems or appliances.[48] The FDACS inspects facilities where LP gas is sold or stored and investigates accidents involving LP gas or equipment.[49]

A Category I LP Gas Dealer is any person selling any LP gas to consumers for industrial, commercial, or domestic use, leasing appliances and equipment for LP gas, or installing or servicing any equipment used for LP gas.[50] A Category II LP Gas Dispenser is any person operating an LP gas dispensing unit for serving liquid product to consumers and includes sales of appliances and equipment.[51] A Category III LP Gas Cylinder Exchange Operator is any person operating a storage facility used for the purpose of storing filled propane cylinders of not more than 43.5 pounds propane capacity or 104 pounds water capacity, while awaiting sale to the consumer, or a facility used for the storage of empty or filled containers which have been offered for exchange.[52]

Sustainable Energy

Public Utility Regulatory Policies Act (PURPA)

In 1978, the federal government enacted the Public Utility Regulatory Policies Act (PURPA),[53] which required promotion of energy efficiency and use of renewables.[54] The act required utilities to purchase power from "qualifying facilities," which fall into two categories: qualifying small power production facilities and qualifying cogeneration facilities.[55] The PURPA directed the Federal Energy Regulatory Commission to implement the provisions, which in turn, directed the states to implement the provisions. In response, the Florida Legislature created s. 366.051, F.S., directing the utilities to purchase power from the cogenerators or small power producers and defining "full avoided costs."

Florida Energy Efficiency and Conservation Act

Under the Florida Energy Efficiency and Conservation Act (FEECA),[56] enacted in 1980, the Legislature directed the PSC to develop and adopt programs for increasing energy efficiency and conservation, intending, in part, that solar energy and renewable energy sources be encouraged.[57]

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[47] *See* s. 377.805, F.S.
[48] *See* ch. 527, F.S; Florida Department of Agriculture and Consumer Services, *Liquefied Petroleum Gas Licenses*, https://www.fdacs.gov/Business-Services/LP-Gas-Licenses (last visited Mar. 10, 2021).
[49] *Id*.
[50] Section 527.01(6), F.S. *See also*, FDACS, *Liquefied Petroleum Gas Licenses*, *supra* at n. 48.
[51] Section 527.01(7), F.S. *See also*, FDACS, *Liquefied Petroleum Gas Licenses*, *supra* at n. 48.
[52] Section 527.01(8), F.S. *See also*, FDACS, *Liquefied Petroleum Gas Licenses*, *supra* at n. 48.
[53] 16 U.S.C. ch. 46 § 2601 et seq.
[54] Federal Energy Regulatory Commission, *PURPA Qualifying Facilities*, https://www.ferc.gov/qf (last visited Mar. 5, 2021).
[55] *Id*.
[56] Sections 366.80-366.85, F.S.
[57] Section 366.81, F.S.

The Legislature's goal is to advance the conservation of expensive resources, such as petroleum fuels in order to reduce and control electric consumption.[58]

Renewable Energy

In 2005, the Legislature created s. 366.91, F.S., to address renewable energy. This section requires utilities to continuously offer a purchase contract to renewable energy producers for a minimum of ten years.[59] It also includes municipal electric utilities and rural electric cooperatives whose annual sales are greater than 2,000 gigawatt hours.[60]

In 2006, the Legislature created s. 366.92, F.S., relating to renewable energy policy, to authorize the PSC to adopt appropriate goals for increasing the use of existing, expanded, and new Florida renewable resources.

Renewable Portfolio Standards and Goals

Renewable portfolio standards (RPS) are policies, either voluntary or formal, designed to increase the use of renewable energy sources for electricity generation.[61] RPS policies that a specified percentage of the electricity sold by utilities comes from renewable resources.[62] Currently, there is not a national RPS in place.[63] However, most states have enacted their own RPS programs. Over the past year, state governments nationwide have been revising their RPS policies, requiring that a specified percentage of electricity sold come from renewable sources.[64]

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

- Executive Order 07-126; Establishing Climate Change Leadership by Example: Immediate Actions to Reduce Greenhouse Gas Emissions from Florida State Government.[65]
- Executive Order 07-127; Establishing Immediate Actions to Reduce Greenhouse Gas Emissions within Florida.[66]

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[58] *Id*.
[59] Section 366.91, F.S.
[60] Section 366.91(4), F.S.
[61] U.S. Energy Information Administration, *Renewable Energy Explained: Portfolio Standards*, https://www.eia.gov/energyexplained/renewable-sources/portfolio-standards.php#:~:text=Renewable%20portfolio%20standards%20(RPS)%2C,energy%20sources%20for%20electricity%20generation.&text=However%2C%20most%20states%20have%20enacted%20their%20own%20RPS%20programs. (last visited Mar. 5, 2021).
[62] National Conference of State Legislatures, *State Renewable Portfolio Standards and Goals*, https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx (last visited Mar. 5, 2021)
[63] USEIA, *Renewable Energy Explained: Portfolio Standards*, *supra* at n. 60.
[64] *Id*.
[65] Fla. Exec. Order No. 07-126, available at http://www.fsec.ucf.edu/en/media/enews/2007/pdf/07-126-actions.pdf (last visited Mar. 5, 2021).
[66] Fla. Exec. Order No. 07-127, available at http://www.fsec.ucf.edu/en/media/enews/2007/pdf/07-127-emissions.pdf (last visited Mar. 5, 2021).

- Executive Order 07-128; Florida Governor's Action Team on Energy and Climate Change."[67]

In Executive Order 07-127, the Governor requested the PSC initiate rulemaking to require that utilities produce at least 20 percent of their electricity from renewable sources with a strong focus on solar and wind energy. In September 2007, the PSC began holding workshops to study the issue of renewable portfolio standards.

Currently, Florida is one of only 12 states that does not have either a formal renewable energy portfolio or a voluntary renewable energy portfolio.[68]

III. Effect of Proposed Changes:

The bill creates s. 366.032, F.S., to preempt municipalities, counties, special districts, or other political subdivisions from restricting utility service choice, irrespective of fuel source. The bill prohibits these entities from enacting or enforcing any resolutions, ordinances, rules, codes, or policies that restrict or prohibit the types or fuel sources of energy production which may be used, delivered, converted, or supplied by:

- A public, electric, or natural gas utility as defined in ch. 366, F.S.;
- A natural gas transmission company;
- AN entity created pursuant to interlocal agreement that generates, sells, or transmits electrical energy;
- A Category I liquefied petroleum gas dealer;
- A Category II liquefied petroleum gas dispenser; or
- A Category III liquefied petroleum gas cylinder exchange operator.

The bill expressly states that that a municipality's board or a governmental entity is not prevented from passing rules, regulations, or policies governing a utility that it owns or operates and directly controls.

The bill does not expand or alter the jurisdiction of the Public Service Commission over public utilities.

The bill voids any resolutions, ordinances, rules, codes, policies, or actions by any municipality, county, special district, or political subdivision charter, existing on or before the bill's effective date, which are preempted by this bill.

The bill is effective July 1, 2021.

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[67] *See* Sellers, Lawrence E. & Curtin, Lawrence N., *Holland & Knight Newsletter: Florida Addresses Greenhouse Gas Issues* https://www.hklaw.com/en/insights/publications/2007/09/florida-addresses-greenhouse-gas-issues (last visited Mar. 5, 2021).

[68] NCSL, *State Renewable Portfolio Standards and Goals*, *supra* at n. 62.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate effect on the private utilities sector as it voids any restrictions or prohibitions imposed by local governments on the types or the fuel sources of energy production which a utility may use, deliver, convert, or supply to its customers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 366.032 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/CS by Rules on April 20, 2021:
The committee substitute provides that a municipality's board or a governmental entity is not prevented from passing rules, regulations, or policies governing a utility that it owns or operates and directly controls.

CS/CS by Community Affairs on March 16, 2021:
The committee substitute adds to the list of utility providers contemplated by the bill, an entity formed pursuant to an interlocal agreement (s. 163.01, F.S.,) that generates, sells, or transmits electrical energy and a Category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01, F.S. The committee substitute further clarifies that the bill does not expand or alter the jurisdiction of the Public Service Commission over public or electric utilities.

CS by Regulated Industries Committee on March 9, 2021:
The committee substitute prohibits municipalities, counties, special districts, or other political subdivisions from enacting or enforcing a resolution, ordinance, rule, code, or policy that restricts or prohibits the types or the fuel sources of energy production used, delivered, converted, or supplied to customers by a public utility, municipal electric utility, natural gas utility, natural gas transmission company, a category I liquefied petroleum gas dealer, or a category II liquefied petroleum gas dispenser.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 366.032, Florida Statutes, is created to read:

366.032 Preemption over utility service restrictions.—

(1) A municipality, county, special district, or other political subdivision of the state may not enact or enforce a resolution, ordinance, rule, code, policy, or take any action that restricts or prohibits or has the effect of restricting or

587846

prohibiting the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to serve customers that such entities are authorized to serve:

(a) A public utility or an electric utility as defined in this chapter;

(b) An entity formed under s. 163.01 that generates, sells, or transmits electrical energy;

(c) A natural gas utility as defined in s. 366.04(3)(c);

(d) A natural gas transmission company as defined in s. 368.103; or

(e) A Category I liquefied petroleum gas dealer or Category II liquefied petroleum gas dispenser or Category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01.

(2) Notwithstanding the restrictions of this section, this section does not prevent the board of a municipality or governmental entity which owns or operates and directly controls an electric or natural gas utility, from passing rules, regulations, or policies governing the utility.

(3) This section does not expand or alter the jurisdiction of the commission over public utilities or electric utilities.

Section 2. Any municipality, county, special district, or political subdivision charter, resolution, ordinance, rule, code, policy, or action that is preempted by this act that existed before or on July 1, 2021, is void.

Section 3. This act shall take effect July 1, 2021.

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

587846

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to preemption over restriction of utility services; creating s. 366.032, F.S.; prohibiting municipalities, counties, special districts, or other political subdivisions from restricting or prohibiting the types or fuel sources of energy production used, delivered, converted, or supplied by certain entities to serve customers; providing construction; voiding existing specified documents and policies that are preempted by this act; providing an effective date.

By the Committees on Community Affairs; and Regulated Industries; and Senator Hutson

578-02924-21 20211128c2

A bill to be entitled

An act relating to preemption over restriction of utility services; creating s. 366.032, F.S.; prohibiting municipalities, counties, special districts, or other political subdivisions from restricting or prohibiting the types or fuel sources of energy production used, delivered, converted, or supplied by certain entities to customers; providing construction; voiding existing specified documents and policies that are preempted by this act; providing an effective date.

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

Section 1. Section 366.032, Florida Statutes, is created to read:

366.032 Preemption over utility service restrictions.—

(1) A municipality, county, special district, or other political subdivision of the state may not enact or enforce a resolution, ordinance, rule, code, policy, or take any action that restricts or prohibits or has the effect of restricting or prohibiting the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to customers that such entities are authorized to serve:

(a) A public utility or an electric utility as defined in this chapter;

(b) An entity formed under s. 163.01 that generates, sells, or transmits electrical energy;

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

578-02924-21 20211128c2

(c) A natural gas utility as defined in s. 366.04(3)(c);

(d) A natural gas transmission company as defined in s. 368.103; or

(e) A Category I liquefied petroleum gas dealer or Category II liquefied petroleum gas dispenser or Category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01.

(2) This section does not expand or alter the jurisdiction of the commission over public utilities or electric utilities.

Section 2. Any municipality, county, special district, or political subdivision charter, resolution, ordinance, rule, code, policy, or action that is preempted by this act that existed before or on July 1, 2021, is void.

Section 3. This act shall take effect July 1, 2021.

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: April 3, 2021

I respectfully request that **Senate Bill #1128**, relating to Preemption Over Restriction of Utility Services, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/20/21
Meeting Date

SB 1128
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic LOCAL CLEAN ENERGY

Name REV DR RUSSELL MEYER

Job Title EXEC DIR

Address 1308 WINDSOR PL
Street

Phone 8137633610

JAX FL 32205
City *State* *Zip*

Email rmeyer@floridachurches.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLORIDA COUNCIL OF CHURCHES

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

4/20/2021
Meeting Date

1128
Bill Number (if applicable)

Topic Preemption over restriction of ... services
Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.
Street

Phone 850-321-9386

Tallahassee | Fl | 32301
City | *State* | *Zip*

Email fcfep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fl Center for Fiscal and Economic 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)

4/20
Meeting Date

1128
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Preempt of Utility

Name Brewster Bevis

Job Title Senior VP

Address 516 N Adams
Street

Phone

TCH FL 32312
City *State* *Zip*

Email

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.

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)

4/20/2021
Meeting Date

SB 1128
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Repeal of local Clean Energy Goals

Name Lakey Love

Job Title

Address 1521 Melvin Street
Street

Phone 850-345-0018

Tallahassee FL 32301
City *State* *Zip*

Email lakey@lakeyatwork.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Tallahassee Community Actor Committee

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

4/20/21
Meeting Date

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

1128
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Preemption over Utility

Name Diego Echeverri

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 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

4/20/21
Meeting Date

1128
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Preemption Over Restriction of Utility Services

Name David Cullen

Job Title

Address 1934 Shelby Court
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 941-323-2404

Email cullenasea@gmail.com

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-20-21
Meeting Date

1128
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Dale Calhoun

Job Title Executive Director

Address 201 S Monroe St Unit A
Street

Phone 850 681 0496

Tallahassee FL 32302
City *State* *Zip*

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Natural Gas Association & Florida Propane Gas Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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)

4/20/2021
Meeting Date

1128
Bill Number (if applicable)

Topic Preemption Over Restoration of Utility Services

Amendment Barcode (if applicable)

Name JONATHAN WEBBER

Job Title Deputy Director

Address 1700 N. Monroe St. #11-286
Street

Phone 954-593-4441

Tallahassee FL 32303
City *State* *Zip*

Email JWEBBER@FLCV.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Conservation Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

4-20-21
Meeting Date

1128
Bill Number (if applicable)

Topic Preemption of Energy Choice

Amendment Barcode (if applicable)

Name Kim Ross

Job Title ReThink Energy FL Executive Director

Address 608 N. MLK Jr. Blvd.
Street

Phone 850-888-2565

Tallahassee FL 32301
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Email admin@rethinkenergyflorida

Speaking: ☐ For ☑ Against ☐ Information

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

Representing ReThink Energy FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No
(unpaid)

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)

4/20/21
Meeting Date

1128
Bill Number (if applicable)

Topic Preemption Clean Energy

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title

Address 126 N. Mills Ave
Street

Orlando FL 32801
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 Rising

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)

4/20/2021
Meeting Date

1128
Bill Number (if applicable)

Topic Preemption in Restriction of Utility Service

Amendment Barcode (if applicable)

Name Gianna Tosca

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 The CLEO 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 following Appearance Records were not read into the record by the Chair

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.20.21
Meeting Date

SB 1128
Bill Number (if applicable)

Topic Repeal of Local Clean Energy Goals.

Amendment Barcode (if applicable)

Name Trish Brown

Job Title Community & State Organizer

Address 1316 Levy Ave
Street
Tallahassee FL 32310.
City *State* *Zip*

Phone (860) 688-7153

Email BrownLeptop4us@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tallahassee Community Action Comm. Hdq

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 20, 2021
Meeting Date

1128
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Preemption over Restriction of Utility Services

Name Samantha Padgett

Job Title General Counsel

Address 230 S. Adams St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 224-2250

Email spadgett@frla.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Restaurant and Lodging 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)

03/20/2021
Meeting Date

SB 1128
Bill Number (if applicable)

Topic Repeal of local clean energy goals

Amendment Barcode (if applicable)

Name Michelle C. Suarez

Job Title Organizer, activist, human Rights advocate

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Street

Phone 321-442-7777

Orlando FL 32827
City *State* *Zip*

Email Mearths15@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing [redacted]

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)

4/20/2021
Meeting Date

SB 1128
Bill Number (if applicable)

Topic ~~Anti-Trans~~ Repeal of Local Energy Goals

Amendment Barcode (if applicable)

Name Jonce Palmer

Job Title ESL Teacher

Address 395 Prince St
Street

Tallahassee FL 32304
City *State* *Zip*

Phone 850 520 0082

Email jonce.palmer@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Students for a Democratic Society

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

4-20-21
Meeting Date

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

SB 1128
Bill Number (if applicable)

Topic Repeal of local clean energy goals

Amendment Barcode (if applicable)

Name Amanda Weems

Job Title

Address 3404 Cedarwood Trail
Street

Tallahassee FL 32312
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Phone 850-590-7154

Email amandaw1098@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tallahatsee Community Action Committee

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

4/20/2021
Meeting Date

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

SB 1128
Bill Number (if applicable)

Topic Repeal of Local Clean Energy Goals

Amendment Barcode (if applicable)

Name Isabel Ruano

Job Title Human Services

Address 2631 Yarmouth Lane
Street

Tallahassee FL 32309
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

SB 1128
Bill Number (if applicable)

Topic UTILITY SERVICES

Amendment Barcode (if applicable)

Name TRISH NEELY

Job Title DIRECTOR

Address 2024 SHANGRI LA
Street

TALLY FL 32308
City *State* *Zip*

Phone 850 322 3317

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing LWV

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/CS/SB 1146
INTRODUCER:	Rules Committee; Appropriations Committee; Community Affairs Committee; and Senator Brodeur and others
SUBJECT:	Florida Building Code
DATE:	April 21, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Fav/CS**
2.	Davis	Sadberry	AP	**Fav/CS**
3.	Hackett	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1146 amends the Florida Building Codes Act adding several new provisions. Specifically, the bill:

- Allows a substantially affected person to petition the Florida Building Commission (commission) for a non-binding advisory opinion on whether a local government regulation is an improper amendment to the Florida Building Code (building code), and establishes a process for such.
- Allows the commission to issue an "errata to the code" to correct demonstrated errors in provisions contained within the building code.
- Requires the commission to adopt rules for approving product evaluation entities in addition to the ones already listed and approved in current law.
- Prohibits a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.
- Prohibits a local government from restricting the ability of a property owner to obtain a building permit to demolish and replace any single-family residential dwelling located in a coastal high hazard area, moderate flood zone, or special flood hazard area under certain circumstances.
- Expressly authorizes local governments and school districts to use a private provider to provide building code inspection services for public works projects and improvements to any building or structure.

- Provides that a local government may use excess funds generated by building code enforcement for the construction of a building or structure that houses the local government's building department or provides training programs for building officials, inspectors, or plans examiners.
- Provides that a municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency for any law, ordinance, rule, or other measure that has the effect of imposing land use changes.

The bill makes several changes to current law pertaining to private building inspectors, known as "private providers" by:

- Expressly authorizing private providers to conduct virtual building inspections.
- Allowing private provides to submit various inspection forms, records, and reports electronically to local building departments and utilize electronic signatures.
- Allowing private providers to conduct "single-trade inspections," as defined in the bill.
- Creating a "qualified private provider" registration process and providing that a qualified private provider, as defined in the bill, does not need to include information other than the services to be performed in their written notice to the local building official that a private provider has been contracted to perform inspections.
- Authorizing a private provider to conduct emergency inspection services without first notifying the local building official.

The bill amends the Community Planning Act to prohibit local governments from regulating specific "building design elements" for single-family or two-family residential dwellings, with certain exceptions.

The bill also allows the owner of an onsite sewage treatment and disposal system, or the owner's contractor, to select a private provider to provide certain inspection services of such systems in lieu of the Department of Health.

Finally, the bill prohibits the Department of Health from requiring assisted living facilities to comply with rules relating to swimming pool lifeguards.

The bill may have an indeterminate negative fiscal impact. *See* Part V, Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

The Community Planning Act

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

[1] Ch. 2011-139, Laws of Fla.

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

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

- Capital improvements;[6]
- Future land use plan;[7]
- Intergovernmental coordination;[8]
- Conservation;[9]
- Transportation;[10]
- Sanitary sewer, solid waste, drainage, potable water and aquifer recharge;[11]
- Recreation and open space;[12]
- Housing;[13] and
- Coastal management (for coastal local governments).[14]

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

Land Development Regulations

The comprehensive plan is implemented through enactment by local government of land development regulations. Land development regulations are ordinances that regulate any aspect

[2] Section 163.3161(4), F.S.
[3] Section 163.3177(1), F.S.
[4] Section 163.3177(1)(d), F.S.
[5] Section 163.3177(1)(a), F.S.
[6] Section 163.3177(3)(a), F.S. The capital improvements element must be reviewed by local governments annually. *See* s. 163.3177(3)(b), F.S.
[7] Section 163.3177(6)(a), F.S.
[8] Section 163.3177(6)(h), F.S.
[9] Section 163.3177(6)(d), F.S.
[10] Section 163.3177(6)(b), F.S.
[11] Section 163.3177(6)(c), F.S.
[12] Section 163.3177(6)(e), F.S.
[13] Section 163.3177(6)(f), F.S.
[14] Section 163.3177(6)(g), F.S.
[15] Section 163.3194(1)(b), F.S.
[16] *See* ss. 163.3161(6) and 163.3194(1)(a), F.S.
[17] Section 189.081(1)(b), F.S.

of development including any local government zoning, rezoning, subdivision, building construction, sign regulations, or any regulation that controls the development of land.[18]

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

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

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

- External paint color;[20]
- Architectural style of:
  - Windows;
  - Doors, including garage doors;
  - Front porches; and
  - Roofs.[21]
- Exterior building material;[22] and
- Location of windows and garage doors.[23]

[18] Sections 163.3164(26) & 163.3202(1), F.S.
[19] Section 163.3202(1), F.S.
[20] Osceola County Land Development Code, Ch. 3, Art. 3.2.2, *available at* https://library.municode.com/fl/osceola_county/codes/land_development_code?nodeId=LAND_DEVELOPMENT_CODE_CH3PESIST_ART3.2DIDEST(last visited Mar. 18, 2021); Code of the City of Orlando, Ch. 58, Part 3, s. 58.517; Orange County Code, Ch. 38, Art. VIII, Division 8, *available at* Mini TOC: Chapter 58 - ZONING DISTRICTS AND USES | Code of Ordinances | Orlando, FL | Municode Library (last visited Mar. 18, 2021).
[21] Osceola County Land Development Code, s. Ch. 3, Article 3.2.2., *supra* n. 20; Code of the City of Orlando, Ch. 58, Part 3, Section 58.517, *supra* n. 20; City of Winter Park Code of Ordinances, s. Ch. 58, Art. 3, s. 58-67, *available at* ARTICLE III. - ZONING | Code of Ordinances | Winter Park, FL | Municode Library; Orange County Code, Ch. 38, Art. VIII, Division 8, *available at* Mini TOC: ARTICLE VIII. - P-D PLANNED DEVELOPMENT DISTRICT | Code of Ordinances | Orange County, FL | Municode Library (all last visited Mar. 18, 2021).
[22] Orange County Code, Ch. 38, Art. VIII, Division 8, *supra* n. 20; City of Winter Park Code of Ordinances, Ch. 58, Art. 3, s. 58-67, *supra* n. 21 (both last visited Mar. 18, 2021).
[23] Code of the City of Orlando, Ch. 58, Part 3, s. 58.517, *supra* n. 20 (last visited Mar. 18, 2021).

Regulation of Building Design Elements – Other States

Some states now prohibit local governments from adopting regulations that require specific building design elements for single-family and two-family dwellings unless certain conditions exist. For example, a North Carolina law prohibits cities and counties from adopting regulations that require building design elements or a minimum square footage for single-family and two-family dwellings.[24] The North Carolina law defines "building design elements" as exterior building color, type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; number and types of rooms; and interior layout of rooms. The phrase does not include a single and two-family dwelling's height, bulk, orientation, and location of a structure.[25]

The Florida Building Code and Florida Building Commission

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.[26]

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.[27] The current edition of the building code is the seventh edition, which is referred to as the 2020 Building Code.[28]

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. [29]

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[24] *See* General Assembly of North Carolina, Session Law 2015-86 Senate Bill 25, June 9, 2015, *available at* https://www.ncleg.gov/Sessions/2015/Bills/Senate/PDF/S25v3.pdf and R. Erika Churchill, Staff Attorney for the North Carolina General Assembly, *Analysis of S.L. 2015-86* (last updated 10/12/2015), *available at* https://www.ncleg.gov/Legislation/Bills/Summaries/2015/S25 (both last visited Mar. 18, 2021).
[25] Id.
[26] 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 Feb. 15, 2021).
[27] *Id.*; Department of Business and Professional Regulation (DBPR), *Building Code Information System*, https://floridabuilding.org/c/default.aspx# (last visited Feb. 15, 2021).
[28] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Feb. 26, 2021).
[29] *See* s. 553.72(1), F.S.

The main purpose of the building code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.[30]

The Florida Building Commission

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.[31]

The commission reviews several International Codes published by the International Code Council, the National Electric Code (NEC), 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.[32]

The commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.[33] TACs are made up of commission members and other parties who advise the commission on declaratory statements, proposed amendments, and any other areas of interest of the commission.[34]

Local Enforcement of the Florida Building Code

The Legislature has provided local governments with the power to inspect all buildings, structures, and facilities within their jurisdiction to protect the public's health, safety, and welfare.[35]

Every local government must enforce the building code and issue building permits.[36] It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons that 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.[37]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[38] A building official is a local government employee or a person contracted by a local government who supervises building code activities,

[30] Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Feb. 26, 2021).
[31] Sections 553.73, and 553.74, F.S.
[32] *Id.*
[33] DBPR, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited Feb. 26, 2021).
[34] Section 553.73(3), F.S.; Fla. Admin. Code R. 61G20-2.001.
[35] Section 553.72, F.S.
[36] Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[37] *See* Sections 125.56(4)(a) and 553.79(1), F.S.
[38] Section 202 of the Building Code, Sixth Edition.

including plan review, enforcement, and inspection to ensure work complies with the building code.[39]

Amendments to the Building Code

The commission and local governments may adopt technical and administrative amendments to the building code. A technical amendment to the building code is an alteration to the prescriptive requirements or reference standards for construction. An administrative amendment is an addition or alteration of the code enforcement requirements of the building code.[40] All amendments adopted by the commission require a 75 percent supermajority vote of approval.[41]

The commission may approve technical amendments to the building code once each year for statewide or regional application upon a finding that the amendment:[42]

- Is needed in order to accommodate the specific needs of the state;
- Has a reasonable and substantial connection with the health, safety, and welfare of the general public;
- Strengthens or improves the building code, or in the case of innovation or new technology, will provide equivalent or better products or methods or systems of construction;
- Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities; and
- Does not degrade the effectiveness of the building code.

In order to adopt a technical amendment to the building code, the commission must meet the following requirements:[43]

- The proposed amendment has been published on the commission's website for a minimum of 45 days and all the associated documentation has been made available to any interested party before any consideration by a TAC;
- The proposed amendment includes a fiscal impact statement that documents the costs and benefits of the proposed amendment;
- In order for a TAC to make a favorable recommendation to the commission, the proposal must receive a three-fourths vote of the members present at the TAC meeting and at least half of the regular members must be present in order to conduct a meeting;
- After TAC consideration and a recommendation for approval of any proposed amendment, the proposal must be published on the commission's website for at least 45 days before any consideration by the commission; and
- A proposal may be modified by the commission based on public testimony and evidence from a public hearing held in accordance with ch. 120, F.S.

Adopted amendments to the foundation codes must be clearly marked in printed versions of the building code so the fact that the provisions are Florida-specific amendments to the foundation codes is readily apparent.[44]

[39] Section 468.603(2), F.S.
[40] Section 553.73, F.S.; Fla. Admin. Code R. 61G20-2.002.
[41] Fla. Admin. Code R. 61G20-2.002(13).
[42] Section 553.73(9), F.S.
[43] Section 553.73(3) and (9), F.S.
[44] Section 553.73(7), F.S.

However, for certain amendments the commission may adopt amendments at any time and only has to follow the rule adopting procedures in ch. 120, F.S. The commission may adopt amendments using the rule adoption procedure to address the following:[45]

- Conflicts within the updated building code;
- Conflicts between the updated building code and the Florida Fire Prevention Code;
- Unintended results from the integration of previously adopted Florida-specific amendments with the model code;
- Equivalency of standards;
- Changes to or inconsistencies with federal or state law;
- Adoption of an updated edition of the NEC if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare; or
- Enhancement of the construction requirements relating to wind resistance or the prevention of water intrusion.

Local Amendments to the Building Code

Local governments may adopt amendments to the building code that are more stringent than the building code that are limited to the local government's jurisdiction. Amendments by local governments expire upon the adoption of the newest edition of the building code, and, thus, the local government would need to go through the amendment process every three years in order to maintain a local amendment to the building code.[46]

Current law allows local governments to adopt technical amendments to the building code every six months if:[47]

- The local government's governing body holds a public hearing to discuss the amendment, which has been advertised in a newspaper of general circulation at least 10 days before the meeting;
- Following the hearing, the governing body determines that an amendment is needed to address a local need that is not addressed by the building code;
- The amendment is no more stringent than necessary to address the local need;
- The local amendment is not discriminatory against materials, products, or construction techniques of demonstrated capabilities;
- The local amendment does not introduce a new subject that is not addressed by the building code;
- The local amendment includes a fiscal impact statement, which documents the costs and benefits of the amendment including the impact to local government, property and building owners, industry, and the cost of compliance; and
- The local government sends the amendment to the commission.

[45] Section 553.73(8), F.S.; Fla. Admin. Code R. 61G20-2.002(2).
[46] Section 553.73(4), F.S.
[47] *Id*.

A technical amendment adopted by a local government takes effect 30 days after the commission receives the amendment and publishes the amendment on its website.[48]

The commission may review local amendments and issue nonbinding recommendations to local governments about whether the local government complied with the requirements to adopt an amendment. If the commission decides to review a local amendment, it must send the amendment to the applicable TAC for review.[49]

The TAC must then make a recommendation to the commission about whether the local amendment complies with the requirements of current law. The commission must provide the nonbinding recommendation to the local government within 30 days of adopting the recommendation.[50]

Each county and municipality that adopts technical amendments to the building code must establish a countywide compliance review board by interlocal agreement. The compliance review board reviews any amendment adopted by a local government in its county that is challenged by a substantially affected party in order to determine if the amendment has been adopted in accordance with the requirements of current law.[51]

A local government or the substantially affected party may appeal the compliance review board's decision to the commission within 14 days of the board's decision. The commission must refer the appeal to the Division of Administrative Hearings for a hearing by an administrative law judge. The administrative law judge must hold a hearing within 30 days of being assigned the appeal, and must enter a recommended order within 30 days of the conclusion of the hearing.[52]

The commission must enter a final order within 30 days after the administrative law judge issues a recommended order. In proceedings before a compliance review board or the commission, the local government has the burden to prove an amendment has been adopted in accordance with the requirements of current law.[53]

Interpretations of the Building Code

The commission may issue declaratory statements regarding interpretations of the Florida Building Code, review local building officials' interpretation of the building code, and give binding interpretations of the building code.[54]

A substantially affected person, state agency, or a local government may petition the commission in writing for a declaratory statement relating to interpretations of the building code, or the enforcement or administration of the building code by local governments. The commission must issue a declaratory statement or deny a petition within 90 days of receiving the petition.

[48] Section 553.73(4), F.S.; Fla. Admin. Code R. 61G20-2.003.
[49] *Id.*
[50] *Id.*
[51] Section 553.73(4), F.S.
[52] *Id.*
[53] *Id.*
[54] Section 553.775, F.S.

Declaratory statements are binding upon all jurisdictions and are subject to judicial review by a district court of appeal.[55]

A substantially affected person may also petition the commission to review a local building official's interpretation of the building code. A substantially affected person includes an owner or builder subject to a decision of the local building official or an association of owners or builders having members who are subject to a decision of the local building official.[56]
A substantially affected person may petition the commission to review a local building official's interpretation of the building code if:[57]

- The substantially affected person has appealed the building official's interpretation to the local board of appeals, if such board exists;
- The substantially affected person files a written petition to the commission on a form adopted by the commission which contains:
  - The name and address of the local government and the local building official;
  - The name, address, and phone number of the substantially affected person, and an explanation of how they are substantially affected by the building official's interpretation;
  - A statement of the provisions of the building code that are being interpreted, the building official's interpretation of those sections, and the substantially affected person's interpretation of those sections; and
  - The local building official's response.
- The substantially affected person has given the petition to the local building official and at least five days for the building official to respond.

Upon receiving a written petition to review a local building official's interpretation of the building code, the commission must provide copies to a panel, and publish the petition and the local building official's response on the commission's website and allow for comments to be posted by interested parties. The panel must have seven members made up of five building officials, an architect, and an engineer. The commission must coordinate with the Building Officials Association of Florida[58] to designate the panel.[59]

The panel must conduct proceedings necessary to issue a determination, and consider the written petition, the local building official's response, and any comments posted on the commission's website. The panel must issue a determination within 21 days of the petition being filed with the commission. The determination is binding upon all parties and all jurisdictions in Florida.[60] The determination must be published on the commission's website and the Florida Administrative Register.[61]

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[55] Sections 553.775(3), 120.565, and 120.68, F.S.
[56] Section 553.775(3), F.S.
[57] *Id.*
[58] The Building Officials Association of Florida is the largest community of building officials, building inspectors, plans examiners, and building code compliance professionals in the state. Its goal is to ensure the health, safety, and welfare of the public through safe building practices by equipping building professions through education, advocacy, leadership, and code development. Building Officials Association of Florida, *About BOAF*, https://boaf.net/page/About (last visited Jan. 8, 2020).
[59] *Id.*
[60] *Id.*
[61] *Id.*; The Florida Administrative Register is a daily publication which gives the public current information about the status of proposed rules, notice of agency public meetings, workshops and hearings, and anything else required by law. Florida

A party may appeal the panel's determination by filing an appeal with the commission within 30 days of the panel's determination. The commission must conduct a hearing in accordance with the Administrative Procedure Act. The burden of proof in the hearing is on the party appealing the panel's determination. The commission's ruling is subject to judicial review by a district court of appeal.[62]

Virtual Building Inspections

As a result of COVID-19, many building departments in Florida began performing virtual inspections in order to prevent a shut down and to protect building department staff, contractors, and property owners. Virtual inspections allow a building official or inspector to perform an inspection without having to be physically present at the jobsite. They also allow building departments to continue operating during the COVID-19 pandemic, which allows contractors to keep working.[63]

Virtual inspections can range from roofing inspections, windows and doors inspections, to A/C change outs depending on the jurisdiction. Virtual inspections can be more efficient than in-person inspections by reducing jobsite travel time, allowing contractors to immediately request an inspection once they finish work, and allowing the contractor to remain on the jobsite.[64]

Current law does not specifically prohibit building departments from performing virtual inspections, but it also does not specifically allow building departments to perform virtual inspections.

Product Evaluation and Approval

Current law requires the commission to develop and implement an approval of products for statewide use. The commission has created a product approval system for products and systems that makeup the building envelope and structural frame of a building.[65] The commission approves the products in several categories for statewide use.[66]

To obtain state approval, a manufacturer must demonstrate that a product complies with the applicable standards and provisions of the building code by submitting one of the following reports:

- A certification mark or listing of an approved certification agency;

Administrative Code & Florida Administrative Register, *FL Rules FAQ*, https://www.flrules.org/Help/newHelp.asp#FAW (last visited Jan. 15, 2020).

[62] Sections 553.775(3) and 120.68, F.S.

[63] Monica Casey, Tallahassee creates virtual building inspections to save jobs and keep social distancing, WCTV.tv (Apr. 8, 2020) https://www.wctv.tv/content/news/Tallahassee-creates-virtual-building-inspections-to-save-jobs-and-keep-social-distancing-569485561.html (last visited Apr. 5, 2021).

[64] Miami Beach, Modified Procedures for Building Code Inspections During COVID-19 Emergency Period, https://www.miamibeachfl.gov/wp-content/uploads/2020/05/Virtual-inspections-procedures-2.pdf (last visited Apr. 5, 2021); Boca Raton, Virtual Inspections, https://myboca.us/1846/Virtual-Inspections (last visited Apr. 5, 2021).

[65] Section 553.842(1), F.S.; Fla. Admin. Code R. 61G20-3.001.

[66] Fla. Admin. Code R. 61G20-3.001. The categories considered by this rule are panel walls, exterior doors, roofing products, skylights, windows, shutters, structural components, and impact protective systems.

- A test report from an approved testing laboratory;
- A product evaluation report developed, signed, and sealed by a Florida licensed engineer or architect; or
- A product evaluation report from one of the following evaluation entities:
  - The National Evaluation Service;
  - The International Association of Plumbing and Mechanical Officials Evaluation Service;
  - The International Code Council Evaluation Services;
  - Underwriters Laboratories, LLC;
  - The International Conference of Building Officials;
  - SBCCI Public Safety Testing and Evaluation Services, Inc.;
  - Intertek Testing Services NA, Inc.; or
  - The Miami-Dade County Building Code Compliance Office Product Control Division.[67]

Currently, the commission has authority to approve an entity as an approved testing laboratory or a certification agency if it meets the commission's rules.[68] However, the commission does not have authority to approve an entity as an evaluation entity. In order to be approved as an evaluation entity, the entity must be added to the list of approved evaluation entities in current law by the Legislature.

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:[69]

- 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 any additional information be included in the application.[70]

Private Providers

Any construction work that requires a building permit also requires plans and inspections by a local building official to ensure the work complies with the building code. The building code requires certain building, electrical, plumbing, mechanical, and gas inspections. In addition to

[67] Section 553.842, F.S.; DBPR, Product Evaluation Entity List, https://www.floridabuilding.org/pr/pr_org_lst.aspx (last visited Mar. 29, 2021).
[68] Fla. Admin. Code R. 61G20-3.008.
[69] Section 713.135(5) and (6), F.S.
[70] *Id.*

required inspections, a local building official may require other inspections of any work to ensure it complies with the building code.[71]

In 2002, the Legislature created s. 553.791, F.S., allowing contractors and property owners to hire licensed building code administrators, engineers, and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion.

Private providers are able to approve building plans and perform building code inspections as long as the plans approval and inspections are within the scope of the provider's license. Licensed building inspectors and plans examiners may perform inspections for additions and alterations that are limited to 1,000 square feet or less in residential buildings.

A building official is entitled to audit a private provider to ensure the private provider has reviewed the building plans and is performing the required inspections. A building official may not audit a private provider more than four times in a month unless the building official determines the condition of a building constitutes an immediate threat to public safety and welfare. A building official may also issue a stop work order at any time if he or she determines any condition of the construction poses an immediate threat to public safety and welfare.[72]

Building Code Enforcement Fees

Each local government may provide a schedule of reasonable fees in order to cover the costs of inspection and enforcement of the building code.[73] A local government entity's fees must be used solely for carrying out that local government entity's responsibilities in enforcing the building code. The basis for the fee structure must relate to the level of service provided by the local government. The fees charged must be consistently applied.[74]

The fees, including any fines or investment earnings related to the fees, may only be used for the costs associated with enforcing the building code. "Enforcing the building code," includes:[75]

- 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.

Local governments are prohibited from using fees to cover the cost of enforcing the building code to fund:[76]

[71] Sections 107, 110.1, and 110.3 of the Building Code, Sixth Edition.
[72] Sections 553.791(1), (13), and (18), F.S.
[73] Sections 125.56(2), 166.222, and 553.80(7), F.S. *See e.g.*, Broward County website on Impact and Concurrency Fees, available at http://www.broward.org/Planning/Development/FAQs/Pages/Impact-and-Concurrency-Fees.aspx (last visited Mar. 15, 2019).
[74] Sections 125.56(2) and (4), 166.222, and 553.80(7), F.S.
[75] Section 553.80(7)(a), F.S.
[76] Section 553.80(7)(b), F.S.

- Planning and zoning or other general government activities;
- Inspections of public buildings for a reduced fee or no fee;
- Public information requests, community functions, boards, and any program not directly related to enforcement of the building code; and
- Enforcement and implementation of any other local ordinance, excluding local amendments to the building code and local ordinances directly related to enforcing the building code.

Local governments are also prohibited from levying fees that would generate a total estimated annual revenue that exceeds the total estimated annual cost of its enforcement activities.[77] If any excess funds are accumulated, the local government has discretion to issue refunds or **carry forward those funds into future years**. Local governments are required to use "recognized management, accounting, and oversight practices" to ensure fees, fines, and investment earnings are maintained and used only for authorized purposes.[78]

Prior to 2019, there was no limit on the amount of such funds that local governments could carry forward into future years.[79]

In 2019, the Legislature limited the amount of funds generated by building code enforcement activities that local governments could carry forward.[80] Current law provides that local governments may not carry forward an amount that exceeds an amount equal to one year of their operating budget for building code enforcement activities. The amount of the operating budget is determined by averaging the local government's operating budget for building code enforcement activities from the previous four fiscal years. A local government may not count any funds held in reserve when determining the four-year rolling average of its operating budget.[81]

If a local government carries forward an amount of funds that exceeds the statutory limit, it must use the excess funds to **rebate and reduce permit fees**.[82]

However, a local government may carry forward funds that exceed the allowed statutory limit if the local government established a Building Inspections Fund Advisory Board prior to 2019, and the board recommends to carry forward such excess funds. The board must consist of five members from the construction industry stakeholder community.[83]

Onsite Sewage Treatment and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as "septic systems," generally consist of two basic parts: the septic tank and the drainfield.[84] Waste from

[77] Section 553.80(7), F.S.
[78] Section 553.80(7)(c), F.S.
[79] *See* s. 553.80(7), F.S. (2018).
[80] *See* Senate Analysis of 2019 Senate Bill 1036 (April 9, 2019).
[81] Section 553.80(7), F.S.
[82] *Id.*
[83] *Id.*
[84] Department of Health (DOH), *Septic System Information and Care*, http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html (last visited Mar. 31, 2021);

toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria breakdown the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.[85]

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.[86] In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.[87] For example, in rural areas and low-density developments, central sewer systems are not cost-effective.

Permitting and official inspection of OSTDSs is administered by the Environmental Health Section of the Department of Health (DOH) in each county.[88] The section permits, regulates, and inspects the construction of new systems, repairs and modifications to existing systems, existing system approvals, and abandonments of systems.[89] Much like other construction projects, installation, repair, alteration, modification, abandonment, and replacement of OSTDSs requires a permit.[90] Before an OSTDS is covered with earth, put into service, or repaired, the county DOH must inspect the system for compliance with statutory requirements and the DOH rules.[91] Chapter 2020-150, L.O.F., provides effective July 1, 2021, the regulation of OSTDSs relating to the Onsite Sewage Program in the DOH is transferred by a type two transfer to the Department of Environmental Protection (DEP).

Assisted Living Facilities

An assisted living facility is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.[92] A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.[93] Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.[94]

Environmental Protection Agency (EPA), *Types of Septic Systems*, https://www.epa.gov/septic/types-septic-systems (last visited Mar. 31, 2021).
[85] *Id*.
[86] DOH, *Onsite Sewage*, http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last visited Mar. 24, 2021).
[87] DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), *available at* http://www.floridahealth.gov/environmental-health/onsite-sewage/research/_documents/rrac/2008-11-06.pdf (last visited Mar. 24, 2021). The report begins on page 56 of the PDF.
[88] DOH, *Onsite Sewage*, http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html (last visited Apr. 12, 2021).
[89] *Id*.
[90] Fla. Admin. Code R. 64E-6.003(1).
[91] Fla. Admin. Code R. 64E-6.003.
[92] Section 429.02(5), F.S. An assisted living facility does not include an adult family-care home or a non-transient public lodging establishment.
[93] Section 429.02(16), F.S.
[94] Section 429.02(1), F.S.

Assisted living facilities are licensed and regulated by the Agency for Health Care Administration (AHCA) under part I of ch. 429, F.S., and part II of ch. 408, F.S., Florida Administrative Code Rule 59A-36. In addition to a standard license, an assisted living facility may have one or more specialty licenses that allow the assisted living facility to provide additional care. These specialty licenses include limited nursing services,[95] limited mental health services, and extended congregate care services.[96]

Current law requires rules governing assisted living facilities to promote a safe and sanitary environment that is residential and non-institutional in design or nature.[97] Current law also requires that rules set requirements for and maintenance of facilities relating to plumbing, heating, cooling, lighting, ventilation, living space, and other housing conditions that are not in conflict with ch. 553, F.S., governing building construction standards. Current law also requires the AHCA to develop key quality-of-care standards for assisted living facilities with input from the State Long-Term Care Ombudsman Council and representatives of provider groups for incorporation into its rules.[98] Rules must also address moratoriums, classification of deficiencies, the levying of penalties and the use of income from fees and fines.[99]

Public Pools

The DOH is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida under ch. 514, F.S. In order to operate or continue to operate a public swimming pool, a valid operating permit from the DOH must be obtained. If the DOH determines that the public swimming pool is, or is reasonably expected to be, operated in compliance with state laws and rules, the DOH will issue a permit. However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied. The DOH is authorized to establish a schedule of fees for plan approval and permitting.[100] Operating permits must be renewed annually and may be transferred from one name or owner to another.[101]

A public swimming pool includes "a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee, and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses."[102]

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[95] Section 429.07(3)(c), F.S. Limited nursing services include acts that may be performed by a person licensed as a nurse but are not complex enough to require 24-hour nursing supervision and may include such services as the application and care of routine dressings, and care of casts, braces, and splints (s. 429.02(13), F.S.).
[96] Section 429.07(3)(b), F.S. Extended congregate care facilities provide services to an individual that would otherwise be ineligible for continued care in an assisted living facility. The primary purpose is to allow a resident the option of remaining in a familiar setting from which they would otherwise be disqualified for continued residency as they become more impaired.
[97] Section 429.41(1), F.S.
[98] Section 429.41(5), F.S. The Agency for Health Care Administration (AHCA) reviews the key quality-of-care standards for compliance during an abbreviated biennial licensure inspection (s. 429.41(5), F.S.).
[99] Section 429.41(1)(f), F.S.
[100] Section 514.033, F.S.
[101] Section 514.031(2) and (3), F.S.
[102] *Id.*

All public pools must be equipped with the following safety features:[103]

- Safety drain outlet cover(s)/grate(s) and allowable secondary anti-entrapment devices;[104]
- A shepherd's hook securely attached to a one piece pole not less than 16 feet in length. Pools over 50 feet in length shall have a shepherd's hook on each of the longer sides of the pool[105];
- At least one 18-inch diameter lifesaving ring with sufficient rope attached to reach all parts of the pool from the pool deck. Pools over 50 feet in length shall have a lifesaving ring on each of the longer sides of the pool;
- Safety equipment shall be mounted in a conspicuous place and be readily available for use; and
- Lighting if the pool is used during nighttime.

Lifeguards

A "lifeguard" is a person responsible for the safety of the users of a public swimming pool. Lifeguards are not required at a public pool unless the pool has a water slide plunge pool or the pool is a water activity pool with climbable structures.[106]

However, anyone working as a lifeguard at a public swimming pool must be certified in lifeguarding, first aid, and cardiopulmonary resuscitation by the American Red Cross, the Y.M.C.A., or other nationally recognized aquatic training programs.[107]

Pools in Assisted Living Facilities

Current law gives the DOH the authority to adopt rules necessary to protect the health and safety of residents, staff, and patrons of group care facilities.[108] The DOH's rules require a group care facility, with a pool, to provide direct supervision by an adult employee when in use or when the area is occupied by minors and other residents that cannot swim. The adult employee providing supervision must have completed a community water safety course by the American Red Cross, Y.M.C.A., or other approved aquatic training program.[109]

Group care facilities include public or private schools, assisted living facilities, adult family-care homes, adult day care centers, short-term residential treatment centers, residential treatment facilities, home for special services, transitional living facilities, crisis stabilization units, hospices, prescribed pediatric extended care centers, intermediate care facilities for persons with developmental disabilities, or boarding schools.[110]

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[103] Fla. Admin. Code R. 64E-9.008(3) and (7).
[104] Federal law requires public pools and spas to have a drain cover and a secondary anti-entrapment device in order to avoid suction entrapment. 15 U.S.C. s. 106.
[105] Spa pools under 200 square feet of surface area, and interactive water features or wading pools with two feet or less of water depth are exempt from the requirement to have shepherd's hook and lifesaving ring requirement. *Id.*
[106] Section 514.071, F.S.; Fla. Admin. Code R. 64E-9.008(2).
[107] *Id.*
[108] *Id.*
[109] Fla. Admin. Code R. 64E-12.011(3).
[110] Section 381.006(16), F.S.

On July 6, 2018, the DOH opened up its rules relating to group care facilities, including the rule relating to pools in group care facilities, in order to update the rules by incorporating technical changes for consistency with changes in industry standards, reduce surplus language, and increase clarity. On March 11, 2020, the DOH held a workshop to receive comments on the possible rule updates.[111] The proposed rule requires assisted living facilities with pools, spas, or open water hazards to implement and maintain a written policy pertaining to the use of water safety barriers, water safety devices and equipment, and cardiopulmonary resuscitation. The policy must be available for review by the DOH.[112]

The proposed rule provides that if an assisted living facility has a pool, spa, or open water hazard that is not considered a public swimming pool, the facility must have direct supervision by an adult employee when in use or when the area is occupied by minors and other residents or visitors that cannot swim. The individual responsible for supervision during water activities or near water hazards must be knowledgeable of:[113]

- The written policy;
- The correct use of water safety devices and equipment;
- The correct use of any water safety barriers; and
- Cardiopulmonary resuscitation procedures.

The proposed rule also provides that an assisted living facility with a pool or spa that is not considered a public swimming pool, must have a residential swimming pool barrier that meets the standards of the building code, and be equipped with water safety devices including a shepherd's hook not less than 16 feet in length and an 18-inch diameter lifesaving ring.[114]

Federal Emergency Management Agency Flood Maps

The Federal Emergency Management Agency (FEMA) is an agency within the United States Department of Homeland Security. The FEMA coordinates responses to disasters within the United States. The FEMA provides resources and assistance to local and state authorities when a disaster overwhelms local response capacities.

The FEMA is responsible for various services related to flood insurance, floodplain management, and flood mapping. The FEMA provides flood hazard and risk data products to help set insurance rates for the National Flood Insurance Program (NFIP) and help guide local and state governments' flood mitigation actions.

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[111] DOH, *Group Care Facilities*, http://www.floridahealth.gov/environmental-health/group-care-facilities/index.html (last visited Feb. 25, 2021). Department of State, History of Rule 64E-12.011 since Jan. 6, 2006, Florida Administrative Code and Florida Administrative Register https://www.flrules.org/gateway/RuleNo.asp?title=COMMUNITY%20BASED%20RESIDENTIAL%20FACILITIES&ID=64E-12.011 (last visited Feb. 25, 2021).

[112] Email from Andrew Love, Legislative Planning Director, DOH, FW: Violations at pool inspections Re: Pool Bills - Exemption for HOAs HB 463/SB 902 (Feb. 26, 2021).

[113] *Id.*

[114] *Id.*

The National Flood Insurance Program

The NFIP is a program created by the Congress of the United States in 1968 through the National Flood Insurance Act of 1968. The NFIP aims to share the risk of flood losses through flood insurance and reduce flood damage by restricting development within floodplains. The program enables property owners in participating communities to purchase insurance protection, administered by the government, against flooding losses. Participation in the NFIP is limited to communities that adopt adequate land use and control measures with effective enforcement provisions to reduce flood damages by restricting development in areas exposed to flooding.[115]

Flood Insurance Rate Maps

The NFIP insurance rates are correlated with the unique flooding risks of a geographic area. To facilitate the allocation of insurance rates, the FEMA prepares flood insurance rate maps (FIRM). A FIRM is an official map of a community within the United States that displays the floodplains, more explicitly particular hazard areas and risk premium zones, as delineated by the FEMA.[116]

FIRMs display areas that fall within the 100-year flood boundary, special flood hazard areas, and insurance risk zones. FIRMs are used to set insurance rates against the risk of flood and whether buildings are insurable at all against flood. Furthermore, towns and municipalities use FIRMs for local land use policy and zoning.[117]

Local Government Flood Map Adoption Process

For local governments and individual homeowners to acquire property insurance and participation in the NFIP, local governments must officially adopt FIRMs by providing for such via ordinance. Local governments must also adopt updates and revisions to FIRMs made by the FEMA. Generally, the adoption process involves the FEMA issuing preliminary flood maps, a period for community review and appeal, the FEMA issuing a letter of determination, and local governments updating ordinances to reflect flood map changes. The process for adopting FIRMs is described in more detail below.[118]

Preliminary Flood Insurance Rate Maps

The FEMA prepares preliminary flood hazard data to provide the public an early look at their home or community's projected risk to flood hazards. Preliminary data may include new or revised FIRMs. Under the FEMA's Risk Mapping, Assessment, and Planning program, the FEMA with communities and other local stakeholders engage in a discovery process to obtain a comprehensive picture of the community's flooding issues, flood risk, and potential flood mitigation activities. This analysis may also include a review of more restrictive floodplain

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[115] FEMA, *Flood Insurance*, *available at:* https://www.fema.gov/flood-insurance (last visited April 16, 2021).
[116] FEMA, *Flood Insurance Rate Map (FIRM)*, *available at:* https://www.fema.gov/glossary/flood-insurance-rate-map-firm (last visited April 16, 2021).
[117] *Id.*
[118] *See generally* Adoption of Flood Insurance Rate Maps by Participating Communities, FEMA 495 January 2019, *available at:* https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf (last visited April 16, 2021).

management criteria. Information obtained during the discovery process helps the FEMA prepare preliminary FIRMs.[119]

Local Government Flood Map Adoption Process

Next, the FEMA provides copies of a preliminary FIRM report for community review and holds meetings with various state and local officials involved in the study. The FEMA may also hold public meetings to introduce and discuss the preliminary FIRM and FIS report with community members.[120]

90-day Communities Appeals Period

After the Consultation Coordination Officer (CCO) meeting, the FEMA initiates a 90-day period for communities to submit appeals about the new or modified flood hazard information shown on the FIRM. Before the appeal period is initiated, the FEMA will publish a notice of proposed flood hazard determinations in the Federal Register, notify the community's Chief Executive Officer, and publish information at least twice in a local newspaper. The appeal period provides community officials and people who own or lease property in the community an opportunity to submit scientific or technical information if they believe the flood hazard determinations are scientifically or technically incorrect.[121]

Letter of Final Determination

Following the 90-day appeal period, the FEMA resolves all appeals and finalizes the changes to the FIRM and FIS report. The FEMA then sends each affected community a Letter of Final Determination (LFD), which establishes the final flood hazard data and the effective date of the new FIRM and FIS report for the community.[122]

Six-month Community Adoption Period

The LFD also initiates the six-month period during which each community must adopt or amend its floodplain management regulations to reference the date and title of the new FIRM report. The FIRM and FIS report become effective at the end of the six months. At that time, flood insurance rates will be based on the new flood data, and the community will apply any floodplain management ordinances related to the new mapping. Federally insured or regulated lenders will also use the newly effective FIRM to determine if flood insurance is required as a condition of a loan.[123]

Community Land Use Regulation Changes

Each time the FEMA provides a community with new or revised flood hazard data, the local government must either adopt new floodplain management regulations to incorporate the data

[119] FEMA, *Flood Map Products*, *available at:* https://www.fema.gov/flood-maps/products-tools/products#gis (last visited April 16, 2021).
[120] *See generally* Adoption of Flood Insurance Rate Maps by Participating Communities, FEMA 495 January 2019, available at: https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf (last visited April 16, 2021).
[121] *Id.* at 3.
[122] *Id.* at 4.
[123] *Id.*

into in a code of ordinances or amend the existing ones to reference the new FIRM report. Many communities have legally valid automatic adoption clauses to incorporate updated FIRM map reference sections.[124]

If a new type of flood hazard data is added to a community's FIRM, local officials may need to enact an ordinance to meet additional requirements. This ordinance enactment could be needed when the FEMA upgrades a flood zone without Base Flood Elevations (BFEs), indicates a new Special Flood Hazard Area (SFHA), or designates a coastal high hazard area.[125]

Consequences for Failing to Adopt Appropriate Floodplain Management Regulations

If a community does not adopt or amend floodplain management regulations after six months, the community will be suspended from the NFIP. Suspension from the NFIP will have the following consequences:

- Property owners are prevented from purchasing NFIP flood insurance policies, and existing policies will not be renewed.
- Federal grants or loans for development will not be available in identified flood hazard areas.
- Federal disaster assistance will not be provided to permanently repair insurable buildings in identified flood hazard areas for damage caused by a flood.
- Federal mortgage insurance or loan guarantees, such as those written by the Federal Housing Administration and the Department of Veteran Affairs, will not be provided in identified flood hazard areas.

Federally insured or regulated lending institutions, such as banks and credit unions, can make conventional loans for insurable buildings in flood hazard areas of non-participating communities.[126]

III. Effect of Proposed Changes:

Section 1 amends s. 163.3202, F.S., to prohibit local governments from adopting zoning and development regulations that relate to building design elements for single-family or two-family dwellings.

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

- The dwelling is listed in the National Register of Historic Places;[127]
- The dwelling is located in a National Register Historic District;
- The dwelling is designated as a historic property or located in a historic district by a local preservation ordinance;
- The regulations are adopted in order to implement the National Flood Insurance Program;

[124] *Id*. at 5.
[125] *See generally* Adoption of Flood Insurance Rate Maps by Participating Communities, FEMA 495 January 2019, available at: https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf (last visited April 16, 2021).
[126] *Id.* at 5 – 6.
[127] Section 267.021(5), F.S., relating to historical resources, provides the term "National Register of Historic Places" means "the list of historic properties significant in American history, architecture, archaeology, engineering, and culture, maintained by the Secretary of the Interior, as established by the National Historic Preservation Act of 1966, as amended."

- The regulations are adopted pursuant to and meet the building construction standards in ch. 553, F.S.;
- The dwelling is located in a community redevelopment area, as defined in s. 163.340(10), F.S.;[128]
- The regulations are required to ensure protection of coastal wildlife;
- The dwelling is located in a planned unit development or master planned community; or
- The dwelling is located within the jurisdiction of a local government that has a design review board or architectural review board.

The section defines the term "building design elements" to mean:

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

The section defines "planned unit development" and "master planned community" as:

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

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

Section 2 amends s. 381.0065, F.S., to allow the owner of an onsite sewage treatment and disposal system (OSTDS), or the owner's contractor, to select a private provider to provide official inspection services of such systems in lieu of the Department of Health (DOH).[129] This

[128] Under s. 163.340(10), F.S., the term "community redevelopment area" means " a slum area, a blighted area, or an area in which there is a shortage of housing that is affordable to residents of low or moderate income, including the elderly, or a coastal and tourist area that is deteriorating and economically distressed due to outdated building density patterns, inadequate transportation and parking facilities, faulty lot layout or inadequate street layout, or a combination thereof which the governing body designates as appropriate for community redevelopment. For community redevelopment agencies created after July 1, 2006, a community redevelopment area may not consist of more than 80 percent of a municipality."

[129] Chapter 2020-150, Laws of Fla., provides effective July 1, 2021, the regulation of OSTDSs relating to the Onsite Sewage Program in the DOH is transferred by a type two transfer to the Department of Environmental Protection (DEP).

authorization is substantially similar to the provisions governing private building inspectors in ch. 553, F.S.

An owner or contractor using a private provider must notify the DOH two days prior to the first inspection of their intention to use a private provider. This notification must include the private provider's business information, professional license or certification number, and qualification statements or resumes. It must also include an acknowledgement form with prescribed language stating the owner's rights and liabilities to the DOH. An owner or contractor who changes the listed private providers must also update the notice given to the DOH.

The DOH must reduce permit fees based on savings to the DOH due to a private provider providing the inspection services.

The OSTDS inspection services may be performed only by a private provider, a duly authorized representative of a private provider, or a person who is:

- Certified as an environmental health professional[130] by the DOH under s. 381.0101, F.S.;
- A master septic contractor[131] licensed by the Department of Business and Professional Regulations pursuant to ch. 489, F.S.;
- A professional engineer who has passed all three parts of the Onsite Sewage Treatment and Disposal System (OSTDS) Accelerated Certification Training[132]; or
- A person working as staff under such an engineer, who has also passed all three parts of the OSTDS Accelerated Certification Training.

The DOH may audit the performance of OSTDS inspection services by private providers. Such an audit cannot occur more than four times per month unless the DOH determines that an inspected and passed OSTDS should not have passed. Audits may not delay work following a passed inspection.

Section 3 amends s. 514.0115, F.S., to prohibit the DOH from requiring assisted living facilities with pools to comply with the DOH rules relating to swimming pool lifeguards.

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[130] "Environmental health professional" means a person who is employed or assigned the responsibility for assessing the environmental health or sanitary conditions, as defined by the department, within a building, on an individual's property, or within the community at large, and who has the knowledge, skills, and abilities to carry out these tasks. Environmental health professionals may be either field, supervisory, or administrative staff members. Section 381.0101(1)(d), F.S.

[131] "Master septic tank contractor" means a septic tank contractor whose services are unlimited in the septic tank trade who has had at least three years' experience as a Florida-registered septic tank contractor or a certified plumbing contractor who has provided septic tank contracting services for at least three years and who has the experience, knowledge, and skills to install, maintain, repair, close repairs of, and alter all types of onsite sewage treatment and disposal systems, to design onsite sewage treatment and disposal systems, where not prohibited by law, to perform and submit soil evaluations, when determined to meet site-evaluation expertise established by rule, and to use materials and items used in the installation and maintenance of all types of onsite sewage treatment and disposal systems. Section 489.551(2), F.S.

[132] The Onsite Sewage Treatment and Disposal System (OSTDS) Accelerated Certification Training program, administered by the DOH, provides five days of training on OSTDSs and results in a special certification. The program is available to private individuals, septic tank contractors, licensed plumbers, professional engineers, and staff working under professional engineers. DOH, *Accelerated Environmental Health Professional Certification and Master Septic Tank Contractor Training Participation and Examination Guide, available at* http://www.floridahealth.gov/environmental-health/onsite-sewage/training/_documents/act-part-n-exam-guide1-12-2021.pdf (last visited Apr. 1, 2021).

Section 4 amends s. 553.73, F.S., to provide that a substantially affected person[133] may petition the Florida Building Commission (commission) for a non-binding advisory opinion for any local government[134] regulation, law, ordinance, policy, amendment, or land use or zoning provision (regulation) that the person believes is a technical amendment to the Florida Building Code (building code) and was not adopted in accordance with the process for adopting local amendments to the building code.

The commission must issue a non-binding advisory opinion stating whether a local government regulation is a technical amendment to the building code if the substantially affected person submits a petition to the commission. The petition must also be submitted to the local government's general counsel or administrator by certified mail, return receipt requested. The local government may respond within 14 days, and send a copy of its response to the commission. The petition must be made using a form adopted by the commission that contains at a minimum:

- The name of the local government that enacted the regulation;
- The name and address of the local government's general counsel;
- The name, address, and phone number of the substantially affected person;
- An explanation of how the person is substantially affected by the local government's regulation; and
- A statement of why the regulation is a technical amendment to the building code, and which provisions of the building code are amended by the regulation, if any.

Upon receiving a petition to review a local government's regulation, the commission must publish the petition and the local government's response on the building code information system and allow for comments to be posted by interested parties.

The commission must consider the petition, the local government's response, any comments posted on the commission's website, and any recommendation provided by a Technical Advisory Committee. The commission must issue a non-binding advisory opinion stating whether the local government's regulation is a technical amendment to the building code within 60 days of receiving the petition. The commission must also publish the non-binding advisory opinion on its website and the Florida Administrative Register.

This section further provides that the commission may also issue an "errata to the code," pursuant to the rule adoption procedures in chapter 120, F.S., to correct demonstrated errors in provisions contained with the building code. An "errata to the code" means a list of errors on current and previous editions of the building code. The determination of such errors and the issuance of an "errata to the code" must be approved by a 75 percent supermajority vote of the commission.

Finally, under the bill, a municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency (FEMA) for any law, ordinance, rule, or other measure that has the effect of imposing land use changes. Under this provision, the named

[133] A "substantially affected person" includes an owner or builder subject to the local government's regulation or an association of owners or builders who have members who are subject to the regulation.
[134] A "local government" means a county, municipality, special district, or political subdivision of the state.

local government entities may have to provide that land use changes based on a preliminary FEMA map are not effective until the FEMA map becomes effective, and is no longer considered preliminary.

Section 6 amends s. 553.79, F.S., to prohibit a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.

The section also provides that a local government may not prohibit or otherwise restrict the ability of a property owner to obtain a building permit to demolish and replace any single-family residential dwelling located in a coastal high hazard area, moderate flood zone, or special flood hazard area if the lowest floor elevation of the dwelling is at or below the property's base flood elevation plus one foot, pursuant to the building code or local ordinance. Such a demolition permit may only be reviewed administratively for compliance with the building code and applicable construction regulations, and is not subject to additional land development regulation or zoning approval that requires a public hearing before the issuance of the permit. Local governments may not impose additional regulatory requirements on the replacement single-family residential dwelling which would not otherwise be applicable to a similarly situated vacant parcel, and may not penalize the owner for such demolition.[135]

Section 7 amends s. 553.791, F.S., to allow private providers to conduct inspection services either virtually or in person.

This section revises the statutory provision regarding reduction of fees for utilizing private providers to expressly require local jurisdictions to reduce the permit fee by the amount of cost savings realized by the local enforcement agency based on a flat fee, percentage, or other reasonable means.

This section further allows electronic signatures to be used on several forms submitted by private providers to building code officials. "Electronic signature" is defined to mean any letters, characters, or symbols manifested by electronic or similar means which are executed or adopted by a party with an intent to authenticate a writing or record. Inspection records and affidavits attesting that plans have been reviewed for compliance may be signed physically or electronically. Such an affidavit may also be electronically submitted.

When a noncomplying item related to the building code or permitted documents is found at a work site, a deficiency notice must be posted at the job site by the private provider, the provider's representative, or the building department. The bill allows such deficiency notice to be electronically posted, in the alternative to physically posting at the jobsite

[135] Some local governments have requirements put in place prior to allowing demolition of certain buildings, such as those recorded on the Florida Master Site File (The Florida Department of State's official inventory of historical and cultural resources), those 50 years or older, or those listed on the National or Local Register (officially administered lists of historic places). Often the local governments require review by a historic architectural review board, or similar body, to determine whether actions can be taken to preserve the historic nature of the property. These review board actions may include or require public hearings to approve demolition and replacement of such buildings. See, e.g. *Demolitions, City of St. Augustine*, available at https://www.citystaug.com/194/Demolitions (last accessed April 20, 2021); *Demolition Application Package for Florida Master Site File Structures*, City of Sarasota, available at https://www.sarasotafl.gov/home/showpublisheddocument?id=4705 (last accessed April 20, 2021).

This section provides that if equipment replacements and repairs must be performed in an emergency situation, subject to the emergency permitting provisions of the building code, a private provider may perform emergency inspection services without first notifying the local building official. The building code provides that where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official.[136] A private provider must conduct the inspection within three business days after being contacted to conduct an emergency inspection and must submit the inspection report to the local building official within one day after the inspection is completed.

This section defines "single-trade inspections" as any inspection focused on a single construction trade, such as plumbing, mechanical, or electrical, and provides specific examples of single-trade work. The section expressly provides that private providers are allowed to perform single-trade inspections within the disciplines covered by that person's licensure or certification.

If an owner or contractor makes changes to the listed private providers or services to be conducted by private providers, they must update the notice of work to be performed within one business day. The bill amends the timing to allow, in the alternative, such notice to be updated two business days before the next scheduled inspection.

Further, the bill defines "qualified private providers" as those private providers who have previously performed plans review and inspection services in the local jurisdiction and has registered with the local enforcing agency by providing the local building official with the provider's:

- Name, firm, address, telephone number, and email address;
- Professional license or certification number, qualification statements, or resumes; and
- A certificate of insurance, if required by the local building official.

This information must be submitted on an annual basis to maintain qualifying status, and must be updated within 10 business days after any change. The local jurisdiction is required to keep a registry of active qualified private providers separate from the jurisdiction's private provider and duly authorized representative licensure registration system authorized by 553.791(16)(b), F.S.

Qualified private providers are not required to re-provide the information listed above to the local building code administrator with each notice of work to be performed as otherwise required by s. 553.971(4), F.S.

Finally, this section expressly authorizes local governments and school districts to use a private provider to provide building code inspection services for public works projects and improvements to any building or structure owned by the entity.

Section 8 amends s. 553.842, F.S., to require the commission to adopt rules for approving evaluation entities in addition to the ones already approved and listed in current law.

[136] Section 105.2.1, Florida Building Code (7th ed.) 2020.

The section also clarifies that the Commission may suspend any product evaluation entity, including those listed in statute.

Section 9 amends s. 553.80, F.S., to provide that in addition to using excess funds generated from fees and fines to rebate and reduce fees, a local government may use such funds for the construction of a building or structure that houses the local government's building department or provides training programs for building officials, inspectors, or plans examiners. Excess funds used to construct such a building or structure must be designated for such purpose by the local government and may not be carried forward for more than four years.

Sections 5, 10, and 11 correct statutory references to conform to changes made by the bill.

Section 12 provides the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 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 to procure or enhance technology infrastructure to accommodate electronic submission and posting of certain inspection materials and records by private providers.

However, Article VII, s. 18(d) of the State Constitution provides that the mandate requirements do not apply to laws having an insignificant impact,[137] which for Fiscal Year 2020-2021 is forecast at $2.2 million.[138] 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

[137] 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).

[138] 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).

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:

This bill may implicate the constitutional single subject rule. Article III, s. 6 of the Florida Constitution imposes a single subject restriction on laws enacted by the Legislature: "Every law shall embrace but one subject and matter properly connected therewith...." The Florida Supreme Court has described the purpose of the single subject rule as twofold. First, it attempts to avoid surprise and fraud by ensuring that both the public and the legislators involved receive fair and reasonable notice of the contents of a proposed act. Secondly, the limitation prevents hodgepodge, logrolling legislation. With regard to the test to be applied by the court in determining whether a particular provision violates the single subject rule, the fact that the scope of a legislative enactment is broad and comprehensive is not fatal so long as the matters included in the enactment have a natural or logical connection.

The title of the bill is "An act relating to the Florida Building Code." However, section one of the bill relates to land development regulations, section two of the bill relates to the inspection of onsite sewage treatment and disposal systems, and section three relates to the Department of Health's lifeguard standards for pools serving assisted living facilities, which do not appear properly connected to the subject of the Florida Building Code.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Allowing the use of private providers to inspect onsite sewage treatment and disposal systems (OSTDSs) may increase efficiencies and lower costs for OSTDS owners. Additionally, persons qualified to be a private provider under the bill will be able to offer official inspection services, increasing business opportunities.

Private providers generally will also have increased opportunities for emergency inspections, virtual inspections, and electronic submission and signature efficiencies, which will have a positive effect. To the extent that the clarification regarding fee reduction alters a local government's fee calculations, consumers utilizing private providers may experience an indeterminate impact.

Prohibiting local governments from requiring contracts between owners and builders as a condition to apply or obtain a building permit may have a positive impact by preventing certain proprietary information from becoming public.

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

C. Government Sector Impact:

Allowing the use of private providers to inspect OSTDSs may save government funds by lightening the burden on inspections performed by the government; however, each inspection performed by a private provider reduces the revenue received by the governmental entity that would have done the inspection. The Department of Health is currently responsible for performing these inspections; however, effective July 1, 2021, the Onsite Sewage Program will transfer to the Department of Environmental Protection.

According to Department of Business and Professional Regulation (DBPR), applicants for certification as product evaluation entities will be required to pay an initial application fee and renewals fees. The DBPR estimates no more than 75 new entities will apply for certification and estimates receiving no more than $45,000 in new application fees and $15,000 annually in renewal fees for such applicants.[139]

The Florida Building Commission may see an increased workload related to establishing a process for accepting petitions from affected persons, issuing non-binding advisory opinions. According to the DBPR, the technology contractor for the Florida Building Commission (commission) estimates updating the building code information system to implement the nonbinding advisory opinion process will cost approximately $60,000.[140]

The provision allowing the commission to adopt an "errata to the code" is not anticipated to have a significant impact on the commission's processes.[141]

Local governments may need to expend funds to procure or enhance electronic infrastructure to accommodate electronic submission and posting of certain inspection materials and records by private providers.

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[139] *See* Department of Business and Professional Regulation, *HB 401 Bill Analysis*, p. 5, (Feb. 24, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[140] *Id.*
[141] Email from the Legislative Affairs Coordinator, Department of Business and Professional Regulation, HB 401 Provision, (Mar. 30, 2021).

Local building code administrators may incur costs, most likely insignificant, related to the provision requiring maintenance of a registry of "qualified private providers."

Local building code administrators may see a positive effect from the increased flexibility of being authorized to utilize excess funds to construct certain buildings.

Local governments may experience costs associated with repealing, amending, and defending existing ordinances, zoning codes, and regulations related to building designs prohibited by section 1.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 1 provides that zoning and development regulations enacted by local governments may not relate to "building design elements." However, the term "zoning and development regulations" is not defined in the Community Planning Act. The term "land development regulations" is, however, defined in the Community Planning Act to mean ordinances enacted by governing bodies for the regulation of any aspect of development, and includes any local government zoning, rezoning, subdivision, building construction, sign regulations, or any other regulation controlling the development of land.[142]

Section 2 provides that certain onsite sewage treatment and disposal system inspections may be performed by a "private provider" or a representative thereof. "Private provider" is not defined in ch. 381, F.S., and the operation of the term in the bill is unclear. An amendment may be necessary to more clearly define the professional licensing standards and requirements of a private provider.

The provision in section 3 of the bill pertaining to land use changes and preliminary FEMA flood maps (lines 428-431) would be more appropriately placed within part II of ch. 163, F.S., pertaining to land development regulations. Additionally, this provision should specifically reference "***Flood Insurance Rate Map*** issued by the Federal Emergency Management Agency," as opposed to a general reference to FEMA maps.

Current law does not expressly authorize building inspections performed by local building departments to be conducted virtually. Section 6 provides express authorization for private building inspectors, "private providers," to conduct building inspections virtually. The sponsor may consider addressing this inconsistency.

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

Section 7 provides that private providers may electronically post certain documents "through the use of a website or other form of electronic communication used to transmit or display information." The bill is silent as to whether this capability must be authorized by the local building code administrator, or whether such website must be provided by the local building code administrator, as opposed to each private provider creating their own method of posting.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.3202, 381.0065, 514.0115, 553.73, 553.77, 553.79, 553.791, 553.80, 553.842, 125.01, and 125.56.

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/CS by Rules on April 20, 2021:
The CS:

- Prohibits local governments from adopting zoning and development regulations that relate to "building design elements" for single-family or two-family dwellings, with certain exceptions.
- Provides that a local government may not prohibit or restrict the ability of a property owner to obtain a permit to demolish and replace any single family dwelling located in certain flood hazard areas.
- Permits local governments to utilize excess building code enforcement fees to pay for the construction of a building or structure that houses a local building code enforcement agency or is used to provide certain training.
- Allows the Florida Building Commission to issue an advisory opinion regarding the technical nature of a building code amendment within 60 days, increased from 30 days.

CS/CS by Appropriations on April 15, 2021:
The CS makes several changes to current law pertaining to private providers to allow private providers to conduct virtual inspections, perform single-trade inspections, submit certain inspection documentation and reports electronically, conduct emergency inspection services, and register as a "qualified private provider" with a local government.

The CS also provides that a municipality, county, or special district may not use preliminary maps issued by Federal Emergency Management Agency (FEMA) for any measure that imposes land use changes.

CS by Community Affairs on March 30, 2021:
The CS incorporates the provisions allowing an owner of an onsite sewage treatment and disposal system, or the owner's contractor, to select a private provider to provide certain inspection services of such systems in lieu of the Department of Health. It also expressly authorizes local governments and school districts to use a private provider to provide

building code inspection services for public works projects and improvements to any building or structure.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
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The Committee on Rules (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Before line 88

insert:

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

163.3202 Land development regulations.—

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


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

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

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

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

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

6. The dwelling is located within the jurisdiction of a local government that has a design review board or architectural review board and the dwelling was reviewed by such board on or before July 1, 2021.

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

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

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neighbors.

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

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

================ 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:

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

444374

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2021	.	
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The Committee on Rules (Brodeur) recommended the following:

Senate Amendment to Amendment (485418)

Delete lines 23 - 26
and insert:
5. The regulations are required to ensure protection of coastal wildlife in compliance with s. 161.052, s. 161.053, s. 161.0531, s. 161.085, s. 161.163, or chapter 373.
6. The dwelling is located in a planned unit development or master planned community created pursuant to a local ordinance; or
7. The dwelling is located within the jurisdiction of a

954366

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
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The Committee on Rules (Brodeur) recommended the following:

Senate Amendment to Amendment (485418)

Delete lines 23 - 29
and insert:
5. The regulations are required to ensure protection of coastal wildlife in compliance with s. 161.052, s. 161.053, s. 161.0531, s. 161.085, s. 161.163, or chapter 373;
6. The dwelling is located in a planned unit development or master planned community created pursuant to a local ordinance; or
7. The dwelling is located within the jurisdiction of a

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local government that has a design review board or architectural review board.

283658

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
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The Committee on Rules (Brodeur) recommended the following:

Senate Amendment

Delete line 400

and insert:

technical amendment to the Florida Building Code within 60 days

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
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The Committee on Rules (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 460 - 930

and insert:

(b) The commission may issue errata to the code pursuant to the rule adoption procedures in chapter 120 to list demonstrated errors in provisions contained within the Florida Building Code. The determination of such errors and the issuance of errata to the code must be approved by a 75 percent supermajority vote of the commission. For purposes of this paragraph, "errata to the code" means a list of errors in current and previous editions of


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the Florida Building Code.

Section 4. Subsection (7) of section 553.77, Florida Statutes, is amended to read:

553.77 Specific powers of the commission.—

(7) Building officials shall recognize and enforce variance orders issued by the Department of Health under s. 514.0115(9) ~~pursuant to s. 514.0115(8)~~, including any conditions attached to the granting of the variance.

Section 5. Paragraph (d) is added to subsection (1) of section 553.79, Florida Statutes, and subsection (23) is added to that section, to read:

553.79 Permits; applications; issuance; inspections.—

(1)

(d) A local government may not require a contract between a builder and an owner for the issuance of a building permit or as a requirement for the submission of a building permit application.

(23) Notwithstanding any law, regulation or ordinance, a local government may not prohibit or otherwise restrict the ability of a property owner to obtain a building permit to demolish and replace any single-family residential dwelling located in a coastal high hazard area, moderate flood zone, or special flood hazard area according to the Federal Emergency Management Agency's Flood Insurance Rate Map if the lowest floor elevation of the dwelling is at or below the property's base flood elevation plus one foot pursuant to Florida Building Code or pursuant to local ordinance, whichever is higher, and all other Florida Building Code requirements are met. Demolition permits issued under this section may only be reviewed


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administratively for compliance with the Florida Building Code and other applicable construction regulations, and are not subject to any additional land development regulation or zoning approval that requires a public hearing before the issuance of the permit. Local governments may not impose additional regulatory requirements on the replacement single-family residential dwelling which would not otherwise be applicable to a similarly situated vacant parcel and may not penalize the owner for such demolition.

Section 6. Present subsections (10) through (19) of section 553.791, Florida Statutes, are redesignated as subsections (11) through (20), respectively, a new subsection (10) and subsection (21) are added to that section, and subsection (1), paragraph (b) of subsection (2), subsections (3), (4), and (6), paragraphs (b) and (d) of subsection (7), subsections (8) and (9), and present subsections (10), (11), (12), (14), and (15) are amended, to read:

553.791 Alternative plans review and inspection.—

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

(a) "Applicable codes" means the Florida Building Code and any local technical amendments to the Florida Building Code but does not include the applicable minimum fire prevention and firesafety codes adopted pursuant to chapter 633.

(b) "Audit" means the process to confirm that the building code inspection services have been performed by the private provider, including ensuring that the required affidavit for the plan review has been properly completed and submitted with ~~affixed to~~ the permit documents and that the minimum mandatory inspections required under the building code have been performed


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and properly recorded. The local building official may not replicate the plan review or inspection being performed by the private provider, unless expressly authorized by this section.

(c) "Building" means any construction, erection, alteration, demolition, or improvement of, or addition to, any structure or site work for which permitting by a local enforcement agency is required.

(d) "Building code inspection services" means those services described in s. 468.603(5) and (8) involving the review of building plans as well as those services involving the review of site plans and site work engineering plans or their functional equivalent, to determine compliance with applicable codes and those inspections required by law, conducted either in person or virtually, of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.

(e) "Deliver" or "delivery" means any method of delivery used in conventional business or commercial practice, including delivery by electronic transmissions.

(f) "Duly authorized representative" means an agent of the private provider identified in the permit application who reviews plans or performs inspections as provided by this section and who is licensed as an engineer under chapter 471 or as an architect under chapter 481 or who holds a standard certificate under part XII of chapter 468.

(g) "Electronically posted" means providing notices of decisions, results, or records, including inspection records, through the use of a website or other form of electronic communication used to transmit or display information.


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(h) "Electronic signature" means any letters, characters, or symbols manifested by electronic or similar means which are executed or adopted by a party with an intent to authenticate a writing or record.

(i) "Electronic transmission" or "submitted electronically" means any form or process of communication not directly involving the physical transfer of paper or another tangible medium which is suitable for the retention, retrieval, and reproduction of information by the recipient and is retrievable in paper form by the receipt through an automated process. All notices provided for in this section may be transmitted electronically and shall have the same legal effect as if physically posted or mailed.

(j) ~~(f)~~ "Immediate threat to public safety and welfare" means a building code violation that, if allowed to persist, constitutes an immediate hazard that could result in death, serious bodily injury, or significant property damage. This paragraph does not limit the authority of the local building official to issue a Notice of Corrective Action at any time during the construction of a building project or any portion of such project if the official determines that a condition of the building or portion thereof may constitute a hazard when the building is put into use following completion as long as the condition cited is shown to be in violation of the building code or approved plans.

(k) ~~(g)~~ "Local building official" means the individual within the governing jurisdiction responsible for direct regulatory administration or supervision of plans review, enforcement, and inspection of any construction, erection,


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alteration, demolition, or substantial improvement of, or addition to, any structure for which permitting is required to indicate compliance with applicable codes and includes any duly authorized designee of such person.

(l) ~~(h)~~ "Permit application" means a properly completed and submitted application for the requested building or construction permit, including:

1. The plans reviewed by the private provider.

2. The affidavit from the private provider required under subsection (6).

3. Any applicable fees.

4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(m) ~~(i)~~ "Plans" means building plans, site engineering plans, or site plans, or their functional equivalent, submitted by a fee owner or fee owner's contractor to a private provider or duly authorized representative for review.

(n) ~~(j)~~ "Private provider" means a person licensed as a building code administrator under part XII of chapter 468, as an engineer under chapter 471, or as an architect under chapter 481. For purposes of performing inspections under this section for additions and alterations that are limited to 1,000 square feet or less to residential buildings, the term "private provider" also includes a person who holds a standard certificate under part XII of chapter 468.

(o) "Qualified private provider" means a private provider who has previously performed plans review and inspection services in the local jurisdiction and has registered with the


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local enforcing agency by providing the local building official with the private provider's name, firm, address, telephone number, and e-mail address; his or her professional license or certification number, qualification statements, or resumes; and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider's firm, the private provider, and any duly authorized representative in the amounts required by this section. This information must be submitted on an annual basis to the local jurisdiction in order to maintain qualifying status. If at any time any of the information submitted to the local jurisdiction changes, the private provider must contact the local jurisdiction and update the information within 10 business days after the change. The local jurisdiction is required to keep a registry of active qualified private providers.

(p) ~~(k)~~ "Request for certificate of occupancy or certificate of completion" means a properly completed and executed application for:

1. A certificate of occupancy or certificate of completion.

2. A certificate of compliance from the private provider required under subsection (12) ~~(11)~~.

3. Any applicable fees.

4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(q) "Single-trade inspection" means any inspection focused on a single construction trade, such as plumbing, mechanical, or electrical. The term includes, but is not limited to,


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inspections of door or window replacements; fences and block walls more than 6 feet high from the top of the wall to the bottom of the footing; stucco or plastering; reroofing with no structural alteration; HVAC replacements; ductwork or fan replacements; alteration or installation of wiring, lighting, and service panels; water heater changeouts; sink replacements; and repiping.

(r) ~~(l)~~ "Site work" means the portion of a construction project that is not part of the building structure, including, but not limited to, grading, excavation, landscape irrigation, and installation of driveways.

(s) ~~(m)~~ "Stop-work order" means the issuance of any written statement, written directive, or written order which states the reason for the order and the conditions under which the cited work will be permitted to resume.

(2)

(b) If an owner or contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must reduce the permit fee by the amount of cost savings realized by the local enforcement agency for not having to perform such services. Such reduction may be calculated on a flat fee or percentage basis, or any other reasonable means by which a local enforcement agency assesses the cost for its plans review or inspection services ~~It is the intent of the Legislature that owners and contractors pay reduced fees related to building permitting requirements when hiring a private provider for plans review and building inspections~~. ~~A local jurisdiction must calculate the cost savings to the local enforcement agency, based on a fee owner or~~


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~~contractor hiring a private provider to perform plans reviews and building inspections in lieu of the local building official, and reduce the permit fees accordingly.~~ The local jurisdiction may not charge fees for building inspections if the fee owner or contractor hires a private provider to perform such services; however, the local jurisdiction may charge a reasonable administrative fee.

(3) A private provider and any duly authorized representative may only perform building code inspection services that are within the disciplines covered by that person's licensure or certification under chapter 468, chapter 471, or chapter 481, including single-trade inspections. A private provider may not provide building code inspection services pursuant to this section upon any building designed or constructed by the private provider or the private provider's firm.

(4) A fee owner or the fee owner's contractor using a private provider to provide building code inspection services shall notify the local building official in writing at the time of permit application, or by 2 p.m. local time, 2 business days before the first scheduled inspection by the local building official or building code enforcement agency that ~~for~~ a private provider has been contracted to perform the ~~performing~~ required inspections of construction under this section, including single-trade inspections, on a form to be adopted by the commission. This notice shall include the following information:

(a) The services to be performed by the private provider.

(b) The name, firm, address, telephone number, and e-mail address ~~facsimile number~~ of each private provider who is


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performing or will perform such services, his or her professional license or certification number, qualification statements or resumes, and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider's firm, the private provider, and any duly authorized representative in the amounts required by this section.

However, the notice is not required to include such information for private providers who are qualified private providers within the local jurisdiction and have renewed such designation pursuant to this section.

(c) An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide building code plans review and/or inspection services on the building or structure that is the subject of the enclosed permit application, as authorized by s. 553.791, Florida Statutes. I understand that the local building official may not review the plans submitted or perform the required building inspections to determine compliance with the applicable codes, except to the extent specified in said law. Instead, plans review and/or required building inspections will be performed by licensed or certified personnel identified in the application. The law requires minimum insurance requirements for such


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personnel, but I understand that I may require more insurance to protect my interests. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and the level of their insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the local government, the local building official, and their building code enforcement personnel from any and all claims arising from my use of these licensed or certified personnel to perform building code inspection services with respect to the building or structure that is the subject of the enclosed permit application.

If the fee owner or the fee owner's contractor makes any changes to the listed private providers or the services to be provided by those private providers, the fee owner or the fee owner's contractor shall, within 1 business day after any change or within 2 business days before the next scheduled inspection, update the notice to reflect such changes. A change of a duly authorized representative named in the permit application does not require a revision of the permit, and the building code enforcement agency shall not charge a fee for making the change. ~~In addition, the fee owner or the fee owner's contractor shall post at the project site, before the commencement of construction and updated within 1 business day after any change, on a form to be adopted by the commission, the name, firm, address, telephone number, and facsimile number of each private~~


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~~provider who is performing or will perform building code inspection services, the type of service being performed, and similar information for the primary contact of the private provider on the project.~~

(6) A private provider performing plans review under this section shall review the plans to determine compliance with the applicable codes. Upon determining that the plans reviewed comply with the applicable codes, the private provider shall prepare an affidavit or affidavits ~~on a form reasonably acceptable to the commission~~ certifying, under oath, that the following is true and correct to the best of the private provider's knowledge and belief:

(a) The plans were reviewed by the affiant, who is duly authorized to perform plans review pursuant to this section and holds the appropriate license or certificate.

(b) The plans comply with the applicable codes.

Such affidavit may bear a written or electronic signature and may be submitted electronically to the local building official.

(7)

(b) If the local building official provides a written notice of plan deficiencies to the permit applicant within the prescribed 20-day period, the 20-day period shall be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to subsection (14) ~~(13)~~ or to submit revisions to correct the deficiencies.

(d) If the local building official provides a second written notice of plan deficiencies to the permit applicant


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within the prescribed time period, the permit applicant may elect to dispute the deficiencies pursuant to subsection (14) ~~(13)~~ or to submit additional revisions to correct the deficiencies. For all revisions submitted after the first revision, the local building official has an additional 5 business days from the date of resubmittal to issue the requested permit or to provide a written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections.

(8) A private provider performing required inspections under this section shall inspect each phase of construction as required by the applicable codes. Such inspection may be performed in-person or virtually. The private provider may have ~~shall be permitted to send~~ a duly authorized representative ~~to the building site to~~ perform the required inspections, provided all required reports are prepared by and bear the written or electronic signature of the private provider or the private provider's duly authorized representative. The duly authorized representative must be an employee of the private provider entitled to receive reemployment assistance benefits under chapter 443. The contractor's contractual or legal obligations are not relieved by any action of the private provider.

(9) A private provider performing required inspections under this section shall provide notice to the local building official of the date and approximate time of any such inspection no later than the prior business day by 2 p.m. local time or by any later time permitted by the local building official in that jurisdiction. The local building official may not prohibit the


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private provider from performing any inspection outside the local building official's normal operating hours, including after hours, weekends, or holidays. The local building official may visit the building site as often as necessary to verify that the private provider is performing all required inspections. A deficiency notice must be posted ~~at the job site~~ by the private provider, the duly authorized representative of the private provider, or the building department whenever a noncomplying item related to the building code or the permitted documents is found. Such notice may be physically posted at the job site or electronically posted. After corrections are made, the item must be reinspected by the private provider or representative before being concealed. Reinspection or reaudit fees shall not be charged by the local jurisdiction as a result of the local jurisdiction's audit inspection occurring before the performance of the private provider's inspection or for any other administrative matter not involving the detection of a violation of the building code or a permit requirement.

(10) If equipment replacements and repairs must be performed in an emergency situation, subject to the emergency permitting provisions of the Florida Building Code, a private provider may perform emergency inspection services without first notifying the local building official pursuant to subsection (9). A private provider must conduct the inspection within 3 business days after being contacted to conduct an emergency inspection and must submit the inspection report to the local building official within 1 day after the inspection is completed.

(11)~~(10)~~ Upon completing the required inspections at each


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applicable phase of construction, the private provider shall record such inspections on a form acceptable to the local building official. The form must bear the written or electronic signature of ~~be signed by~~ the provider or the provider's duly authorized representative. These inspection records shall reflect those inspections required by the applicable codes of each phase of construction for which permitting by a local enforcement agency is required. The private provider, upon completion of the required inspection ~~before leaving the project site~~, shall post each completed inspection record, indicating pass or fail, ~~at the site~~ and provide the record to the local building official within 2 business days. Such inspection record may be electronically posted by the private provider or the private provider may post such inspection record physically at the project site. The private provider may electronically transmit the record to the local building official. The local building official may waive the requirement to provide a record of each inspection within 2 business days if the record is electronically posted or posted at the project site and all such inspection records are submitted with the certificate of compliance. Unless the records have been electronically posted, records of all required and completed inspections shall be maintained at the building site at all times and made available for review by the local building official. The private provider shall report to the local enforcement agency any condition that poses an immediate threat to public safety and welfare.

(12) ~~(11)~~ Upon completion of all required inspections, the private provider shall prepare a certificate of compliance, on a form acceptable to the local building official, summarizing the


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inspections performed and including a written representation, under oath, that the stated inspections have been performed and that, to the best of the private provider's knowledge and belief, the building construction inspected complies with the approved plans and applicable codes. The statement required of the private provider shall be substantially in the following form and shall be signed and sealed by a private provider as established in subsection (1) or may be electronically transmitted to the local building official:

> To the best of my knowledge and belief, the building components and site improvements outlined herein and inspected under my authority have been completed in conformance with the approved plans and the applicable codes.

(13) ~~(12)~~ No more than 2 business days after receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance and approval of all other government approvals required by law, the local building official shall issue the certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies, as well as the specific code chapters and sections. If the local building official does not provide notice of the deficiencies within the prescribed 2-day period, the request for a certificate of occupancy or certificate of completion shall be deemed granted and the certificate of occupancy or certificate of completion shall be issued by the local building official on


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the next business day. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (14) ~~(13)~~ or to submit a corrected request for a certificate of occupancy or certificate of completion.

(15) ~~(14)~~ For the purposes of this section, any notice to be provided by the local building official shall be deemed to be provided to the person or entity when successfully transmitted to the e-mail address ~~facsimile number~~ listed for that person or entity in the permit application or revised permit application, or, if no e-mail address ~~facsimile number~~ is stated, when actually received by that person or entity.

(16)(a) ~~(15)(a)~~ A local enforcement agency, local building official, or local government may not adopt or enforce any laws, rules, procedures, policies, qualifications, or standards more stringent than those prescribed by this section.

(b) A local enforcement agency, local building official, or local government may establish, for private providers and duly authorized representatives working within that jurisdiction, a system of registration to verify compliance with the licensure requirements of paragraph (1)(n) ~~(1)(j)~~ and the insurance requirements of subsection (17). Such registration must be distinct from the registry of qualified private providers ~~(16)~~.

(c) This section does not limit the authority of the local building official to issue a stop-work order for a building project or any portion of the project, as provided by law, if the official determines that a condition on the building site constitutes an immediate threat to public safety and welfare.

(21) Notwithstanding any other law, a county, a municipality, a school district, or an independent special


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district may elect to use a private provider to provide building code inspection services for a public works project, an improvement, a building, or any other structure that is owned by the county, municipality, school district, or independent special district.

Section 7. Paragraph (a) of subsection (8) and subsection (14) of section 553.842, Florida Statutes, are amended to read:

553.842 Product evaluation and approval.—

(8) The commission may adopt rules to approve the following types of entities that produce information on which product approvals are based. All of the following entities, including engineers and architects, must comply with a nationally recognized standard demonstrating independence or no conflict of interest:

(a) Evaluation entities approved under ~~pursuant to~~ this paragraph or that meet the criteria for approval adopted by the commission by rule. The commission shall specifically approve the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, Underwriters Laboratories, LLC, Intertek Testing Services NA, Inc., and the Miami-Dade County Building Code Compliance Office Product Control Division. Architects and engineers licensed in this state are also approved to conduct product evaluations as provided in subsection (5).

(14) The commission shall by rule establish criteria for revocation of product approvals as well as suspension ~~revocation~~ of approvals of product evaluation entities, including those approved pursuant to paragraph (8)(a), and suspension or


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revocation of approvals of testing laboratories, quality assurance entities, certification agencies, and validation entities. Suspension and revocation is governed by s. 120.60 and the uniform rules of procedure.

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

And the title is amended as follows:

Delete lines 47 - 81

and insert:

of a building permit; prohibiting local governments from taking certain actions relating to building permits to demolish and replace single-family residential dwellings located in certain flood zones; providing requirements for such permits; amending s. 553.791, F.S.; revising and defining terms; providing requirements for qualified private providers; requiring local jurisdictions to reduce permit fees under certain circumstances; deleting legislative intent; specifying that contractors using private providers to provide building code inspections services must notify local building officials in writing; revising notice requirements; deleting a provision requiring fee owners or fee owners' contractors to post certain information at a project site before commencing construction; authorizing certain affidavits to be signed with electronic signatures and be submitted to local building officials electronically; authorizing certain inspections to be performed in-person or virtually;


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authorizing certain reports to be signed with electronic signatures; authorizing certain notices to be electronically posted; authorizing private providers to perform certain replacements and repairs without first notifying local building officials under certain circumstances; authorizing certain forms to be signed with electronic signatures; authorizing certain inspection records to be electronically posted and electronically submitted to local building officials; authorizing certificates of compliance to be electronically transmitted to local building officials; specifying that a certain registry must be distinct from the registry of qualified private providers; conforming provisions to changes made by the act; authorizing a county, a municipality, a school district, or an independent special district to use a private provider to provide building code inspection services for certain purposes; amending s. 553.842, F.S.; requiring evaluation entities that meet certain criteria to comply with certain standards; revising rulemaking requirements relating to suspensions and revocations by the commission; specifying that suspensions are governed by specified provisions;

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
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The Committee on Rules (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Between lines 930 and 931
insert:

Section 7. Paragraph (a) of subsection (7) of section 553.80, Florida Statutes, is amended to read:

553.80 Enforcement.—

(7)(a) The governing bodies of local governments may provide a schedule of reasonable fees, as authorized by s. 125.56(2) or s. 166.222 and this section, for enforcing this part. These fees, and any fines or investment earnings related



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to the fees, shall be used solely for carrying out the local government's responsibilities in enforcing the Florida Building Code. When providing a schedule of reasonable fees, the total estimated annual revenue derived from fees, and the fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities. Any unexpended balances shall be carried forward to future years for allowable activities or shall be refunded at the discretion of the local government. A local government may not carry forward an amount exceeding the average of its operating budget for enforcing the Florida Building Code for the previous 4 fiscal years. For purposes of this subsection, the term "operating budget" does not include reserve amounts. Any amount exceeding this limit must be used as authorized in subparagraph 2. However, a local government which established, as of January 1, 2019, a Building Inspections Fund Advisory Board consisting of five members from the construction stakeholder community and carries an unexpended balance in excess of the average of its operating budget for the previous 4 fiscal years may continue to carry such excess funds forward upon the recommendation of the advisory board. The basis for a fee structure for allowable activities shall relate to the level of service provided by the local government and shall include consideration for refunding fees due to reduced services based on services provided as prescribed by s. 553.791, but not provided by the local government. Fees charged shall be consistently applied.

1. As used in this subsection, the phrase "enforcing the Florida Building Code" includes the direct costs and reasonable indirect costs associated with review of building plans,

970712

building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement of the Florida Building Code and enforcement action pertaining to unlicensed contractor activity to the extent not funded by other user fees.

2. A local government must use any excess funds that it is prohibited from carrying forward to rebate and reduce fees, or pay for the construction of a building or structure that houses a local government's building code enforcement agency or provides training programs for building officials, inspectors, or plans examiners associated with the enforcement of the Florida Building Code. Excess funds used to construct such a building or structure must be designated for such purpose by the local government and may not be carried forward for more than 4 consecutive years.

3. The following activities may not be funded with fees adopted for enforcing the Florida Building Code:

a. Planning and zoning or other general government activities.

b. Inspections of public buildings for a reduced fee or no fee.

c. Public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.

d. Enforcement and implementation of any other local ordinance, excluding validly adopted local amendments to the Florida Building Code and excluding any local ordinance directly related to enforcing the Florida Building Code as defined in

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subparagraph 1.

4. A local government shall use recognized management, accounting, and oversight practices to ensure that fees, fines, and investment earnings generated under this subsection are maintained and allocated or used solely for the purposes described in subparagraph 1.

5. The local enforcement agency, independent district, or special district may not require at any time, including at the time of application for a permit, the payment of any additional fees, charges, or expenses associated with:

a. Providing proof of licensure pursuant to chapter 489;

b. Recording or filing a license issued pursuant to this chapter;

c. Providing, recording, or filing evidence of workers' compensation insurance coverage as required by chapter 440; or

d. Charging surcharges or other similar fees not directly related to enforcing the Florida Building Code.

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

And the title is amended as follows:

Between lines 81 and 82

insert:

amending s. 553.80, F.S.; revising requirements for the expenditure of certain unexpended revenue relating to enforcing the Florida Building Code;

By the Committees on Appropriations; and Community Affairs; and Senators Brodeur and Perry

576-04235-21 20211146c2

A bill to be entitled

An act relating to the Florida Building Code; amending s. 381.0065, F.S.; authorizing fee owners or fee owners' contractors to select private providers to provide inspection services for onsite sewage treatment and disposal systems if certain requirements are met; providing legislative intent; requiring the Department of Health to reduce certain permit fees; prohibiting the department from charging inspection fees if the fee owner or contractor hires a private provider to perform an inspection; providing requirements for private providers or duly authorized representatives of private providers performing such inspections; requiring fee owners or contractors to provide specified notice to the department when using a private provider for such inspections; providing requirements for the contents of such notice; prohibiting the department from charging a fee for changing the duly authorized representative named in a permit application; authorizing the department to audit the performance of private providers; providing requirements relating to work on a building, a structure, or an onsite sewage treatment and disposal system relating to such audits; amending s. 514.0115, F.S.; prohibiting the Department of Health from requiring that pools serving assisted living facilities be compliant with rules relating to swimming pool lifeguards; amending s. 553.73, F.S.; authorizing a substantially affected person to file a

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

576-04235-21 20211146c2

petition with the Florida Building Commission to review certain local government regulations, laws, ordinances, policies, amendments, or land use or zoning provisions; defining the term "local government"; providing requirements for the petition and commission; requiring the commission to issue a nonbinding advisory opinion within a specified timeframe; prohibiting a municipality, county, or special district from using preliminary maps issued by the Federal Emergency Management Agency for certain purposes relating to land use changes; authorizing the commission to issue errata to the code; defining the term "errata to the code"; making technical changes; amending s. 553.77, F.S.; conforming a cross-reference; amending s. 553.79, F.S.; prohibiting a local government from requiring certain contracts for the application for or issuance of a building permit; amending s. 553.791, F.S.; revising and defining terms; providing requirements for qualified private providers; requiring local jurisdictions to reduce permit fees under certain circumstances; deleting legislative intent; specifying that contractors using private providers to provide building code inspections services must notify local building officials in writing; revising notice requirements; deleting a provision requiring fee owners or fee owners' contractors to post certain information at a project site before commencing construction; authorizing certain affidavits to be

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signed with electronic signatures and be submitted to local building officials electronically; authorizing certain inspections to be performed in-person or virtually; authorizing certain reports to be signed with electronic signatures; authorizing certain notices to be electronically posted; authorizing private providers to perform certain replacements and repairs without first notifying local building officials under certain circumstances; authorizing certain forms to be signed with electronic signatures; authorizing certain inspection records to be electronically posted and electronically submitted to local building officials; authorizing certificates of compliance to be electronically transmitted to local building officials; specifying that a certain registry must be distinct from the registry of qualified private providers; conforming provisions to changes made by the act; authorizing a county, a municipality, a school district, or an independent special district to use a private provider to provide building code inspection services for certain purposes; amending s. 553.842, F.S.; requiring evaluation entities that meet certain criteria to comply with certain standards; amending ss. 125.01 and 125.56, F.S.; conforming cross-references; making technical changes; providing an effective date.

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

Section 1. Subsection (8) is added to section 381.0065, Florida Statutes, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(8) PRIVATE PROVIDER INSPECTION SERVICES.—

(a) Notwithstanding any other law, ordinance, or policy, the fee owner of an onsite sewage treatment and disposal system, or the fee owner's contractor upon written authorization from the fee owner, may select a private provider to provide inspection services for onsite sewage treatment and disposal systems and may pay the private provider directly for such services if such services are the subject of a written contract between the private provider, or the private provider's firm, and the fee owner or the fee owner's contractor, upon written authorization of the fee owner.

(b) It is the intent of the Legislature that owners and contractors pay reduced fees related to onsite sewage treatment disposal system inspections when selecting a private provider to provide such inspections. The department must calculate the cost savings to the department based on a fee owner or contractor hiring a private provider to perform inspections in lieu of the department and reduce permit fees accordingly. The department may not charge fees for an inspection if the fee owner or contractor hires a private provider to perform the inspection.

(c) Onsite sewage treatment and disposal system inspection services may be performed only by a private provider or a duly authorized representative of a private provider within the disciplines covered under such person's licensure or if the person is certified under s. 381.0101, is a master septic

contractor licensed pursuant to chapter 489, is a professional engineer who has passed all three parts of the OSTDS Accelerated Certification Training, or is a person working as staff under the supervision of a licensed professional engineer and has passed all three parts of the OSTDS Accelerated Certification Training.

(d)1. A fee owner or the fee owner's contractor using a private provider for onsite sewage treatment and disposal system inspection services must provide notice to the department at the time of permit application, or by 2 p.m. local time, 2 business days before the first scheduled inspection by the department. The notice must include the following information:

a. The name, firm, address, telephone number, and e-mail address of each private provider who is performing or will perform such services, the private provider's professional license or certification number, and qualification statements or resumes for each private provider; and

b. An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide onsite sewage treatment and disposal system inspection services that are the subject of the enclosed permit application. I understand that the department may not perform the required onsite sewage treatment and disposal system inspections to determine compliance with the applicable codes, except to the extent authorized by law. Instead, inspections will be performed by the licensed or certified personnel

identified in the application. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the department from any and all claims arising from my use of these licensed or certified personnel to perform onsite sewage treatment and disposable system inspections with respect to the onsite sewage treatment and disposable system that are the subject of the enclosed permit application.

2. If the fee owner or the fee owner's contractor makes any changes to the listed private providers or the services to be provided by the private providers, the fee owner or the fee owner's contractor must update the notice to reflect the change within 1 business day after the change. A change of a duly authorized representative named in the permit application does not require a revision of the permit and the department may not charge a fee for making such change.

(e) The department may audit the performance of onsite sewage treatment and disposal system inspection services by private providers. However, the same private provider may not be audited more than four times in a month unless the department determines that an onsite sewage treatment and disposal system inspected by the private provider should not have passed inspection. Work on a building, a structure, or an onsite sewage treatment and disposal system may proceed after inspection and approval by a private provider if the fee owner or fee owner's

contractor has given notice of the inspection pursuant to subsection (4) and, subsequent to such inspection and approval, may not be delayed for completion of an inspection audit by the department.

Section 2. Present subsections (3) through (8) of section 514.0115, Florida Statutes, are redesignated as subsections (4) through (9), respectively, and a new subsection (3) is added to that section, to read:

514.0115 Exemptions from supervision or regulation; variances.—

(3) The department may not require compliance with rules relating to swimming pool lifeguard standards for pools serving assisted living facilities.

Section 3. Subsections (4), (5), and (8) of section 553.73, Florida Statutes, are amended to read:

553.73 Florida Building Code.—

(4)(a) All entities authorized to enforce the Florida Building Code under ~~pursuant to~~ s. 553.80 shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations in ~~of~~ this subsection ~~paragraph~~. Local amendments must ~~shall~~ be more stringent than the minimum standards described in this section ~~herein~~ and must ~~shall~~ be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is

responsible for establishing the standards and procedures required in this subsection ~~paragraph~~ for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(b) Local governments may, subject to the limitations in ~~of~~ this section and not more than once every 6 months, adopt amendments to the technical provisions of the Florida Building Code that ~~which~~ apply solely within the jurisdiction of such government and that ~~which~~ provide for more stringent requirements than those specified in the Florida Building Code~~, not more than once every 6 months~~. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new

subject not addressed in the Florida Building Code.

(c) ~~4.~~ The enforcing agency shall make readily available, in a usable format, all amendments adopted under ~~pursuant to~~ this section.

(d) ~~5.~~ Any amendment to the Florida Building Code shall be transmitted within 30 days after adoption by the ~~adopting~~ local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments are ~~shall~~ not ~~become~~ effective until 30 days after the amendment has been received and published by the commission.

(e) ~~6.~~ An ~~Any~~ amendment to the Florida Building Code adopted by a local government under ~~pursuant to~~ this subsection is ~~paragraph shall be~~ effective only until the adoption ~~by the commission~~ of the new edition of the Florida Building Code by the commission every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment under ~~pursuant to~~ the provisions of this subsection ~~paragraph~~.

(f) ~~7.~~ Each county and municipality desiring to make local technical amendments to the Florida Building Code shall ~~by interlocal agreement~~ establish by interlocal agreement a countywide compliance review board to review any amendment to the Florida Building Code that is~~,~~ adopted by a local government within the county under ~~pursuant to~~ this subsection and

~~paragraph,~~ that is challenged by a ~~any~~ substantially affected party for purposes of determining the amendment's compliance with this subsection ~~paragraph~~. If challenged, the local technical amendments are ~~shall~~ not ~~become~~ effective until the time for filing an appeal under paragraph (g) ~~pursuant to subparagraph 8.~~ has expired or, if there is an appeal, until the commission issues its final order determining if the adopted amendment is in compliance with this subsection.

(g) ~~8.~~ If the compliance review board determines such amendment is not in compliance with this subsection ~~paragraph~~, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines that such amendment is ~~to be~~ in compliance with this subsection ~~paragraph~~, any substantially affected party may appeal such determination to the commission. Any such appeal must ~~shall~~ be filed with the commission within 14 days after ~~of~~ the board's written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division's website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days after being assigned to the appeal, and shall enter a recommended order within 30 days after ~~of~~ the conclusion of such hearing. The commission shall enter a final order within 30 days after an order is rendered ~~thereafter~~. ~~The provisions of~~ Chapter 120 and the

uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this subsection ~~paragraph~~ in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review under ~~pursuant to~~ s. 120.68. The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

(h) ~~9.~~ An amendment adopted under this subsection ~~paragraph~~ must ~~shall~~ include a fiscal impact statement that ~~which~~ documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement and~~,~~ the impact to property and building owners and~~, as well as to~~ industry~~,~~ relative to the cost of compliance. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

(i) ~~10.~~ In addition to paragraphs (f) and (g) ~~subparagraphs 7. and 9.~~, the commission may review any amendments adopted under ~~pursuant to~~ this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(j) ~~(c)~~ Any amendment adopted by a local enforcing agency under ~~pursuant to~~ this subsection may ~~shall~~ not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved under ~~pursuant to~~ s. 553.77(3). The respective responsible entities shall consider the physical

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performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(k) ~~(d)~~ A technical amendment to the Florida Building Code related to water conservation practices or design criteria adopted by a local government under ~~pursuant to~~ this subsection is not ~~rendered~~ void when the code is updated if the technical amendment is necessary to protect or provide for more efficient use of water resources as provided in s. 373.621. However, any such technical amendment carried forward into the next edition of the code under ~~pursuant to~~ this paragraph is subject to review or modification as provided in this part.

(l) If a local government adopts a regulation, law, ordinance, policy, amendment, or land use or zoning provision without using the process established in this subsection, and a substantially affected person considers such regulation, law, ordinance, policy, amendment, or land use or zoning provision to be a technical amendment to the Florida Building Code, then the substantially affected person may submit a petition to the commission for a nonbinding advisory opinion. If a substantially affected person submits a request in accordance with this paragraph, the commission shall issue a nonbinding advisory opinion stating whether or not the commission interprets the regulation, law, ordinance, policy, amendment, or land use or zoning provision as a technical amendment to the Florida Building Code. As used in this paragraph, the term "local government" means a county, municipality, special district, or political subdivision of the state.

1. Requests to review a local government regulation, law, ordinance, policy, amendment, or land use or zoning provision

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may be initiated by any substantially affected person. A substantially affected person includes an owner or builder subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision, or an association of owners or builders having members who are subject to the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

2. In order to initiate a review, a substantially affected person must file a petition with the commission. The commission shall adopt a form for the petition and directions for filing, which shall be published on the Building Code Information System. The form shall, at a minimum, require the following:

a. The name of the local government that enacted the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

b. The name and address of the local government's general counsel or administrator.

c. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; and an explanation of how the petitioner's substantial interests are being affected by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

d. A statement explaining why the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code, and which provisions of the Florida Building Code, if any, are being amended by the regulation, law, ordinance, policy, amendment, or land use or zoning provision.

3. The petitioner shall serve the petition on the local

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government's general counsel or administrator by certified mail, return receipt requested, and send a copy of the petition to the commission, in accordance with the commission's published directions. The local government shall respond to the petition in accordance with the form by certified mail, return receipt requested, and send a copy of its response to the commission, within 14 days after receipt of the petition, including Saturdays, Sundays, and legal holidays.

4. Upon receipt of a petition that meets the requirements of this paragraph, the commission shall publish the petition, including any response submitted by the local government, on the Building Code Information System in a manner that allows interested persons to address the issues by posting comments.

5. Before issuing an advisory opinion, the commission shall consider the petition, the response, and any comments posted on the Building Code Information System. The commission may also provide the petition, the response, and any comments posted on the Building Code Information System to a technical advisory committee, and may consider any recommendation provided by the technical advisory committee. The commission shall issue an advisory opinion stating whether the regulation, law, ordinance, policy, amendment, or land use or zoning provision is a technical amendment to the Florida Building Code within 30 days after the filing of the petition, including Saturdays, Sundays, and legal holidays. The commission shall publish its advisory opinion on the Building Code Information System and in the Florida Administrative Register. The commission's advisory opinion is nonbinding and is not a declaratory statement under s. 120.565.

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(5) Notwithstanding subsection (4), counties and municipalities may adopt by ordinance an administrative or technical amendment to the Florida Building Code relating to flood resistance in order to implement the National Flood Insurance Program or incentives. Specifically, an administrative amendment may assign the duty to enforce all or portions of flood-related code provisions to the appropriate agencies of the local government and adopt procedures for variances and exceptions from flood-related code provisions other than provisions for structures seaward of the coastal construction control line consistent with the requirements in 44 C.F.R. s. 60.6. A technical amendment is authorized to the extent it is more stringent than the code. A technical amendment is not subject to the requirements of subsection (4) and may not be rendered void when the code is updated if the amendment is adopted for the purpose of participating in the Community Rating System promulgated pursuant to 42 U.S.C. s. 4022, the amendment had already been adopted by local ordinance prior to July 1, 2010, or the amendment requires a design flood elevation above the base flood elevation. Any amendment adopted pursuant to this subsection shall be transmitted to the commission within 30 days after being adopted. A municipality, county, or special district may not use preliminary maps issued by the Federal Emergency Management Agency for any law, ordinance, rule, or other measure that has the effect of imposing land use changes.

(8) Notwithstanding subsection (3) or subsection (7), the commission may address issues identified in this subsection by amending the code under ~~pursuant to~~ the rule adoption procedures in chapter 120. Updates to the Florida Building Code, including

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provisions contained in referenced standards and criteria which relate to wind resistance or the prevention of water intrusion, may not be amended under ~~pursuant to~~ this subsection to diminish those standards; however, the commission may amend the Florida Building Code to enhance such standards. Following the approval of any amendments to the Florida Building Code by the commission and publication of the amendments on the commission's website, authorities having jurisdiction to enforce the Florida Building Code may enforce the amendments.

(a) The commission may approve amendments that are needed to address:

1.~~(a)~~ Conflicts within the updated code;

2.~~(b)~~ Conflicts between the updated code and the Florida Fire Prevention Code adopted under ~~pursuant to~~ chapter 633;

3.~~(c)~~ Unintended results from the integration of previously adopted amendments with the model code;

4.~~(d)~~ Equivalency of standards;

5.~~(e)~~ Changes to or inconsistencies with federal or state law; or

6.~~(f)~~ Adoption of an updated edition of the National Electrical Code if the commission finds that delay of implementing the updated edition causes undue hardship to stakeholders or otherwise threatens the public health, safety, and welfare.

(b) The commission may issue errata to the code to correct demonstrated errors in provisions contained within the Florida Building Code. The determination of such errors and the issuance of errata to the code must be approved by a 75 percent supermajority vote of the commission. For purposes of this

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paragraph, "errata to the code" means a list of errors in current and previous editions of the Florida Building Code.

Section 4. Subsection (7) of section 553.77, Florida Statutes, is amended to read:

553.77 Specific powers of the commission.—

(7) Building officials shall recognize and enforce variance orders issued by the Department of Health under s. 514.0115(9) ~~pursuant to s. 514.0115(8)~~, including any conditions attached to the granting of the variance.

Section 5. Paragraph (d) is added to subsection (1) of section 553.79, Florida Statutes, to read:

553.79 Permits; applications; issuance; inspections.—

(1)

(d) A local government may not require a contract between a builder and an owner for the issuance of a building permit or as a requirement for the submission of a building permit application.

Section 6. Present subsections (10) through (19) of section 553.791, Florida Statutes, are redesignated as subsections (11) through (20), respectively, a new subsection (10) and subsection (21) are added to that section, and subsection (1), paragraph (b) of subsection (2), subsections (3), (4), and (6), paragraphs (b) and (d) of subsection (7), subsections (8) and (9), and present subsections (10), (11), (12), (14), and (15) are amended, to read:

553.791 Alternative plans review and inspection.—

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

(a) "Applicable codes" means the Florida Building Code and any local technical amendments to the Florida Building Code but

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does not include the applicable minimum fire prevention and firesafety codes adopted pursuant to chapter 633.

(b) "Audit" means the process to confirm that the building code inspection services have been performed by the private provider, including ensuring that the required affidavit for the plan review has been properly completed and submitted with ~~affixed to~~ the permit documents and that the minimum mandatory inspections required under the building code have been performed and properly recorded. The local building official may not replicate the plan review or inspection being performed by the private provider, unless expressly authorized by this section.

(c) "Building" means any construction, erection, alteration, demolition, or improvement of, or addition to, any structure or site work for which permitting by a local enforcement agency is required.

(d) "Building code inspection services" means those services described in s. 468.603(5) and (8) involving the review of building plans as well as those services involving the review of site plans and site work engineering plans or their functional equivalent, to determine compliance with applicable codes and those inspections required by law, conducted either in person or virtually, of each phase of construction for which permitting by a local enforcement agency is required to determine compliance with applicable codes.

(e) "Deliver" or "delivery" means any method of delivery used in conventional business or commercial practice, including delivery by electronic transmissions.

(f) "Duly authorized representative" means an agent of the private provider identified in the permit application who

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reviews plans or performs inspections as provided by this section and who is licensed as an engineer under chapter 471 or as an architect under chapter 481 or who holds a standard certificate under part XII of chapter 468.

(g) "Electronically posted" means providing notices of decisions, results, or records, including inspection records, through the use of a website or other form of electronic communication used to transmit or display information.

(h) "Electronic signature" means any letters, characters, or symbols manifested by electronic or similar means which are executed or adopted by a party with an intent to authenticate a writing or record.

(i) "Electronic transmission" or "submitted electronically" means any form or process of communication not directly involving the physical transfer of paper or another tangible medium which is suitable for the retention, retrieval, and reproduction of information by the recipient and is retrievable in paper form by the receipt through an automated process. All notices provided for in this section may be transmitted electronically and shall have the same legal effect as if physically posted or mailed.

(j) ~~(f)~~ "Immediate threat to public safety and welfare" means a building code violation that, if allowed to persist, constitutes an immediate hazard that could result in death, serious bodily injury, or significant property damage. This paragraph does not limit the authority of the local building official to issue a Notice of Corrective Action at any time during the construction of a building project or any portion of such project if the official determines that a condition of the

building or portion thereof may constitute a hazard when the building is put into use following completion as long as the condition cited is shown to be in violation of the building code or approved plans.

(k) ~~(g)~~ "Local building official" means the individual within the governing jurisdiction responsible for direct regulatory administration or supervision of plans review, enforcement, and inspection of any construction, erection, alteration, demolition, or substantial improvement of, or addition to, any structure for which permitting is required to indicate compliance with applicable codes and includes any duly authorized designee of such person.

(l) ~~(h)~~ "Permit application" means a properly completed and submitted application for the requested building or construction permit, including:

1. The plans reviewed by the private provider.

2. The affidavit from the private provider required under subsection (6).

3. Any applicable fees.

4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(m) ~~(i)~~ "Plans" means building plans, site engineering plans, or site plans, or their functional equivalent, submitted by a fee owner or fee owner's contractor to a private provider or duly authorized representative for review.

(n) ~~(j)~~ "Private provider" means a person licensed as a building code administrator under part XII of chapter 468, as an engineer under chapter 471, or as an architect under chapter

481. For purposes of performing inspections under this section for additions and alterations that are limited to 1,000 square feet or less to residential buildings, the term "private provider" also includes a person who holds a standard certificate under part XII of chapter 468.

(o) "Qualified private provider" means a private provider who has previously performed plans review and inspection services in the local jurisdiction and has registered with the local enforcing agency by providing the local building official with the private provider's name, firm, address, telephone number, and e-mail address; his or her professional license or certification number, qualification statements, or resumes; and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider's firm, the private provider, and any duly authorized representative in the amounts required by this section. This information must be submitted on an annual basis to the local jurisdiction in order to maintain qualifying status. If at any time any of the information submitted to the local jurisdiction changes, the private provider must contact the local jurisdiction and update the information within 10 business days after the change. The local jurisdiction is required to keep a registry of active qualified private providers.

(p) ~~(k)~~ "Request for certificate of occupancy or certificate of completion" means a properly completed and executed application for:

1. A certificate of occupancy or certificate of completion.

2. A certificate of compliance from the private provider

required under subsection (12) ~~(11)~~.

3. Any applicable fees.

4. Any documents required by the local building official to determine that the fee owner has secured all other government approvals required by law.

(q) "Single-trade inspection" means any inspection focused on a single construction trade, such as plumbing, mechanical, or electrical. The term includes, but is not limited to, inspections of door or window replacements; fences and block walls more than 6 feet high from the top of the wall to the bottom of the footing; stucco or plastering; reroofing with no structural alteration; HVAC replacements; ductwork or fan replacements; alteration or installation of wiring, lighting, and service panels; water heater changeouts; sink replacements; and repiping.

(r) ~~(l)~~ "Site work" means the portion of a construction project that is not part of the building structure, including, but not limited to, grading, excavation, landscape irrigation, and installation of driveways.

(s) ~~(m)~~ "Stop-work order" means the issuance of any written statement, written directive, or written order which states the reason for the order and the conditions under which the cited work will be permitted to resume.

(2)

(b) If an owner or contractor retains a private provider for purposes of plans review or building inspection services, the local jurisdiction must reduce the permit fee by the amount of cost savings realized by the local enforcement agency for not having to perform such services. Such reduction may be

calculated on a flat fee or percentage basis, or any other reasonable means by which a local enforcement agency assesses the cost for its plans review or inspection services ~~It is the intent of the Legislature that owners and contractors pay reduced fees related to building permitting requirements when hiring a private provider for plans review and building inspections. A local jurisdiction must calculate the cost savings to the local enforcement agency, based on a fee owner or contractor hiring a private provider to perform plans reviews and building inspections in lieu of the local building official, and reduce the permit fees accordingly.~~ The local jurisdiction may not charge fees for building inspections if the fee owner or contractor hires a private provider to perform such services; however, the local jurisdiction may charge a reasonable administrative fee.

(3) A private provider and any duly authorized representative may only perform building code inspection services that are within the disciplines covered by that person's licensure or certification under chapter 468, chapter 471, or chapter 481, including single-trade inspections. A private provider may not provide building code inspection services pursuant to this section upon any building designed or constructed by the private provider or the private provider's firm.

(4) A fee owner or the fee owner's contractor using a private provider to provide building code inspection services shall notify the local building official in writing at the time of permit application, or by 2 p.m. local time, 2 business days before the first scheduled inspection by the local building

official or building code enforcement agency that ~~for~~ a private provider has been contracted to perform the ~~performing~~ required inspections of construction under this section, including single-trade inspections, on a form to be adopted by the commission. This notice shall include the following information:

(a) The services to be performed by the private provider.

(b) The name, firm, address, telephone number, and e-mail address ~~facsimile number~~ of each private provider who is performing or will perform such services, his or her professional license or certification number, qualification statements or resumes, and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider's firm, the private provider, and any duly authorized representative in the amounts required by this section.

However, the notice is not required to include such information for private providers who are qualified private providers within the local jurisdiction and have renewed such designation pursuant to this section.

(c) An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide building code plans review and/or inspection services on the building or structure that is the subject of the enclosed permit application, as authorized by s. 553.791, Florida Statutes. I

understand that the local building official may not review the plans submitted or perform the required building inspections to determine compliance with the applicable codes, except to the extent specified in said law. Instead, plans review and/or required building inspections will be performed by licensed or certified personnel identified in the application. The law requires minimum insurance requirements for such personnel, but I understand that I may require more insurance to protect my interests. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and the level of their insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the local government, the local building official, and their building code enforcement personnel from any and all claims arising from my use of these licensed or certified personnel to perform building code inspection services with respect to the building or structure that is the subject of the enclosed permit application.

If the fee owner or the fee owner's contractor makes any changes to the listed private providers or the services to be provided by those private providers, the fee owner or the fee owner's contractor shall, within 1 business day after any change or within 2 business days before the next scheduled inspection, update the notice to reflect such changes. A change of a duly

authorized representative named in the permit application does not require a revision of the permit, and the building code enforcement agency shall not charge a fee for making the change. ~~In addition, the fee owner or the fee owner's contractor shall post at the project site, before the commencement of construction and updated within 1 business day after any change, on a form to be adopted by the commission, the name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform building code inspection services, the type of service being performed, and similar information for the primary contact of the private provider on the project.~~

(6) A private provider performing plans review under this section shall review the plans to determine compliance with the applicable codes. Upon determining that the plans reviewed comply with the applicable codes, the private provider shall prepare an affidavit or affidavits ~~on a form reasonably acceptable to the commission~~ certifying, under oath, that the following is true and correct to the best of the private provider's knowledge and belief:

(a) The plans were reviewed by the affiant, who is duly authorized to perform plans review pursuant to this section and holds the appropriate license or certificate.

(b) The plans comply with the applicable codes.

Such affidavit may bear a written or electronic signature and may be submitted electronically to the local building official.

(7)

(b) If the local building official provides a written

notice of plan deficiencies to the permit applicant within the prescribed 20-day period, the 20-day period shall be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to subsection (14) ~~(13)~~ or to submit revisions to correct the deficiencies.

(d) If the local building official provides a second written notice of plan deficiencies to the permit applicant within the prescribed time period, the permit applicant may elect to dispute the deficiencies pursuant to subsection (14) ~~(13)~~ or to submit additional revisions to correct the deficiencies. For all revisions submitted after the first revision, the local building official has an additional 5 business days from the date of resubmittal to issue the requested permit or to provide a written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections.

(8) A private provider performing required inspections under this section shall inspect each phase of construction as required by the applicable codes. Such inspection may be performed in-person or virtually. The private provider may have ~~shall be permitted to send~~ a duly authorized representative ~~to the building site to~~ perform the required inspections, provided all required reports are prepared by and bear the written or electronic signature of the private provider or the private provider's duly authorized representative. The duly authorized representative must be an employee of the private provider entitled to receive reemployment assistance benefits under

chapter 443. The contractor's contractual or legal obligations are not relieved by any action of the private provider.

(9) A private provider performing required inspections under this section shall provide notice to the local building official of the date and approximate time of any such inspection no later than the prior business day by 2 p.m. local time or by any later time permitted by the local building official in that jurisdiction. The local building official may not prohibit the private provider from performing any inspection outside the local building official's normal operating hours, including after hours, weekends, or holidays. The local building official may visit the building site as often as necessary to verify that the private provider is performing all required inspections. A deficiency notice must be posted ~~at the job site~~ by the private provider, the duly authorized representative of the private provider, or the building department whenever a noncomplying item related to the building code or the permitted documents is found. Such notice may be physically posted at the job site or electronically posted. After corrections are made, the item must be reinspected by the private provider or representative before being concealed. Reinspection or reaudit fees shall not be charged by the local jurisdiction as a result of the local jurisdiction's audit inspection occurring before the performance of the private provider's inspection or for any other administrative matter not involving the detection of a violation of the building code or a permit requirement.

(10) If equipment replacements and repairs must be performed in an emergency situation, subject to the emergency permitting provisions of the Florida Building Code, a private

provider may perform emergency inspection services without first notifying the local building official pursuant to subsection (9). A private provider must conduct the inspection within 3 business days after being contacted to conduct an emergency inspection and must submit the inspection report to the local building official within 1 day after the inspection is completed.

(11)~~(10)~~ Upon completing the required inspections at each applicable phase of construction, the private provider shall record such inspections on a form acceptable to the local building official. The form must bear the written or electronic signature of ~~be signed by~~ the provider or the provider's duly authorized representative. These inspection records shall reflect those inspections required by the applicable codes of each phase of construction for which permitting by a local enforcement agency is required. The private provider, upon completion of the required inspection ~~before leaving the project site~~, shall post each completed inspection record, indicating pass or fail, ~~at the site~~ and provide the record to the local building official within 2 business days. Such inspection record may be electronically posted by the private provider or the private provider may post such inspection record physically at the project site. The private provider may electronically transmit the record to the local building official. The local building official may waive the requirement to provide a record of each inspection within 2 business days if the record is electronically posted or posted at the project site and all such inspection records are submitted with the certificate of compliance. Unless the records have been electronically posted,

records of all required and completed inspections shall be maintained at the building site at all times and made available for review by the local building official. The private provider shall report to the local enforcement agency any condition that poses an immediate threat to public safety and welfare.

(12)~~(11)~~ Upon completion of all required inspections, the private provider shall prepare a certificate of compliance, on a form acceptable to the local building official, summarizing the inspections performed and including a written representation, under oath, that the stated inspections have been performed and that, to the best of the private provider's knowledge and belief, the building construction inspected complies with the approved plans and applicable codes. The statement required of the private provider shall be substantially in the following form and shall be signed and sealed by a private provider as established in subsection (1) or may be electronically transmitted to the local building official:

> To the best of my knowledge and belief, the building components and site improvements outlined herein and inspected under my authority have been completed in conformance with the approved plans and the applicable codes.

(13)~~(12)~~ No more than 2 business days after receipt of a request for a certificate of occupancy or certificate of completion and the applicant's presentation of a certificate of compliance and approval of all other government approvals required by law, the local building official shall issue the

certificate of occupancy or certificate of completion or provide a notice to the applicant identifying the specific deficiencies, as well as the specific code chapters and sections. If the local building official does not provide notice of the deficiencies within the prescribed 2-day period, the request for a certificate of occupancy or certificate of completion shall be deemed granted and the certificate of occupancy or certificate of completion shall be issued by the local building official on the next business day. To resolve any identified deficiencies, the applicant may elect to dispute the deficiencies pursuant to subsection (14) ~~(13)~~ or to submit a corrected request for a certificate of occupancy or certificate of completion.

(15)~~(14)~~ For the purposes of this section, any notice to be provided by the local building official shall be deemed to be provided to the person or entity when successfully transmitted to the e-mail address ~~facsimile number~~ listed for that person or entity in the permit application or revised permit application, or, if no e-mail address ~~facsimile number~~ is stated, when actually received by that person or entity.

(16)(a)~~(15)(a)~~ A local enforcement agency, local building official, or local government may not adopt or enforce any laws, rules, procedures, policies, qualifications, or standards more stringent than those prescribed by this section.

(b) A local enforcement agency, local building official, or local government may establish, for private providers and duly authorized representatives working within that jurisdiction, a system of registration to verify compliance with the licensure requirements of paragraph (1)(n) ~~(1)(j)~~ and the insurance requirements of subsection (17). Such registration must be

distinct from the registry of qualified private providers ~~(16)~~.

(c) This section does not limit the authority of the local building official to issue a stop-work order for a building project or any portion of the project, as provided by law, if the official determines that a condition on the building site constitutes an immediate threat to public safety and welfare.

(21) Notwithstanding any other law, a county, a municipality, a school district, or an independent special district may use a private provider to provide building code inspection services for a public works project, an improvement, a building, or any other structure pursuant to this section.

Section 7. Paragraph (a) of subsection (8) of section 553.842, Florida Statutes, is amended to read:

553.842 Product evaluation and approval.—

(8) The commission may adopt rules to approve the following types of entities that produce information on which product approvals are based. All of the following entities, including engineers and architects, must comply with a nationally recognized standard demonstrating independence or no conflict of interest:

(a) Evaluation entities approved under ~~pursuant to~~ this paragraph or that meet the criteria for approval adopted by the commission by rule. The commission shall specifically approve the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, Underwriters Laboratories, LLC, Intertek Testing Services NA, Inc., and the Miami-Dade County Building Code Compliance Office Product Control Division. Architects and engineers licensed in this

state are also approved to conduct product evaluations as provided in subsection (5).

Section 8. Paragraph (bb) of subsection (1) of section 125.01, Florida Statutes, is amended to read:

125.01 Powers and duties.—

(1) The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:

(bb) Enforce the Florida Building Code~~,~~ as provided in s. 553.80~~,~~ and adopt and enforce local technical amendments to the Florida Building Code as provided in s. 553.73(4)~~, pursuant to s. 553.73(4)(b) and (c)~~.

Section 9. Subsection (1) of section 125.56, Florida Statutes, is amended to read:

125.56 Enforcement and amendment of the Florida Building Code and the Florida Fire Prevention Code; inspection fees; inspectors; etc.—

(1) The board of county commissioners of each of the several counties of the state may enforce the Florida Building Code and the Florida Fire Prevention Code~~,~~ as provided in ss. 553.80, 633.206, and 633.208~~,~~ and, at its discretion, adopt local technical amendments to the Florida Building Code as provided in s. 553.73(4)~~, pursuant to s. 553.73(4)(b) and (c)~~ and local technical amendments to the Florida Fire Prevention Code as provided in~~, pursuant to~~ s. 633.202~~,~~ to provide for the safe construction, erection, alteration, repair, securing, and demolition of any building within its territory outside the corporate limits of any municipality. Upon a determination to

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

consider amending the Florida Building Code or the Florida Fire Prevention Code by a majority of the members of the board of county commissioners of such county, the board shall call a public hearing and comply with the public notice requirements of s. 125.66(2). The board shall hear all interested parties at the public hearing and may then amend the building code or the fire code consistent with the terms and purposes of this act. Upon adoption, an amendment to the code shall be in full force and effect throughout the unincorporated area of such county until otherwise notified by the Florida Building Commission under ~~pursuant to~~ s. 553.73 or the State Fire Marshal under ~~pursuant to~~ s. 633.202. This subsection does not ~~Nothing herein contained shall be construed to~~ prevent the board of county commissioners from repealing such amendment to the building code or the fire code at any regular meeting of such board.

Section 10. This act shall take effect July 1, 2021.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JASON BRODEUR
9th District

COMMITTEES:
Environment and Natural Resources, *Chair*
Health Policy, *Vice Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs
Community Affairs

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

JOINT COMMITTEE:
Joint Administrative Procedures Committee

April 15, 2021

Honorable Kathleen Passidomo
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Passidomo,

I am writing to request that **SB 1146, Florida Building Code**, be placed on the agenda to be heard in the Committee on Rules.

I appreciate your consideration in this matter.

Sincerely,

Jason Brodeur

Cc: John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
❒ 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

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)

4-20-21
Meeting Date

SB 1146
Bill Number (if applicable)

Topic BUILDING CODES

2803658
Amendment Barcode (if applicable)

Name KARI HEBRANK

435284

Job Title

Address 7711 Deepwood Trail
Street

Tallahassee FL 32309
City *State* *Zip*

Phone 566-1824

Email Khebrank@earlton fields.com

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

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

Representing FLORIDA HOME BUILDERS

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

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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

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)

4-20-21
Meeting Date

SB 1146
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic BUILDING CODES

Name KARL HEBRANK

Job Title

Address 215 S. MONROE ST.
Street
TALLAHASSEE FL 32301
City *State* *Zip*

Phone 524-7824

Email KHebrank@CarltonFields.com

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

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

Representing FLORIDA HOME BUILDERS, PFS TECO

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/CS/SB 1194
INTRODUCER:	Rules Committee; Appropriations Committee; Transportation Committee; and Senator Hooper
SUBJECT:	Transportation
DATE:	April 20, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Fav/CS**
2.	McAuliffe	Sadberry	AP	**Fav/CS**
3.	Price	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1194 contains various transportation-related provisions, including:

- Authorizing a municipal or county governing body to abandon roads and rights of way dedicated in a recorded residential subdivision plat and to simultaneously convey the city's or the county's interest to a community development district under specified conditions.
- Precluding a governmental entity from prohibiting a bid relating to the entity's procurement of certain contractual services from a vendor possessing a valid certificate of qualification from the Florida Department of Transportation (FDOT) relating to certain road and bridge construction contracts or a license relating to construction, electrical and alarm, or septic tank contracting corresponding to the services being procured.
- Authorizing construction equipment in a work zone on roadways with a posted speed limit of 55 miles per hour or higher to display a combination of flashing green, amber, and red lights during periods when workers are present.
- Authorizing flashing lights on vehicles during periods of extremely low visibility on roadways posted with a speed limit of 55 miles per hour or more.
- Increasing the penalties for violations of a prohibition against modification of a motor vehicle exhaust system or any other noise-abatement device of a motor vehicle in such a manner that the noise emitted by the motor vehicle is above that emitted by the vehicle as originally manufactured.
- Substituting an affidavit with an attestation on a form provided by the Florida Department of Highway Safety and Motor Vehicles (DHSMV) as a requirement for an insurance company

to receive a salvage certificate of title or certificate of destruction for motor vehicles and mobile homes from the DHSMV.
- Clarifying that the types of vehicles authorized to elect a permanent registration period are rental vehicles, making clear that the authorization does not apply to leased vehicles.
- Requiring motor vehicle dealer licensees to deliver to the DHSMV copies of renewed, continued, changed, or new insurance policies, surety bonds, or irrevocable letters of credit within 10 days after any renewal, continuation, change, or new issuance of the same, ensuring continuous insurance coverage.
- Dissolving the inactive Northwest Florida Transportation Corridor Authority and repeals part III of ch. 343, F.S., under which the authority was established.
- Prohibiting the Central Florida Expressway Authority from constructing any extensions, additions, or improvements to the Central Florida Expressway System in Lake County without prior consultation with, rather than consent of, the Secretary of Transportation.
- Increasing from 40 years to 99 years an existing limitation on the term of a lease into which the Jacksonville Transportation Authority may enter.
- Revising provisions relating to an annual cap on the FDOT's authorization to enter into contracts for innovative transportation projects.
- Amending financial statement requirements relating to applications for certificates of qualification to bid on contracts for the performance of work for the FDOT under certain construction contracts.
- Excluding certain airports from the prohibition against the same entity performing design and performing construction engineering and inspection services on a project funded by the FDOT and administered by a local governmental entity
- Substantially revising provisions relating to the State Arbitration Board, which hears claims for additional compensation arising out of construction and maintenance contracts between the FDOT and its contractors.
- Defining the term "borrow pit" and requiring a borrow pit operator to provide a notice of intent to extract to the DEP.
- Prohibiting the FDOT, and its contractors and subcontractors, from purchasing or using specified substances extracted from a borrow pit unless certification is provided by the operator showing the borrow pit is in compliance with certain existing requirements and proof is provided of currently valid permits required by the Florida Department of Environmental Protection (DEP) and the appropriate water management district.
- Requiring the FDOT, if it determines substances are being obtained and used from a noncompliant borrow pit, to cease accepting any substances within 48 hours. The FDOT may resume acceptance of substances from the borrow pit once the pit is in compliance.
- Requiring the FDOT to create and implement a publicly accessible electronic database for sign permit information; specifies requirements for the database; prohibits the department from furnishing permanent metal permit tags or replacement tags and from enforcing related provisions once the department creates and implements the database.

The bill does not appear to significantly impact state and local revenues but may present other fiscal impacts. See the "Fiscal Impact Statement" for further information.

The bill takes effect July 1, 2021.

II. Present Situation:

For ease or organization and readability, the present situation is discussed below in conjunction with the effect of the proposed changes.

III. Effect of Proposed Changes:

Closing and Abandonment of Roads/Optional Conveyance to a Community Development District (Section 1)

Present Situation

Community Development Districts

Community development districts (CDD) are a type of special-purpose local government intended to develop and provide basic urban community services cost-effectively. These independent special districts are created pursuant to and governed by the Uniform Community Development District Act of 1980.[1] The act lays out the exclusive and uniform procedures for establishing and operating a CDD.[2] CDDs provide a means to manage and finance the delivery of basic services and capital infrastructure to developing communities without overburdening other governments and their taxpayers.[3] As of April 15, 2021, there are 755 active CDDs in Florida.[4]

Powers of CDD Board of Supervisors

A CDD board is authorized to exercise general and special powers within the constraints of applicable comprehensive plans, ordinances, and regulations of the general-purpose local government.[5] General powers include the authority to assess and impose ad valorem taxes within the district and to issue bonds.[6] In part, the special powers over public improvements and community facilities include, unless prohibited elsewhere,[7] the power to finance, fund, plan, establish, acquire, construct, equip, operate, and maintain facilities and basic infrastructures for:[8]

- Water management and control for the lands within the district;
- Water supply, sewer, and wastewater management, reclamation, and reuse; and
- District roads and road improvements.[9]

CDDs are specifically granted "the power to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for…security,

[1] Chapter 190, F.S.
[2] *See* ss. 190.004 and 190.005, F.S.
[3] Section 190.002(1)(a), F.S.
[4] Department of Economic Opportunity, *Official List of Special Districts Online – Directory*, *available at*: http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx (last visited April 14, 2021).
[5] *See* s. 190.004(3), F.S.
[6] Section 190.011, F.S.
[7] Sections 190.005(1)(f) and (2)(d), F.S.
[8] A CDD board may authorize general obligation, benefit, or revenue bonds by one or more resolutions approved by a majority of the members in office. Section 190.016(2), F.S. Although the statute allows boards to authorize benefit bonds, these bonds are not defined nor discussed any further in the chapter.
[9] Section 190.012, F.S.

including, but not limited to, *guardhouses, fences and gates*, electronic intrusion-detection systems, and patrol cars, when authorized by proper governmental agencies."[10]

Closing and Abandonment of Roads/Optional Conveyance to Homeowner's Association

The Florida Constitution establishes and describes the duties, powers, structure, function, and limitations of government in Florida. Article VIII, s. 1 of the Florida Constitution endows counties and municipalities the power of self-government or home rule power. Under the home rule power, local governments have broad authority to exercise the state's sovereign police powers and legislate on any matter that is not inconsistent with the federal and state constitution and laws.

County governing bodies are statutorily authorized to abandon the roads and rights-of-way dedicated in a recorded residential plat and simultaneously convey the county's interest in such roads, rights-of-way, and appurtenant drainage facilities to a homeowners' association for the subdivision, if the following conditions have been met:

- The homeowners' association has requested the abandonment and conveyance in writing for the purpose of converting the subdivision to a gated neighborhood with restricted public access.
- No fewer than four-fifths of the owners of record of property located in the subdivision have consented in writing to the abandonment and simultaneous conveyance to the homeowners' association.
- The homeowners' association is both a corporation nonprofit organized and in good standing under ch. 617, F.S., and a "homeowners' association" as defined in s. 720.301(9), F.S., with the power to levy and collect assessments for routine and periodic major maintenance and operation of street lighting, drainage, sidewalks, and pavement in the subdivision.
- The homeowners' association has entered into and executed such agreements, covenants, warranties, and other instruments; has provided, or has provided assurance of, such funds, reserve funds, and funding sources; and has satisfied other requirements and conditions as may be established or imposed by the county with respect to the ongoing operation, maintenance, and repair and the periodic reconstruction or replacement of the roads, drainage, street lighting, and sidewalks in the subdivision after the abandonment by the county.[11]

The homeowners' association is required to install, operate, maintain, repair, and replace all signs, signals, markings, striping, guardrails, and other traffic control devices necessary or useful for the private roads unless an agreement has been entered into between the county and the homeowners' association, as authorized under s. 316.006(3)(b), F.S., expressly providing that the county has traffic control jurisdiction.

Upon abandonment of the roads and rights-of-way and the conveyance thereof to the homeowners' association, the homeowners' association has all the rights, title, and interest in the roads and rights-of-way, including all appurtenant drainage facilities, as were previously vested in the county. The homeowners' association holds the roads and rights-of-way in trust for the benefit of the owners of the property in the subdivision and operates, maintains, repairs, and,

[10] Section 190.012(2)(d), F.S. (emphasis added).
[11] Section 336.125, F.S.

from time to time, replaces and reconstructs the roads, street lighting, sidewalks, and drainage facilities as necessary to ensure their use and enjoyment by the residents. These provisions are supplemental and additional to the provisions of s. 336.12, F.S.[12]

Municipalities likely have the same power under the broad home rule authority granted by the Florida constitution, as well as authorization in ch. 163, F.S., to enter into interlocal agreements.

Traffic Control Jurisdiction

Generally, municipalities and counties may exercise traffic control jurisdiction over any roads located within their respective jurisdictions. This includes exercising jurisdiction over any private road or roads, or any limited access road or roads owned or controlled by a special district, if the municipality or county enters into a written agreement approved by the respective governing body.[13]

As to municipalities, the agreement with the party owning or controlling the road at issue:

- May include provision for reimbursement for actual costs of traffic control and enforcement and for liability insurance and indemnification by the party, and such other terms as are mutually agreeable.
- May provide for the installation of multiparty stop signs by the parties controlling the roads covered by the agreement if a determination is made by such parties that the signage will enhance traffic safety.

The exercise of jurisdiction is in addition to jurisdictional authority exercised by municipalities under law, and nothing limits or removes any such jurisdictional authority. Such jurisdiction includes regulation of access to such road or roads by security devices or personnel. In addition, the board of directors of a homeowners' association as defined in ch. 720, F.S., may, by majority vote, elect to have state traffic laws enforced by local law enforcement agencies on private roads that are controlled by the association. A municipality may also, by interlocal agreement with a county, agree to transfer traffic regulatory authority over areas within the municipality to the county.[14]

As to counties, the agreement with the party owning or controlling the road at issue may include the same two provisions identified above. The exercise of jurisdiction is likewise additional authority for counties, and a homeowner's association board may also elect to have state traffic laws enforced by local law enforcement agencies on private roads that are controlled by the association. However, prior to entering into any agreement, the governing body of the county must consult with the county sheriff.[15]

[12] That section provides the act of any commissioners in closing or abandoning any such road, or in renouncing or disclaiming any rights in any land delineated on any recorded map as a road, abrogates the easement held by or on behalf of the public and the title of fee owners is released. If the fee title to the road space has been vested in the county, the same is surrendered and vests in the abutting fee owners to the extent and in the same manner as in case of termination of an easement for road purposes.
[13] Section 316.006(2)(b) and (3)(b), F.S.
[14] Section 316.006(2)(b), F.S.
[15] Section 316.006(3)(b), F.S.

If the county governing body abandons the roads and rights-of-way dedicated in a recorded residential subdivision, and simultaneously conveys the county's interest to a homeowners' association for the subdivision in the manner prescribed in s. 336.125, F.S., that county's traffic control jurisdiction over the abandoned and conveyed roads ceases unless an agreement exists for the exercise of traffic control jurisdiction in accordance with the above-described requirements.[16]

Effect of Proposed Changes

Section 1 creates s. 177.107, F.S., primarily, but not identically, modeled after s. 336.125, F.S. The bill authorizes a municipal or county governing body to abandon the roads and rights-of-way dedicated in a recorded residential subdivision plat and simultaneously convey the municipality's or county's interest in such roads, rights-of-way, and appurtenant drainage facilities to a community development district established under ch. 190, F.S., in which the subdivision is located, if all of the following conditions are met:

- The CDD has requested the abandonment and conveyance by written resolution for the purpose of converting the subdivision to a gated neighborhood with monitored (as opposed to "restricted," in the case of a homeowner's association) public access.
- The CDD has received approval for the conveyance by a vote of two-thirds (four-fifths in the case of a homeowner's association) of the landowners who are subject to the non-ad valorem assessments of the community development district and who are present by person or proxy at a properly noticed landowners meeting.
- The CDD has executed an interlocal agreement with the municipality or county, as applicable, requiring the CDD to do all of the following:
    - Maintain the roads and any associated drainage, street lighting, or sidewalks identified in the interlocal agreement to municipal or county standards, as applicable.
    - Every 5 years, conduct a reserve study of the roads and any associated drainage, street lighting, or sidewalks identified in the interlocal agreement.
    - Levy annual special assessments in amounts sufficient to maintain the roads and any drainage, street lighting, or sidewalks identified in the interlocal agreement to municipal or county standards, as applicable.
    - Annually fund the amounts set forth in the reserve study.

The CDD must install, operate, maintain, repair, and replace all signs, signals, markings, striping, guardrails, and other traffic control devices necessary or useful for the roads unless an agreement has been entered into between the municipality or county and the CDD, as authorized under s. 316.006(2)(b) and (3)(b), respectively, expressly providing that the municipality or county has traffic control jurisdiction.

Upon abandonment of the roads and rights-of-way and the conveyance to the CDD, the CDD has all the rights, title, and interest in the roads and rights-of-way, including all appurtenant drainage facilities, as were previously vested in the municipality or county. Thereafter, the CDD holds the roads and rights-of-way in trust for the benefit of the public and owners of the property in the subdivision and shall operate, maintain, repair, and from time to time replace and reconstruct the roads and any associated street lighting, sidewalks, or drainage facilities identified in the

[16] Section 316.006(3)(c), F.S.

interlocal agreement as necessary to ensure their use and enjoyment by the public and property owners, tenants, and residents of the subdivision and their guests and invitees.

The bill provides that the new provisions are supplemental and additional to the powers of municipalities and counties.

Procurement of Public Construction Services (Section 2)

Present Situation

Procurement Methods

Chapter 287, F.S., sets out provisions governing agency[17] procurement of personal property and services. Agencies may use different methods, depending on the cost and characteristics of the goods or services being procured, which include:

- Invitations to bid, used when an agency is capable of specifically defining the scope of work for which a contractual service is required or of establishing precise specifications defining the actual commodity or group of commodities required.[18]
- Requests for proposals, used when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables. Responsive vendors may propose various combinations or versions of commodities or contractual services to meet the agency's specifications.[19]
- Invitations to negotiate, used to determine the best method for achieving a specific goal or solving a particular problem. This procurement method identifies one or more responsive vendors with which the agency may negotiate to receive the best value.[20]
- Single source contracts, used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase and which may be excepted from competitive-solicitation requirements.[21]

FDOT Certificate of Qualification

Current law requires any contractor desiring to bid on any FDOT construction contract in excess of $250,000 to first be certified by the FDOT as qualified pursuant to s. 337.14, F.S., and the FDOT's rules.[22] Those rules include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor, which are necessary to perform the specific class of work for which the contractor seeks certification. The rules also apply to applicants seeking to bid on road, bridge, or public transportation construction contracts in excess of $250,000.[23]

[17] "Agency" is defined as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government," but does not include university and college boards of trustees or the state universities and colleges. Section 287.012(1), F.S.
[18] Section 287.057(1)(a), F.S.
[19] Section 287.057(1)(b), F.S.
[20] Section 287.057(1)(c), F.S.
[21] Section 287.057(3)(c), F.S.
[22] Chapter 14-22, F.A.C.
[23] Section 337.14(1), F.S., and Rule 14-22.0011(1), F.A.C.

Licensure: Construction, Electrical and Alarm System, and Septic Tank Contracting

Chapter 489, F.S., is administered by the Department of Business and Professional Regulation and, in general, requires licensure of various types of contractors before contracting to perform work of the type for which they are licensed. Part I of ch. 489, F.S., relating to construction contracting, expressly does not apply to contractors in work on bridges, roads, streets, highways, or railroads, and services incidental thereto.[24] "Services incidental thereto" specifically includes storm drainage and excavation work necessary for the construction of bridges, roads, streets, highways, and railroads, and those subcontractor categories, defined in s 489.105(3)(d)-(q), F.S., and includes directly contracting with a governmental entity for such work.[25] Section 489.105(3)(d)-(q), F.S., includes a wide variety of contractors including roofing, air-conditioning, plumbing, underground utility and excavation, and solar.

Effect of Proposed Changes

Section 2 of the bill creates s. 287.05705, F.S., to provide that if a competitive solicitation is limited to the classes of work for which the FDOT issues certificates of qualification and does not involve the construction, remodeling, repair, or improvement of any building, or if a vendor holds an FDOT certificate of qualification or license under ch. 489, F.S., corresponding to the contractual service being procured, the procuring governmental entity may not prohibit a vendor from responding (*e.g.*, submitting a bid or proposal) to that entity's competitive solicitation. The bill applies these provisions to all competitive solicitations issued by a governmental entity on or after October 1, 2021.

Lights on Vehicles (Section 3)

Present Situation

Current law generally prohibits a person from driving or otherwise moving on a road any vehicle or equipment that has a lamp or device that displays red, red and white, or blue lights visible from directly in front of such vehicle or equipment, with certain exceptions.[26] The display of blue lights on any vehicle or equipment is prohibited, except police vehicles and vehicles owned, operated, or leased by the Department of Corrections (DOC) or any county correctional agency when responding to emergencies.[27]

The display of flashing lights on vehicles is also prohibited, except:[28]

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicles is lawfully stopped or disabled upon the highway.
- When a motorist intermittently flashes his or her vehicles' headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so.
- Flashing blue lights on police, DOC, or county correctional agency vehicles.
- Flashing amber lights on road or street maintenance equipment, road or street maintenance vehicles, road service vehicles, refuse collection vehicles, petroleum tankers, and mail carrier

[24] Section 489.103(1)
[25] Rule 61G4-12.011(9), F.A.C.
[26] Section 316.2397(1), F.S.
[27] Section 316.2397(2), F.S.
[28] Section 316.2397(7), F.S.

vehicles when in operation or when a hazard exists; and on commercial motor vehicles or trailers designed to transport unprocessed logs or pulpwood.
- Flashing red or red and white lights on vehicles such as those of a fire department or medical staff or facilities and ambulances.
- Flashing red lights on emergency response vehicles used by the Fish and Wildlife Conservation Commission, the DEP, and the Department of Health when responding to an emergency in the line of duty.
- Flashing white lights or flashing white strobe lights on road maintenance and construction equipment and vehicles when in operation and where a hazard exists; and on school buses and vehicles used to transport farm workers.
- Flashing white and red lights on bicycles and bicycle riders.
- Additional flashing lights authorized under s. 316.235, F.S., relating to additionally authorized lighting equipment on vehicles such as running board or fender lights.

Effect of Proposed Changes

Section 3 amends s. 316.2397, F.S., to authorize on roadways with a posted speed limit of 55 miles per hour or more:
- Flashing green, amber, and red lights on construction equipment within a work zone[29] during periods when workers are present.
- Flashing lights on vehicles during periods of extremely low visibility.[30]

Motor Vehicle Noise (Section 4)

Present Situation

Current law prohibits a person from modifying the exhaust system of a motor vehicle or any other noise-abatement device of a motor vehicle operated or to be operated in this state in such a manner that the noise emitted is above that emitted by the vehicle as originally manufactured.[31] Emergency vehicles; any motor vehicle engaged in a professional or amateur sanctioned, competitive sports even for which admission or entry fee is charged, or practice or time trials for such event; any motor vehicle engaged in a manufacturer's engineering, design, or equipment test; and construction or agricultural equipment either on a job site or traveling on the highways are exempt from the prohibition.[32] A violation is a noncriminal traffic infraction, which carries a $30 fine plus court costs.[33]

[29] Section 316.003(105) defines "work zone *area*" to mean "the area and its approaches on any state-maintained highway, county-maintained highway, or municipal street where construction, repair, maintenance, or other street-related or highway-related work is being performed or where one or more lanes are closed to traffic."
[30] With the exception of vehicles in funeral processions as provided in 316.1974(4)(c), F.S., Florida law does not expressly authorize the use of hazard lights on moving vehicles. The Florida Driver Handbook indicates that a driver should not use emergency flashers in instances of low visibility or rain and may only use emergency flashers when a vehicle is disabled or stopped on the side of the road. Department of Highway Safety and Motor Vehicles, *Florida Driver Handbook*, at p. 48, available at https://www3.flhsmv.gov/handbooks/englishdriverhandbook.pdf (last visited April 7, 2021).
[31] Section 316.293(5), F.S.
[32] Section 316.293(6), F.S.
[33] Section 318.18, F.S.

Effect of Proposed Changes

Section 4 amends s. 318.18, F.S., providing that in addition to any penalties imposed, violators of the prohibition are subject to a fine of $200 for a first offense, and $500 for a second or subsequent offense.

Salvage Certificate of Title or Certificate of Destruction (Section 5)

Present Situation

In order to receive a salvage certificate of title or certificate of destruction for a motor vehicle or mobile home that does not carry an electronic lien on the title under current law, among other requirements, an insurance company must provide proof of payment of the total loss claim and must provide an affidavit to the DHSMV stating that attempts have been made to obtain the title from the owner or lienholder to no avail.[34]

Effect of Proposed Changes

Section 5 amends s. 319.30(3)(b), F.S., to remove the requirement for an affidavit, instead requiring that the insurance company has *attested* on a form provided by the DHSMV stating that attempts have been made to obtain the title from the owner or lienholder to no avail, and has *attested* on a form provided by the DHSMV stating that attempts to obtain the title have failed.

Permanent Motor Vehicle Registration (Section 6)

Present Situation

Currently, upon application for registration of a motor vehicle and payment of the appropriate license tax, the DHSMV generally issues one registration license plate.[35] Generally, upon registration renewal (and replacement of the license plate after a ten-year period), a validation sticker is issued based on the applicant's renewal period. The period is 12 months, the extended period is 24 months, and all expirations occur based on the applicant's appropriate registration period.[36] Owners of motor vehicles for hire taxed under s. 320.08(6), F.S., are authorized to elect a permanent registration period if payment of the appropriate license taxes and fees occurs annually.[37] According to the DHSMV, for-hire vehicles include both short-term and long-term *leased* vehicles,[38] and the department proposes clarifying that permanent registration is available only to rental vehicles.[39]

[34] Section 319.30(3)(b), F.S.
[35] Section 320.06(1)(a), F.S.
[36] Section 320.06(1)(b)1., F.S.
[37] *Id.*
[38] Section 320.01(15)(a), F.S., defines "for-hire vehicle," in part, as any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration, or offered for rent or hire as a means of transportation for compensation.
[39] *See* DHSMV email dated April 5, 2021 (on file in the Senate Transportation Committee).

Effect of Proposed Changes

Section 6 amends s. 320.06(1)(b)1., F.S., providing that owners of *rental* vehicles taxed under s. 320.06(8), F.S., may elect a permanent registration period upon annual payment of the appropriate license taxes and fees.

Garage Liability Insurance (Section 7)

Present Situation

Motor vehicle dealers are required to have garage liability insurance or general liability insurance coupled with a business automobile policy in order to ensure a licensed dealer[40] has coverage for the day-to-day operations of businesses in the automotive industry that are not covered under most commercial or business liability insurance, including providing coverage for all dealer-owned vehicles driven by prospective purchasers.[41]

While the Florida law requires a dealer to provide at the time of licensure application proof of the required coverage for the duration of the licensure period and again at the beginning of each licensure renewal period, the statute does not cover the issue of a gap in coverage during the licensure period. Gaps in coverage can, and do, occur as a result of various actions - a dealer may cancel a policy in the middle of the term or the insurer itself may cancel the policy in the middle of the term for nonpayment of the premium or for other reasons.

This technicality may allow a motor vehicle dealer to meet the requirement of proof of coverage at the beginning of the licensure period but allow the coverage to lapse during the licensure period and then reinstate coverage at the beginning of the next licensure period. The cancellation and later reinstatement of a policy creates a gap wherein the dealer has no insurance coverage. A gap in insurance coverage at any time during the licensure period has the potential to result in direct consumer harm, as any dealer-owned vehicles taken for test drives or driven as program models by the dealer, or any consumer-owned vehicles damaged while on the dealer's lot, or any other property or personal injury situations that would otherwise be covered under a garage liability policy are not otherwise covered. Currently, over 14,500 dealers are required to carry appropriate insurance coverage.[42]

The DHSMV currently advises vehicle dealers and recreational vehicle dealers about upcoming policy expirations by generating a list of dealers whose policies are set to expire. The DHSMV then sends out three separate notices that ask each dealer to submit an updated or current policy to the DHSMV. Additionally, after the policy has expired, the DHSMV sends a follow-up letter that indicates the DHSMV will take administrative action against the licensee for non-compliance with the insurance requirement if an updated policy is not received within fourteen days. In addition to this written communication, the DHSMV field offices follow up with telephone calls and emails to the dealers, attempting to bring them into compliance with the insurance requirement. Ultimately, if the dealer is unresponsive and does not provide the DHSMV with proof of the required coverage, the Bureau of Dealer Services forwards the

[40] Section 320.27, F.S.
[41] Section 320.27(3), F.S.
[42] Department of Highway Safety and Motor Vehicles, *2021 Legislative Bill Analysis for SB 1500*, (March 5, 2021), p. 4 (on file in the Senate Committee on Transportation).

relevant information to the Office of the General Counsel with a request to initiate an administrative action against the dealer under ch. 120, F.S.[43]

Currently, the DHSMV has no enforcement authority permitting it to take administrative action against a dealer's license for not timely providing proof of coverage. The only enforcement authority available lies in the ability to seek administrative action if the dealer has a gap in coverage or does not obtain and maintain coverage.[44]

Effect of Proposed Changes

Section 7 amends s. 320.27(3) and (10), F.S., requiring motor vehicle dealer licensees to deliver to the FDHSMV copies of renewed, continued, changed, or new insurance policies, surety bonds, or irrevocable letters of credit within 10 days after any renewal, continuation, change, or new issuance of the same, ensuring continuous insurance coverage.

Innovative Transportation Projects (Section 8)

Present Situation

The FDOT is currently authorized to establish a program for transportation projects that demonstrate innovative techniques of highway and bridge design, construction, maintenance, and finance. The innovations must intend to measure resiliency and structural integrity and control time and cost increases on construction projects. These techniques may include state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, the FDOT must use existing processes to award and administer construction and maintenance contracts. [45]

The FDOT is limited to $120 million in contracts annually for the purposes of innovative transportation projects. This annual cap on contracts for innovative transportation projects does not apply to:

- Turnpike Enterprise projects.
- Transportation projects funded by the American Recovery and Reinvestment Act of 2009.

Currently, minor design-build contracts are included in the annual cap for innovative transportation projects. These projects are bridges under $10 million and other transportation projects (resurfacing) that are not considered to be major design-build.[46]

Effect of Proposed Changes

Section 8 amends s. 337.025, F.S., to repeal redundant language relative to exclusion of Turnpike Enterprise projects and obsolete language relative to exclusion of transportation

[43] *Ibid.*
[44] *Ibid.*
[45] Section 337.025(1), F.S.
[46] FDOT Construction, *Design-Build Minor,* available at https://www.fdot.gov/construction/AltContract/General/DBMinor.shtm (last visited April 7, 2021).

projects funded by the American Recovery and Reinvestment Act of 2009 from the annual $120 million cap.

The bill also excludes low-bid design-build milling and resurfacing contracts from the annual cap. Such contracts would not be counted toward the annual cap for innovative transportation projects, possibly resulting in increased opportunities for the FDOT to engage in innovative transportation projects.

Whether all low-bid milling and resurfacing contracts are "innovative," even with the design-build element, is unclear. The FDOT's work program instructions state that resurfacing deals with improvements to the structural condition of existing pavement, intended to preserve the pavement's structural integrity. The program provides for pavement milling and pavement resurfacing, among other activities.[47]

FDOT Certificates of Qualification (Section 10)

Present Situation

FDOT Certificate of Qualification

Current law requires any contractor desiring to bid on any FDOT construction contract in excess of $250,000 to first be certified by the FDOT as qualified to perform the specific class of work for which the contractor seeks certification. A contractor who is not already qualified and in good standing with the FDOT as of January 1, 2019, and who desires to bid on FDOT contracts in excess of $50 million must have satisfactorily completed two projects, each in excess of $15 million, for the FDOT or for any other state's department of transportation.[48]

When applying to the FDOT, each application for certification must be accompanied by the contractor's latest annual financial statement, which must have been completed within the last 12 months. If the application or the annual financial statement shows the contractor's financial condition more than four months prior to the date on which the FDOT receives the application, the contractor must also submit an interim financial statement and an updated application.[49] Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.

Contractor Maximum Capacity Rating

The FDOT's rules include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor, which are necessary to perform the specific class of work for which the contractor seeks certification. In so doing, the

[47] FDOT, *Work Program Instructions Tentative Work Program – FY 21/22-25/26*, Part III – Chapter 27: Resurfacing, (rev. April 1, 2021) available at https://fdotewp1.dot.state.fl.us/fmsupportapps/Documents/development/WorkProgramInstructions.pdf (last visited April 7, 2021).
[48] Section 337.14(1), F.S.
[49] The interim statement must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than four months prior to the date the FDOT receives the interim statement but, upon request of the applicant, an application and accompanying annual or interim financial statement received by the FDOT within 15 days after either four-month period is considered timely.

FDOT verifies and evaluates whether an applicant is competent and responsible and possesses the necessary financial resources to perform the requested work.[50]

Part of the latter inquiry involves whether an applicant has the financial resources sufficient to establish a maximum capacity rating (MCR), which is defined as the total aggregate dollar amount of *uncompleted* work an applicant may have under contract at any one time as a prime contractor and/or subcontractor, regardless of the work location and with whom the applicant contracted.[51]

According to the FDOT's rules, the MCR is established by a formula, one element of which is the "ability factor." For example, for new applicants and applicants not qualified under the rule for more than two years, the "ability score" determines the ability factor, which is determined from the total ability score resulting from evaluations of the applicant's organization, management, work experience, and letters of recommendation.[52]

Currently, if an applicant for a certificate of qualification is found to possess the prescribed qualifications, the FDOT must issue the applicant a certificate, which, unless revoked by the FDOT for good cause, is valid for a period of 18 months after the date of the applicant's financial statement, or such shorter period as the FDOT prescribes. Submission of an application does not affect expiration of the certificate.[53]

Effect of Proposed Changes

Section 10 amends s. 337.14(1) and (4), F.S., to clarify that any contractor desiring to bid on contracts in excess of $50 million must first be certified by the FDOT as qualified, in addition to the existing requirement relating to satisfactory completion of two projects, each in excess of $15 million.

The bill requires each application for certification to be accompanied by *audited, certified* financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state. The applying contractor's audited, certified financial statements must specifically address the applying contractor and must have been prepared within the immediately preceding 12 months. The FDOT may not consider any financial information relating to the parent entity of the applying contractor, if any, and may not certify as qualified any applying contractor that fails to submit the required audited, certified financial statements.

If the application or the annual financial statement shows the applying contractor's financial condition more than four months before the date on which the FDOT receives the application, the applying contractor must also submit interim *audited, certified* financial statements prepared in accordance with generally accepted accounting and auditing principles and standards by a certified public accountant licensed in this state or another state.

[50] Rule 14.22-003(1), F.A.C.
[51] Rule 14.22-003(1)(d) and (2), F.A.C.
[52] *Id*.
[53] Section 337.14(4), F.S.

The bill provides that submission of an application *and subsequent approval* do not affect expiration of a contractor's certificate of qualification and, additionally, do not affect a contractor's ability factor or maximum capacity rating.

Construction, Engineering, and Inspection Services (Section 10)

Construction, engineering, and inspection (CEI) services include the activities required to review and inspect highway and bridge construction performed by a construction contractor for compliance with contract requirements. These services are critical to ensuring the safety of the traveling public.

Currently, a contractor[54] or affiliate[55] holding an FDOT certification of qualification may not also qualify to provide testing services or CEI services to the FDOT in connection with a construction contract under which the contractor is performing any work.[56] Simply stated, the contractor is prohibited from performing both the construction work *and* the CEI services on the same project, to avoid any conflict of interest that may arise in inspecting one's own work.[57]

Legislation enacted in 2019 restated the prohibition with respect to projects funded by the FDOT and administered by a local governmental entity; *i.e.*, that the entity performing design services and CEI services may not be the same entity.[58] Specified seaports were made exempt from the prohibition in that legislation, but airports were not.[59]

According to the Florida Airports Council, the current prohibition increases airport project construction costs, lengthens project schedules due to additional coordination with consultants, and reduces project efficiency. Further:

- Florida airports leverage many different delivery methods for conducting CEI activities, depending on the project.
- Airports deliver more than road projects, such as building, hangars, ramps, and runways, and the CEI methods and processes the FDOT uses do not accommodate airport construction projects.
- "Airports need to remain agile with the many types of projects that they deliver, particularly as it pertains to the unique and specialized nature of airport projects, to ensure that each project is completed safely, timely and cost effectively."[60]

[54] Section 337.165(1)(d), F.S.
[55] Section 337.165(1)(a), F.S.
[56] Section 337.14(7), F.S.
[57] This limitation does not apply to any design-build prequalification pursuant to s. 337.11(7), F.S., and does not apply when the FDOT otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the public's best interests with respect to a particular contract for testing services or CEI services.
[58] Chapter 2019-153, L.O.F.
[59] Those listed in s. 311.09, which include the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.
[60] *See* email to House committee staff relating to HB 1441 (2020) (on file in the Senate Transportation Committee).

Effect of Proposed Changes

Section 10 amends s. 337.14(7), F.S., to provide that with respect to projects funded by the FDOT and administered by a local governmental entity, airports as defined in s. 332.004, F.S.,[61] are likewise exempt from the prohibition against the same entity performing design services and CEI services.

State Arbitration Board (Section 11)

Present Situation

Current law creates the State Arbitration Board (SAB) within the FDOT to facilitate the prompt settlement of claims[62] for additional compensation arising out of construction and maintenance contracts between the FDOT and its various contractors.[63] Every contractual claim in an amount up to $250,000 per contract or, at the claimant's option, up to $1 million per contract or, upon agreement of the parties, up to $2 million per contract, which cannot be resolved by negotiation between the FDOT and the contractor must be arbitrated by the SAB after the FDOT's acceptance of the project. However, either party may request that the claim be submitted to binding private arbitration. A court of law may not consider the settlement of a claim until the SAB process has been exhausted.[64]

The SAB is composed of three members: one member is appointed by the FDOT Secretary; one member is elected by those construction or maintenance companies who are under contract with the FDOT; and the third member is chosen by agreement of the other two members. Whenever the third member has a conflict of interest regarding an affiliation with one of the parties, the other two members select an alternate member for that hearing. The FDOT secretary may select an alternative or substitute to serve as the FDOT's member for any hearing or term. Each member serves a two-year term. The SAB elects a chair, each term, who is the administrator of the SAB and custodian of its records.[65]

An arbitration hearing may be requested by the FDOT or by a contractor who has a dispute with the FDOT.[66] For all contracts entered into after June 30, 1993, the request must be made to the SAB within 820 days after the final acceptance of the work. The SAB must conduct the hearing within 45 days of the request. The party requesting the SAB's consideration must give notice of the hearing to each SAB member. If the SAB finds that a third party is necessary to resolve the dispute, the SAB may vote to dismiss the claim, which may thereafter be pursued in accordance

[61] That section defines the term "airport" to mean "any area of land or water, or any manmade object or facility located therein, which is used, or intended for public use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for public use, for airport buildings or other airport facilities or rights-of-way."
[62] For the purpose of s. 337.185, F.S., the term "claim" means the aggregate of all outstanding claims by a party arising out of a construction or maintenance contract.
[63] Section 337.185(1), F.S.
[64] Section 337.185(1), F.S.
[65] Section 337.185(2), F.S.
[66] Current State Arbitration Board procedures are available at: https://cdn.ymaws.com/ftba.site-ym.com/resource/resmgr/website_files/arbitration_board/11-19-20_State_Arbitration_B.pdf (last visited April 8, 2020).

with Florida law.[67] All members must be present to conduct a meeting. Upon being called into session, the SAB must promptly proceed to a determination of the issue or issues in dispute.[68]

When a valid contract is in effect defining the rights, duties, and liabilities of the parties with respect to any matter in dispute, the SAB may only determine the proper interpretation and application of the appropriate contract provisions. Any investigation made by less than the whole membership of the SAB must be by authority of a written directive by the chair, and the investigation must be summarized in writing and considered by the SAB as part of the record of its proceedings.[69] The SAB must hand down its order within 60 days after it is called into session. If all three SAB members do not agree, the order of the majority constitutes the order of the SAB.[70]

The SAB members may receive compensation for the performance of their duties from administrative fees received by the SAB, except that an FDOT employee may not receive compensation. The compensation amount is determined by the SAB, but may not exceed $125 per hour, up to $1,000 per day for each member authorized to receive compensation. This does not prevent the member elected by construction or maintenance companies from being an employee of an association affiliated with the industry, even if the sole responsibility of that member is service on the SAB. Travel expenses for the industry member may be paid by an industry association, if necessary. The SAB may allocate funds annually for clerical and other administrative services.[71]

The party requesting arbitration must pay a fee to the SAB in accordance with a schedule established by it, to cover the cost of administration and compensation of the SAB, not to exceed:

- $500 per claim which is $25,000 or less;
- $1,000 per claim which is in excess of $25,000 but not exceeding $50,000;
- $1,500 per claim which is in excess of $50,000 but not exceeding $100,000;
- $2,000 per claim which is in excess of $100,000 but not exceeding $200,000;
- $3,000 per claim which is in excess of $200,000 but not exceeding $300,000;
- $4,000 per claim which is in excess of $300,000 but not exceeding $400,000; or
- $5,000 per claim which is in excess of $400,000.[72]

The SAB in its order may apportion the above fees, and the cost of recording and preparing a transcript of the hearing, among the parties in accordance with the SAB's finding of liability.[73]

Effect of Proposed Changes

Section 11 substantially revises s. 337.185, F.S., relating to the SAB. The bill creates the following definitions:

[67] Section 337.185(3), F.S.
[68] Section 337.185(4), F.S.
[69] Section 337.185(5), F.S.
[70] Section 337.185(6), F.S.
[71] Section 337.185(7), F.S.
[72] Section 337.185(8), F.S.
[73] Section 337.185(9), F.S.

- "Claim" means the aggregate of all outstanding written requests for additional monetary compensation, time, or other adjustments to the contract, the entitlement or impact of which is disputed by the FDOT and could not be resolved by negotiations between the FDOT and the contractor.
- "Contractor" means a person or firm having a contract for rendering services to the FDOT relating to the construction or maintenance of a transportation facility.
- "Final acceptance" means that the contractor has completely performed the work provided for under the contract, the FDOT or its agent has determined that the contractor has satisfactorily completed the work provided for under the contract, and the FDOT or its agent has submitted written notice of final acceptance to the contractor.

The bill requires every claim of up to $250,000 per contract that cannot be resolved by negotiations between the FDOT and the contractor to be arbitrated by the SAB. Authorization for either party to request that a claim be submitted to binding private arbitration is removed. An award issued by the SAB is final and enforceable by a court of law.

A contractor may submit a claim greater than $250,000 up to $1 million per contract or, upon agreement of the parties, up to $2 million per contract to be arbitrated by the SAB. An award issued by the SAB is final if a request for a trial de novo[74] is not filed within the time provided by Rule 1.830, Florida Rules of Civil Procedure.[75] At the trial de novo, the court may not admit evidence that there has been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Florida Evidence Code.[76] If a request for trial de novo is not filed within the time provided, the award issued by the board is final and enforceable by a court of law.

An arbitration request may not be made to the SAB before final acceptance, but must be made within 820 days after final acceptance. The SAB must still schedule a hearing within 45 days after an arbitration request but, if possible, must now conduct the hearing within 90 days after the request instead of the previous 45-day deadline.

The bill authorizes the SAB to administer oaths and conduct the proceedings as provided by court rules. The bill requires the hearing to be conducted informally, with the presentation of testimony and evidence being kept to a minimum. The bill requires matters to be presented to the arbitrators primarily through the statements and arguments of counsel. The SAB must address the scope of discovery, presentation of testimony, and evidence at a preliminary hearing by considering the size, subject matter, and complexity of the dispute. Any party to the arbitration may petition the SAB, for good cause shown, to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration and may petition the SAB for orders compelling such attendance and production at the arbitration. Subpoenas must be served and are enforceable in the manner provided by law.

[74] A trial de novo refers to a new trial on the entire case and is conducted as if there had been no trial in the first instance.
[75] Rule 1.830, Florida Rules of Civil Procedure, relates to voluntary binding arbitration. The rule provides that a voluntary binding arbitration decision may be appealed within 30 days after service of the decision on the parties. Appeal is limited to the grounds specified in s. 44.104(10), F.S.
[76] Chapter 90, F.S.

The SAB must issue its award within 45 days after the conclusion of the arbitration hearing (rather than within 60 days after being called into session under current law). If all three members of the board do not agree, the award agreed to by the majority of the board constitutes the award of the board.

The board is still composed of three members who are selected in the same manner as in current law. If the first or second member has a conflict of interest regarding affiliation with one of the parties, the appointing entity must appoint an alternate member for that hearing. If the third member has such a conflict, the first and second members must select an alternate. Each member serves a 4-year term, instead of the current 2-year term. As under current law, the SAB still elects a chair for each term, and the chair is the SAB administrator and custodian of its records. The presence of all SAB members is required to conduct a meeting, whether in person or via videoconferencing.

The bill requires that SAB members receive compensation from deposits made by the parties based on an estimate of compensation by the SAB, except that, again, an FDOT employee may not receive SAB compensation. All deposits must be held in escrow by the chair in advance of the hearing. Each member eligible for compensation must be compensated at $200 per hour, up to a maximum of $1,500 per day (currently not to exceed $125 per hour up to a maximum of $1,000 per day), and a member must be reimbursed for the actual cost of his or her travel expenses. The SAB is authorized to allocate funds annually for clerical and other administration services.

The bill effectively maintains the same schedule of filing fees as in current law, based on the dollar amount of a claim, and authorizes the SAB to apportion the filing fees and the cost of recording and preparing a transcript of the hearing among the parties in its award.

Surplus Revenue/High-Occupancy Toll Lanes or Express Lanes (Section 12)

Present Situation

Current law authorizes the FDOT to request the Division of Bond Finance to issue bonds secured by toll revenues collected on high-occupancy toll lanes (HOT lanes) or express lanes established on FDOT-owned facilities.[77] All collected tolls must first be used to pay the annual cost of operation, maintenance, and improvement of the HOT or express lanes project or associated transportation system. The FDOT may continue to collect tolls on HOT or express lanes after the discharge of any bond indebtedness related to such project.[78] The FDOT must use any remaining toll revenue from the HOT or express lanes for the construction, maintenance, or improvement of any road on the State Highway System (SHS) within the county or counties in which the toll revenues were collected or to support express bus service on the facility where the toll revenues were collected.[79]

[77] Section 338.166(1), F.S.
[78] Section 338.166(2), F.S.
[79] Section 338.166(3), F.S.

Effect of Proposed Changes

Section 12 amends s. 338.166(3), F.S., providing that remaining toll revenue from HOT or express lanes, after payment of the annual cost of operation, maintenance, and improvement of the HOT or express lanes project and associated transportation system, the FDOT must use any remaining toll revenue to support public transportation projects that benefit the operation of HOT or express lanes on the State Highway System within the county or counties in which the toll revenues were collected. Use of the remaining revenue for such purpose is in addition to expenditures as currently specified for any road on the SHS within the county or counties in which the toll revenues were collected or to support express bus service on the facility where the toll revenues were collected.

Metropolitan Planning Organizations Member Fees (Section 13)

Present Situation

The FDOT is currently required to allocate to each metropolitan planning organization (MPO) for the purpose of accomplishing its transportation planning and programming duties, an appropriate amount of federal transportation planning funds,[80] which generally make up the largest portion of MPO funding. However, governmental entity members of an MPO may, from time to time, voluntarily contribute various sums to an MPO to supplement the federal funding received through the FDOT, and an MPO may assess fees for municipalities, counties, or other governmental entities that are members of the MPO. Under current law, the MPO in a county as defined in s. 125.011(1), F.S. (*i.e.,* Miami-Dade County) is prohibited from assessing any fees for municipalities, counties, or other governmental entities that are members of that MPO.[81]

Effect of Proposed Changes

Section 13 amends s. 339.175(6)(f), F.S., to remove the current prohibition against the MPO in Miami-Dade County assessing any fees for municipalities, counties, or other governmental entities that are members of the MPO.

Northwest Florida Transportation Corridor Authority (Sections 14 and 21)

Present Situation

The Northwest Florida Transportation Corridor Authority (NFTCA), is an agency of the State of Florida, created in 2005 pursuant to ch. 343, Part IV, F.S. One of several transportation authorities in Florida, the governing body consists of eight voting members, one each from Escambia, Santa Rosa, Walton, Okaloosa, Bay, Gulf, Franklin, and Wakulla counties, appointed by the Governor to a 4-year term. The appointees are residents of their respective counties and may not hold an elected office. The district secretary of the FDOT serving Northwest Florida also serves as an ex officio, nonvoting member of the NFTCA governing body.[82]

The primary purpose of the NFTCA is to improve mobility on the U.S. 98 corridor in Northwest Florida, enhance traveler safety, identify and develop hurricane evacuation routes, promote

[80] Section 339.175(6)(f)1., F.S.
[81] *Id.*
[82] Section 343.81(2), F.S.

economic development, and implement transportation projects to alleviate current or anticipated traffic congestion.[83]

The NFTCA met on September 20, 2018, and during the meeting, the NFTCA Board voted unanimously, approving Resolution 18-02, to become inactive as an authority. The NFTCA Board also voted unanimously to approve their 2019 Budget, which utilized all of their remaining funds of $1,016, with $1,015 placed under Board Expenses and $1 placed in Total Reserves for the 2019 Budget before going inactive.[84]

Effect of Proposed Changes

Section 14 repeals Part III of ch. 343, F.S., consisting of ss. 343.80, 343.805, 343.81, 343.82, 343.83, 753 343.835, 343.836, 343.84, 343.85, 343.87, 343.875, 343.88, 754 343.881, 343.884, and 343.89, F.S., in which the NFTCA was established.

Section 21, notwithstanding any other law, dissolves the inactive NFTCA. The NFTCA must discharge or make provisions for the their debts, obligations, and other liabilities; settle and close the NFTCA's activities and affairs; and provide for distribution of the their assets (estimated to be $1,016),[85] or the proceeds of such assets, such that each local general-purpose government represented on the NFTCA's board receives a distribution generally in proportion to each entity's contribution to the acquisition of the assets.

Central Florida Expressway Authority – Lake County (Section 15)

The Central Florida Expressway Authority (CFX) is established in Part III of ch. 348, F.S., and is granted the right to acquire, hold, construct, improve, maintain, operate, own, and lease in the capacity of lessor the CFX Expressway System. Except as otherwise provided, the area served by the CFX is that within the geographical boundaries of Orange, Seminole, Lake, Brevard, and Osceola counties.[86]

The Wekiva Parkway (State Road 429) will ultimately connect to State Road 417 and complete the beltway around Central Florida. The project is a cooperative effort between the FDOT (which is responsible for constructing portions of the parkway)[87] the CFX, and the Turnpike Enterprise. Portions of the parkway are already open, and the entire parkway is scheduled to be open to traffic in 2023.[88]

Section 348.754(1)(c), F.S., notwithstanding any other provision of that section, provides that to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the FDOT, the CFX may not, without the prior consent of the secretary of the FDOT, construct any extensions, additions, or improvements to the expressway system in Lake County.

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[83] Section 343.81(1), F.S.
[84] Northwest Florida Transportation Corridor Authority, Board Meeting Minutes, September 20, 2018 (on file in the Senate Transportation Committee).
[85] *Id.*
[86] Section 348.754(1)(a), F.S.
[87] *See Wekiva Parkway, Sections,* available at Wekiva Parkway - FDOT Sections (last visited April 14, 2021).
[88] *See Wekiva Parkway*, available at Wekiva Parkway - Home Page (last visited April 14, 2021).

Effect of Proposed Changes

Section 15 amends s. 348.754(1)(c), F.S., to provide that to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the FDOT, the CFX may not, without the prior consultation (rather than consent) of the secretary of the FDOT, construct any extensions, additions, or improvements to the expressway system in Lake County.

Jacksonville Transportation Authority (Section 16)

Present Situation

Chapter 349, F.S., creates the Jacksonville Transportation Authority (the JTA) as a body politic and corporate and an agency of the state.[89] The JTA is authorized to acquire, hold, construct, improve, maintain, operate, and own the Jacksonville Expressway System,[90] but the authority also has multi-modal responsibilities. The JTA designs and constructs bridges and highways[91] and provides varied mass transit services including, but not limited to, express and regular bus service;[92] a downtown Skyway Monorail;[93] the St. Johns River Ferry;[94] the Gameday Xpress for various sporting events;[95] inter-county service between points in Baker, Clay, Nassau, Putnam, and St. Johns Counties;[96] and paratransit service.[97]

Current law authorizes the JTA to enter into lease agreements, including the authority to lease:

- As a lessor, the Jacksonville Expressway System,[98] a mass transit system employing motor cars or buses, street railway systems beneath the surface, on the surface, or above the surface, or any other means determined useful to the rapid transfer of large numbers of people among the locations of residence, commerce, industry, and education in Duval County.[99]
- Public transportation projects, such as express bus services; bus rapid transit services; light rail, commuter rail, heavy rail, or other transit services; ferry services; transit stations; park-and-ride lots; transit-oriented development nodes; or feeder roads, reliever roads, connector roads, bypasses, or appurtenant facilities, that are intended to address critical transportation needs or concerns in the Jacksonville, Duval County, metropolitan area.[100]

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[89] Section 349.03(1), F.S.
[90] Section 349.04(1)(a), F.S.
[91] *See* the JTA website for a list of projects, available at JTA Mobility Works - Projects (jtafla.com) (last visited April 14, 2021).
[92] *See* the JTA website, *Riding JTA*, available at Jacksonville Transportation Authority - Riding JTA (jtafla.com) (last visited April 14, 2021).
[93] *See* the JTA website, *Skyway*, available at Jacksonville Transportation Authority - Skyway (jtafla.com) (last visited April 14, 2021).
[94] *See* the JTA website, *St. Johns River Ferry*, available at JTA Ferry - St. John's River Ferry | Schedule, Costs, Information, Directions | JTA (jtafla.com) (last visited April 14, 2021).
[95] *See* the JTA website, *Gameday Xpress*, available at Jacksonville Transportation Authority - Gameday Xpress (jtafla.com) (last visited April 14, 2021).
[96] *See* the JTA website, *Regional Services*, available at Jacksonville Transportation Authority - Regional Services (jtafla.com) (last visited April 14, 2021).
[97] *See* the JTA website, *Paratransit*, available at Jacksonville Transportation Authority - Paratransit (jtafla.com) (last visited April 14, 2021). Some of the JTA services listed have been modified or suspended due to the COVID virus.
[98] Section 349.04(1)(a), F.S.
[99] Section 349.04(1)(b), F.S.
[100] Section 349.04(1)(e), F.S.

- As lessee or lessor, and use any franchise or any property, real, personal, or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority and to sell, lease as lessor, transfer, and dispose of any property or interest therein at any time acquired by it, including, without limitation, land, buildings, and other facilities located within or comprising transit-oriented developments which enhance the use or utility of transportation facilities owned or constructed by the authority and administrative and other buildings for the use of the authority in carrying out its powers and obligations.[101]

Various transportation, bridge, and expressway authorities are granted the power under current law to enter into agreements for similar or other types of leases, such as the South Florida Regional Transportation Authority,[102] the Central Florida Regional Transportation Authority,[103] the Tampa Bay Area Regional Transit Authority,[104] the Tampa-Hillsborough Expressway Authority,[105] and the Santa Rosa Bay Bridge Authority.[106] The authorization in each of these instances, however, is open-ended and not limited in duration. The duration for which the Central Florida Expressway Authority is authorized to enter into lease agreements is for a term not exceeding 99 years.[107]

Standing alone among these various transportation, bridge, and expressway authorities, the JTA is the only such entity with leasing authority limited to a duration of 40 years.

Effect of Proposed Changes

Section 16 amends s. 349.04(2)(d), F.S., to increase from 40 years to 99 years the limitation on the term of a lease into which the Jacksonville Transportation Authority (JTA) is authorized to enter.

Borrow Pits (Sections 9, 17, 18, and 19)

Present Situation

Currently, the term "borrow pit" is not defined in Florida law.

Part III of ch. 378, F.S., contains the Resource Extraction Reclamation Act, which prohibits an operator[108] from beginning the process of extracting clay, peat, gravel, sand, or any other solid substance of commercial value found in natural deposits or in the earth, except fuller's earth clay, heavy minerals, limestone, or phosphate, which are regulated elsewhere in ch. 378, F.S., at a new mine[109] without notifying the secretary of the DEP of the intention to mine.[110] The operator's

[101] Section 349.04(2)(c), F.S.
[102] Section 343.54(1)(b) and (3)(d), (e), and (i), F.S.
[103] Section 343.64(1)(b) and (3)(d), (e), and (i), F.S.
[104] Section 343.922(5)(d), (e), and (i), F.S.
[105] Section 348.54(3), F.S.
[106] Section 348.968(2)(c), and (d), F.S.
[107] Section 348.754(1)(a) and (2)(c), F.S.
[108] Section 378.403(13), F.S., defines the term "operator" as any person engaged in an operation.
[109] Section 348.403(10), F.S., defines the term "mine" as an area of land upon which mining operations have been conducted, are being conducted, or are planned to be conducted, as the term is commonly used in the trade.
[110] Section 378.801(1), F.S.

notice of intent to mine must consist of the operator's estimated life of the mine and the operator's signed acknowledgment of the performance standards provided in s. 378.803, F.S.[111]

The act also provides that after January 1, 1989, all operators of existing mines for the extraction of resources as described above must meet the performance standards provided by s. 378.803, F.S., for any new surface area disturbed at such mines.[112]

Section 378.803, F.S., provides the following performance standards for the reclamation of other resources:[113]

- Reclamation must achieve the stormwater, drainage, wetlands, and other surface and groundwater requirements of the DEP and the appropriate water management district.
- The final slopes must be at such an angle as to minimize the possibility of slides and may not exceed the natural angle of repose of the material being mined.
- Provisions for safety to persons, wildlife, and adjoining property must be provided.
- Any overburden and spoil must be left in a configuration which is in accordance with accepted soil conservation practices and which is suitable for the proposed future use of the land.
- Reclamation must be designed to avoid the collection of water in pools that are, or are likely to become, noxious, odious, or foul.
- All reclamation activities must, to the extent possible, be coordinated with resource extraction and in any event must be initiated at the earliest practicable time.
- Reclamation activities must be consistent with all applicable local government ordinances at least as stringent as the criteria and standards discussed above.

Effect of Proposed Changes

Section 17 amends s. 378.403, F.S., to define the term "borrow pit" as an area of land:

- Upon which excavation of surface resources has been conducted, is being conducted, or is planned to be conducted, as the term is commonly used in the mining trade; and
- Not considered a mine.

Such resources are limited to soil, organic soil, sand, or clay that can be removed with construction excavating equipment and loaded on a haul truck with no additional processing.

Section 9 creates s. 337.0262, F.S., to prohibit the FDOT, and any contractor or subcontractor of the FDOT, from purchasing or using any clay, peat, gravel, sand, or other solid substance extracted from a borrow pit unless:

- The operator certifies to the FDOT, the contractor, or the subcontractor that the borrow pit is in compliance with the notice requirement and the substantive requirements of s. 378.801, F.S., and

[111] Section 378.801(2), F.S.
[112] Section 378.802, F.S.
[113] Section 378.403(17), F.S., defines the term "resource" as soil, clay, peat, stone, gravel, sand, limerock, metallic ore, or any other solid substance of commercial value found in natural deposits on or in the earth, except phosphate.

- The operator is in compliance with the performance standards described above, including providing proof of currently valid permits required by the DEP and the appropriate water management district.

The bill mandates that all contracts and purchase orders executed by the FDOT, and all subcontracts and purchase orders executed by contractors or subcontractors after July 1, 2021, must include specific requirements for compliance with the bill's provisions.

If the FDOT determines that substances are being obtained and used from a borrow pit not in compliance with the bill's provisions, the FDOT is required to cease accepting any substances from that pit within 48 hours. The FDOT is authorized to resume acceptance once the pit has reestablished compliance with the bill's provisions.

Section 18 amends s. 378.801, F.S., revising the title to address a notice of intent to extract, rather than to mine. The bill prohibits an operator from beginning the operation of a borrow pit (in addition to the current prohibition again beginning the process of extracting clay, peat, gravel, etc.) at a new *location* (instead of at a new mine) without notifying the DEP secretary of the intent to *extract* (instead of the intent to mine). The operator's notice of intent to *extract* must consist of the operator's estimated life of the *extraction location* (instead of the estimated life of the mine).

Section 19 amends s. 378.802, F.S., revising the title to address existing extraction locations (rather than existing mines). The bill requires that after January 1, 1989, all operators of existing *locations* for the extraction of the resources described in s. 378.801, F.S., must meet the performance standards in s. 378.803, F.S., for any new surface area disturbed at such *locations*.

Outdoor Advertising (Section 20)

Present Situation

Since the passage of the Highway Beautification Act (HBA) in 1965, the Federal Highway Administration (FHWA) has established controls for outdoor advertising along Federal-aid Primary, Interstate, and National Highway System roads. The HBA allows the location of billboards in commercial or industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

The primary features of the HBA include:

- Billboards are allowed, by statute, in commercial and industrial areas consistent with size, lighting, and spacing provisions as agreed to by the state and federal governments. Billboard controls apply to all interstates, federal-aid primaries, and other highways that are part of the national Highway System.
- States have the discretion to remove legal nonconforming signs[114] along highways. However, the payment of just compensation is required for the removal of any lawfully erected billboard along the specified roads.

[114] A legal "nonconforming sign" is a sign that was legally erected according to the applicable laws and regulations of the time, but which does not meet current laws or regulations. Section 479.01(16), F.S.

- States and localities may enact stricter laws than stipulated in the HBA.

The HBA mandates state compliance and the development of standards for certain signs as well as the removal of nonconforming signs. While the states are not directly forced to control signs, failure to impose the required controls can result in a substantial penalty. The penalty for noncompliance with the HBA is a 10 percent reduction of the state's annual federal-aid highway apportionment.[115]

Under the provisions of a 1972 agreement between the State of Florida and the U.S. Department of Transportation (USDOT)[116] incorporating the HBA's required controls, the FDOT requires commercial signs to meet certain requirements when they are within 660 feet of Interstate and Federal-Aid Primary highways in urban areas, or visible at any distance from the same roadways when outside of urban areas. The agreement embodies the federally-required "effective control of the erection and maintenance of outdoor advertising signs, displays, and devices." Absent this effective control, the non-compliance penalty of 10 percent of federal highway funds may be imposed.

Florida's outdoor advertising laws are found in ch. 479, F.S., and are based on federal law and regulations and the 1972 agreement.[117] That chapter expressly provides that its provisions do not supersede the rights and powers of counties and municipalities to enact outdoor advertising or sign ordinances.[118]

Permitting and Metal Tags

A person is prohibited from engaging in the business of outdoor advertising in this state without first obtaining a license from the FDOT.[119] Except as otherwise provided,[120] a person may not erect, operate, use, or maintain, or cause to be erected, operated, used, or maintained, any sign on the State Highway System outside an urban area,[121] or on any portion of the interstate or federal-aid primary highway system without first obtaining a permit for the sign from FDOT (and paying the required annual fee).[122]

[115] 23 U.S.C. § 131(b).
[116] For a copy of the agreement, *see* ScenicAmerica, available at Florida Agreement (scenic.org) (last visited March 25, 2021).
[117] Some local governments have their own ordinances regulating outdoor advertising in their communities. *See* FDOT, *Outdoor Advertising*, available at Outdoor Advertising (fdot.gov) (last visited March 26, 2021). The current database may be accessed using the same link.
[118] Section 479.155, F.S.
[119] Section 479.04, F.S. However, a person is not required to obtain the license to erect outdoor advertising signs or structures as an incidental part of a building construction contract.
[120] *See, e.g.*, s. 479.16, F.S., for a list of signs for which permits are not required.
[121] "Urban area" means a geographic region comprising as a minimum the area inside the United States Bureau of the Census boundary of an urban place with a population of 5,000 or more persons, expanded to include adjacent developed areas as provided for by Federal Highway Administration regulations. Section 334.03(31), F.S.
[122] The annual permit fee for each sign facing is $71. See Rule 14-10.0043, F.A.C. A "sign facing" includes all sign faces and automatic changeable faces displayed at the same location and facing the same direction. Section 479.01(22), F.S. An "automatic changeable facing" means a facing that is capable of delivering two or more advertising messages through an automated or remotely controlled process. Section 479.01(2), F.S.

Once obtaining a license to engage in the business of outdoor advertising and having been issued a permit by the FDOT for an outdoor advertising sign, the FDOT is required to furnish to a permittee a serially numbered, permanent metal permit tag which the permittee is responsible for maintaining on each permitted sign facing at all times. The tag must be securely attached to the upper 50 percent of the sign structure in such a manner as to be plainly visible from the main traveled way.[123] The tag must be properly and permanently displayed at the permitted site within 30 days after the date of permit issuance and, if the permittee fails to erect a completed sign on the permitted site within 270 days after the date of permit issuance, the permit becomes void. The FDOT is prohibited from issuing a new permit to that permittee for the same locations for 270 days after the date on which the permit becomes void.[124] Current law also provides for the FDOT issuance of a replacement tag in the event a permit tag is lost, stolen, or destroyed. [125] The fee for a replacement tag, set by FDOT rule, is $12 per tag.[126]

At least 105 days before a license or a sign permit expires, the FDOT must send to each permittee a notice of fees due for all licenses and permits issued to a licensee/permittee before the date of the notice, and the permittee must advise the FDOT of any additions, deletions, or errors contained in the notice no later than 45 days before the expiration date.[127] Permits tags that are not renewed must be returned to the FDOT for cancellation by the expiration date. Permits that are not renewed or are canceled must be certified in writing at canceled or not renewed by the permittee, and permit tags for such permits must be returned to the FDOT or accounted for in writing by the permittee.[128]

Effect of Proposed Changes

Section 20 amends s. 479.07, F.S., relating to outdoor advertising sign permits, requiring the FDOT to create and implement as soon as practicable a publicly accessible electronic database which includes permit details for each permit issued by the FDOT. The details in the database must include at a minimum the:

- Name and contact information of the permit operator;
- Structure identification number of numbers;
- Panel or face identification number or numbers;
- Latitude and longitude of the permitted sign;
- Compass bearing; and
- Most recent date the FDOT visually inspected the permitted sign.

Additionally, the database must also include images of the permitted sign once constructed.

Upon implementation of the database, the FDOT may not:

- Furnish permanent metal permit tags or replacement tags to permittees; or

[123] "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separate roadways for traffic in opposite directions is a main-traveled way. The term does not include such facilities as frontage roads, turning roadways which specifically include on-ramps or off-ramps to the interstate highway system, or parking areas. Section 479.01(12), F.S.
[124] Section 479.07(5), F.S.
[125] Section 479.07(5). F.S.
[126] Rule 14-10.004(14), F.A.C.
[127] Section 479.07(8), F.S.
[128] *Id.*

- Enforce specified provisions of current law relating to permanent metal permit tags or replacement tags.

In addition, permittees are not then required to return permit tags to the FDOT, as is the case under current law.

Section 22 provides that the bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or 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:

Violators of the prohibition against modification of a motor vehicle exhaust system or any other noise-abatement device of a motor vehicle may be subject to the specified increased penalties.

Insurance companies may incur insignificant expenses associated with providing the required attestation forms relating to insurance company receipt of a salvage certificate of title or certificate of destruction for a motor vehicle or mobile home.

Motor vehicle dealer licensees may incur insignificant expenses associated with delivering to the DHSMV copies of renewed, continued, changed, or new insurance policies, surety bonds, or irrevocable letters of credit.

The bill increases hourly compensation for SAB members from $150 to $200, and increases the daily maximum compensation from $1,000 to $1,500 per member. Both current law and the bill require parties bringing arbitrations to the SAB to pay fees, based on the amount of the dispute, to defray the costs of operating the board. Contractors requesting arbitration through the SAB may experience indeterminate increased costs associated with submitting a claim to the SAB.

To the extent the bill results in contractors determining that the new procedural and evidentiary provisions governing SAB proceedings warrant hiring legal counsel, the bill may result in increased costs to contractors in the form of legal representation.

Contractors seeking certificates of qualification may experience indeterminate increased costs associated with the bill's requirements for audited, certified financial statements.

C. Government Sector Impact:

Municipalities, counties, and CDDs that undertake conveyance of a road and rights-of-way dedicated in a recorded subdivision plat and enter into an interlocal agreement may incur expenses in accomplishing the conveyance, which expenses are likely not significant. CDDs that choose not to enter into agreements for traffic control jurisdiction over a conveyed road will incur indeterminate expenses associated with installing, operating, maintaining, repairing and replacing all signs, signals, markings, striping, guardrails and other traffic control devices. If there is such an agreement, such costs will be governed by that agreement.

Clerks of Court and various other funds may receive increased revenues from penalties imposed for violations of the prohibition against modification of a motor vehicle exhaust system or any other noise-abatement device. However, the amount of any such penalties is likely insignificant but unknown, as the number of violations that may occur is indeterminate.

The DHSMV will incur expenses associated with creating the required attestation forms relating to insurance company receipt of a salvage certificate of title or certificate of destruction for a motor vehicle or mobile home, which expenses are likely insignificant.

The FDOT will incur likely significant expenses associated with creating and implementing the publicly accessible electronic database for sign permit information but, as the bill allows the FDOT to do so "as soon as practicable," these significant expenses may be incurred over time.

As to the increased SAB compensation, the fees are static. The extent of time for which the fees will adequately cover SAB costs is unknown.

Local governments operating airports may experience a reduction in expenditures due to the exemption from the CEI requirements. Any reduction is dependent on project specifics and is therefore indeterminate.

The bill does not otherwise appear to impact state or local government revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDOT currently requires, by contract specification, contractors to take any dispute before what is called a Dispute Review Board (DRB) before invoking the SAB process. The DRB process establishes a per hearing cost of $9,000 to provide compensation to all DRB members for participation in an actual hearing, with the DRB chair receiving $3,500 and the other two members receiving $2,750 each. The FDOT and the contractor equally provide compensation to the DRB for participation in an actual hearing. The FDOT compensates the contractor in the amount of $4,500 as its contribution to the hearing cost. DRB rulings are not binding and can be rejected by either party.[129]

Under the revised SAB provisions, proceedings must be conducted "as provided by court rules." The bill also requires a preliminary hearing not currently required. The FDOT will presumably continue to require the DRB process, by contract, before a contractor may submit a claim to the SAB. The bill requires SAB hearings to be conducted informally, with the presentation of testimony and evidence kept to a minimum, yet matters are to be presented to the SAB primarily through the statements and arguments of counsel.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.2397, 319.30, 320.06, 320.27, 337.025, 337.14, 337.185, 338.166, 339.175, 348.754, 349.04, 378.403, 378.801, 378.802, and 479.07.

This bill creates the following sections of the Florida Statutes: 177.107, 287.05705, and 337.0262.

This bill creates an undesignated section of Florida law.

This bill repeals the following sections of the Florida Statutes: 343.80, 343.805, 343.81, 343.82, 343.83, 343.835, 343.836, 343.84, 343.85, 343.87, 343.875, 343.88, 343.881, 343.884, and 343.89.

[129] *See* FDOT Dispute Review Board, *Three Party Agreement Form # 700-011-02, Section VI Payment*, at p. 5 (July 2019), available at https://www.fdot.gov/construction/constadm/drb/drbmain.shtm (last visited April 13, 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/CS/CS by Rules on April 20, 2021:
The committee substitute increases the penalties for violations of a prohibition against modification of a motor vehicle exhaust system or any other noise-abatement device of a motor vehicle in such a manner that the noise emitted by the motor vehicle is above that emitted by the vehicle as originally manufactured.

CS/CS by Appropriations on April 15, 2021:
The committee substitute:

- Authorizes a municipal or county governing body to abandon roads and rights of way dedicated in a recorded residential subdivision plat and to simultaneously convey the city's or the county's interest to a CDD under specified conditions.
- Substitutes an affidavit with an attestation on a form provided by the DHSMV as a requirement for an insurance company to receive a salvage certificate of title or certificate of destruction for motor vehicles and mobile homes from the DHSMV.
- Clarifies that the types of vehicles authorized to elect a permanent registration period are rental vehicles, making clear that the authorization does not apply to leased vehicles.
- Requires motor vehicle dealer licensees to deliver to the DHSMV copies of renewed, continued, changed, or new insurance policies, surety bonds, or irrevocable letters of credit within 10 days after any renewal, continuation, change, or new issuance of the same, ensuring continuous insurance coverage.
- Requires the FDOT to also use surplus toll revenues from HOT or express lanes for any public transportation project that benefits the operation of an HOV or express lane on the state highway system within the county or counties in which the revenue was collected, in addition to current use of these revenues for construction, maintenance, or improvement of any road on the state highway system, or to support express bus service on the facility, within the county or counties in which the toll revenues were collected.
- Repeals a prohibition against an MPO in Miami-Dade County assessing any fees for municipalities, counties, or other governmental entities that are members of the MPO.
- Repeals part III of ch. 343, F.S., relating to the inactive Northwest Florida Transportation Corridor Authority.
- Prohibits the Central Florida Expressway Authority from constructing any extensions, additions, or improvements to the Central Florida Expressway System in Lake County without prior consultation with, rather than consent of, the Secretary of Transportation.
- Requires the FDOT to create and implement a publicly accessible electronic database for sign permit information; specifies requirements for the database; prohibits the department from furnishing permanent metal permit tags or replacement tags and from enforcing related provisions once the department creates and implements the database.

- Increases from 40 years to 99 years an existing limitation on the term of a lease into which the Jacksonville Transportation Authority may enter.

CS by Transportation on March 24, 2021:
The committee substitute:

- Authorizes construction equipment in a work zone on roadways with a posted speed limit of 55 miles per hour or higher to display a combination of flashing green, amber, and red lights during periods when workers are present.
- Prohibits the FDOT, and its contractors and subcontractors, from purchasing or using specified substances extracted from a borrow pit unless certification is provided by the operator showing the borrow pit is in compliance with certain existing requirements, and provides proof of currently valid permits required by the FDEP and the appropriate water management district.
- Mandates that all contracts and purchase orders executed by the FDOT, and all subcontracts and purchase orders executed by contractors or subcontractors after July 1, 2021, must include specific requirements for compliance with the bill's provisions.
- Requires the FDOT, if it determines substances are being obtained and used from a non-compliant borrow pit, to cease accepting any substances within 48 hours. The FDOT may resume acceptance of substances from the borrow pit once the pit is in compliance.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Rules (Bracy) recommended the following:

Senate Amendment (with title amendment)

Between lines 212 and 213
insert:

Section 4. Subsection (23) is added to section 318.18, Florida Statutes, to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(23) In addition to any penalties imposed, a fine of $200 for a first offense and a fine of $500 for a second or

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subsequent offense for a violation of s. 316.293(5).

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

And the title is amended as follows:

Delete line 23

and insert:

flashing lights; amending s. 318.18, F.S.; providing fines for certain violations relating to motor vehicle noise abatement equipment modifications; amending s. 319.30, F.S.; revising

By the Committees on Appropriations; and Transportation; and Senator Hooper

576-04243-21 20211194c2

A bill to be entitled

An act relating to transportation; creating s. 177.107, F.S.; authorizing governing bodies of municipalities and counties to abandon and convey their interests in certain roads and rights-of-way dedicated in a recorded residential subdivision plat to community development districts under specified conditions; specifying duties for community development districts relating to such roads and rights-of-way; providing for traffic control jurisdiction of such roads; specifying that the community development district has all rights, title, and interest in such roads and rights-of-way upon abandonment and conveyance; requiring community development districts to thereafter hold such roads and rights-of-way in trust; providing construction; creating s. 287.05705, F.S.; providing that certain governmental entities may not prohibit certain vendors from responding to competitive solicitations of certain contractual services; providing applicability; amending s. 316.2397, F.S.; revising provisions authorizing vehicles and equipment to show or display flashing lights; amending s. 319.30, F.S.; revising conditions under which insurance companies are authorized to receive salvage certificates of title or certificates of destruction for motor vehicles and mobile homes from the Department of Highway Safety and Motor Vehicles; amending s. 320.06, F.S.; clarifying that certain rental vehicles are authorized to elect a

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

576-04243-21 20211194c2

permanent registration period; amending s. 320.27, F.S.; requiring motor vehicle dealer licensees to deliver copies of renewed, continued, changed, or new insurance policies to the department within specified timeframes under certain conditions; requiring such licensees to deliver copies of renewed, continued, changed, or new surety bonds or irrevocable letters of credit to the department within specified timeframes under certain conditions; amending s. 337.025, F.S.; revising the type of transportation project contracts that are subject to an annual cap; creating s. 337.0262, F.S.; prohibiting the Department of Transportation and contractors and subcontractors of the department from purchasing specified substances from a borrow pit unless specified conditions are satisfied; requiring certain contracts, subcontracts, and purchase orders to require compliance with the prohibition; requiring the department to cease acceptance of substances from a borrow pit under certain conditions; authorizing the department to resume acceptance of such substances under certain conditions; amending s. 337.14, F.S.; requiring contractors wishing to bid on certain contracts to first be certified by the department as qualified; revising requirements for applying for and issuing a certificate of qualification; providing construction with respect to submission and approval of an application for such certificate; exempting airports from certain restrictions regarding entities

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

performing engineering and inspection services; amending s. 337.185, F.S.; revising and providing definitions; revising requirements for arbitration of certain contracts by the State Arbitration Board; revising requirements regarding arbitration requests, hearings, procedures, and awards; revising membership and meeting requirements; revising compensation of board members; amending s. 338.166, F.S.; requiring that specified toll revenue be used to support certain public transportation projects; amending s. 339.175, F.S.; deleting a provision prohibiting certain metropolitan planning organizations from assessing any fees for municipalities, counties, or other governmental entities that are members of the organization; repealing part III of ch. 343, F.S., relating to the creation and operation of the Northwest Florida Transportation Corridor Authority; amending s. 348.754, F.S.; prohibiting the Central Florida Expressway Authority from constructing any extensions, additions, or improvements to the Central Florida Expressway System in Lake County without prior consultation with, rather than consent of, the Secretary of Transportation; amending s. 349.04, F.S.; revising a limitation on the terms of leases that the Jacksonville Transportation Authority may enter into and make; amending s. 378.403, F.S.; defining the term "borrow pit"; amending s. 378.801, F.S.; prohibiting operation of a borrow pit at a new location without notifying the Secretary of Environmental Protection of

the intent to extract; conforming provisions to changes made by the act; amending s. 378.802, F.S.; revising application of provisions to exclude existing locations; amending s. 479.07, F.S.; requiring the department to create and implement a publicly accessible electronic database for sign permit information; specifying requirements for the database; prohibiting the department from furnishing permanent metal permit tags or replacement tags and from enforcing specified provisions once the department creates and implements the database; specifying that permittees are not required to return permit tags to the department once the department creates and implements the database; dissolving the Northwest Florida Transportation Corridor Authority and requiring the authority to discharge its liabilities, settle and close its activities and affairs, and provide for the distribution of the authority's assets; providing an effective date.

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

Section 1. Section 177.107, Florida Statutes, is created to read:

177.107 Closing and abandonment of roads; optional conveyance to a community development district; traffic control jurisdiction.—

(1) The governing body of a municipality or county may abandon the roads and rights-of-way dedicated in a recorded

residential subdivision plat and simultaneously convey the municipality's or county's interest in such roads, rights-of-way, and appurtenant drainage facilities to a community development district established under chapter 190 in which the subdivision is located, if all of the following conditions are met:

(a) The community development district has requested the abandonment and conveyance by written resolution for the purpose of converting the subdivision to a gated neighborhood with monitored public access.

(b) The community development district has received approval for the conveyance by a vote of two-thirds of the landowners who are subject to the non-ad valorem assessments of the community development district and who are present by person or proxy at a properly noticed landowners meeting.

(c) The community development district has executed an interlocal agreement with the municipality or county, as applicable, requiring the community development district to do all of the following:

1. Maintain the roads and any associated drainage, street lighting, or sidewalks identified in the interlocal agreement to municipal or county standards, as applicable.

2. Every 5 years, conduct a reserve study of the roads and any associated drainage, street lighting, or sidewalks identified in the interlocal agreement.

3. Levy annual special assessments in amounts sufficient to maintain the roads and any drainage, street lighting, or sidewalks identified in the interlocal agreement to municipal or county standards, as applicable.

4. Annually fund the amounts set forth in the reserve study.

(2) The community development district shall install, operate, maintain, repair, and replace all signs, signals, markings, striping, guardrails, and other traffic control devices necessary or useful for the roads unless an agreement has been entered into between the municipality or county and the community development district, as authorized under s. 316.006(2)(b) and (3)(b), respectively, expressly providing that the municipality or county has traffic control jurisdiction.

(3) Upon abandonment of the roads and rights-of-way and the conveyance thereof to the community development district, the community development district shall have all the rights, title, and interest in the roads and rights-of-way, including all appurtenant drainage facilities, as were previously vested in the municipality or county. Thereafter, the community development district shall hold the roads and rights-of-way in trust for the benefit of the public and owners of the property in the subdivision and shall operate, maintain, repair, and from time to time replace and reconstruct the roads and any associated street lighting, sidewalks, or drainage facilities identified in the interlocal agreement as necessary to ensure their use and enjoyment by the public and property owners, tenants, and residents of the subdivision and their guests and invitees.

(4) The provisions of this section are supplemental and additional to the powers of municipalities and counties.

Section 2. Section 287.05705, Florida Statutes, is created to read:

287.05705 Procurements of road, bridge, and other specified public construction services.—

(1) With respect to competitive solicitations for the procurement of contractual services that are limited to the classes of work for which the Department of Transportation issues certificates of qualification pursuant to s. 337.14, and which services do not involve the construction, remodeling, repair, or improvement of any building, a governmental entity procuring such services may not prohibit a response from a vendor possessing a valid certificate of qualification under s. 337.14 or license under chapter 489 corresponding to the contractual services being procured.

(2) This section applies to all competitive solicitations issued by a governmental entity on or after October 1, 2021.

Section 3. Subsections (5) and (7) of section 316.2397, Florida Statutes, are amended to read:

316.2397 Certain lights prohibited; exceptions.—

(5) Road maintenance and construction equipment and vehicles may display flashing white lights or flashing white strobe lights when in operation and where a hazard exists. Construction equipment in a work zone on roadways with a posted speed limit of 55 miles per hour or higher may show or display a combination of flashing green, amber, and red lights in conjunction with periods when workers are present. Additionally, school buses and vehicles that are used to transport farm workers may display flashing white strobe lights.

(7) Flashing lights are prohibited on vehicles except:

(a) As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully

stopped or disabled upon the highway;

(b) When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so;

(c) During periods of extremely low visibility on roadways with a posted speed limit of 55 miles per hour or higher; and

(d) ~~(c)~~ For the lamps authorized under subsections (1), (2), (3), (4), and (9), s. 316.2065, or s. 316.235(6) which may flash.

Section 4. Paragraph (b) of subsection (3) of section 319.30, Florida Statutes, is amended to read:

319.30 Definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.—

(3)

(b) The owner, including persons who are self-insured, of a motor vehicle or mobile home that is considered to be salvage shall, within 72 hours after the motor vehicle or mobile home becomes salvage, forward the title to the motor vehicle or mobile home to the department for processing. However, an insurance company that pays money as compensation for the total loss of a motor vehicle or mobile home shall obtain the certificate of title for the motor vehicle or mobile home, make the required notification to the National Motor Vehicle Title Information System, and, within 72 hours after receiving such certificate of title, forward such title by the United States Postal Service, by another commercial delivery service, or by electronic means, when such means are made available by the department, to the department for processing. The owner or insurance company, as applicable, may not dispose of a vehicle

or mobile home that is a total loss before it obtains a salvage certificate of title or certificate of destruction from the department. Effective January 1, 2020:

1. Thirty days after payment of a claim for compensation pursuant to this paragraph, the insurance company may receive a salvage certificate of title or certificate of destruction from the department if the insurance company is unable to obtain a properly assigned certificate of title from the owner or lienholder of the motor vehicle or mobile home, if the motor vehicle or mobile home does not carry an electronic lien on the title and the insurance company:

a. Has obtained the release of all liens on the motor vehicle or mobile home;

b. Has attested on a form provided by the department that ~~provided proof of~~ payment of the total loss claim has been distributed; and

c. Has attested on a form provided by the department and ~~provided an affidavit on letterhead~~ signed by the insurance company or its authorized agent stating the attempts that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail. The form ~~affidavit~~ must include a request that the salvage certificate of title or certificate of destruction be issued in the insurance company's name due to payment of a total loss claim to the owner or lienholder. The attempts to contact the owner may be by written request delivered in person or by first-class mail with a certificate of mailing to the owner's or lienholder's last known address.

2. If the owner or lienholder is notified of the request

for title in person, the insurance company must provide an affidavit attesting to the in-person request for a certificate of title.

3. The request to the owner or lienholder for the certificate of title must include a complete description of the motor vehicle or mobile home and the statement that a total loss claim has been paid on the motor vehicle or mobile home.

Section 5. Paragraph (b) of subsection (1) of section 320.06, Florida Statutes, as amended by section 1 of chapter 2020-181, Laws of Florida, is amended to read:

320.06 Registration certificates, license plates, and validation stickers generally.—

(1)

(b)1. Registration license plates bearing a graphic symbol and the alphanumeric system of identification shall be issued for a 10-year period. At the end of the 10-year period, upon renewal, the plate shall be replaced. The department shall extend the scheduled license plate replacement date from a 6-year period to a 10-year period. The fee for such replacement is $28, $2.80 of which shall be paid each year before the plate is replaced, to be credited toward the next $28 replacement fee. The fees shall be deposited into the Highway Safety Operating Trust Fund. A credit or refund may not be given for any prior years' payments of the prorated replacement fee if the plate is replaced or surrendered before the end of the 10-year period, except that a credit may be given if a registrant is required by the department to replace a license plate under s. 320.08056(8)(a). With each license plate, a validation sticker shall be issued showing the owner's birth month, license plate

number, and the year of expiration or the appropriate renewal period if the owner is not a natural person. The validation sticker shall be placed on the upper right corner of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The registration period is 12 months, the extended registration period is 24 months, and all expirations occur based on the applicant's appropriate registration period. Rental vehicles taxed pursuant to s. 320.08(6)(a) may elect a permanent registration period, provided payment of the appropriate license taxes and fees occurs annually. A vehicle that has an apportioned registration shall be issued an annual license plate and a cab card that denote the declared gross vehicle weight for each apportioned jurisdiction in which the vehicle is authorized to operate.

2. In order to retain the efficient administration of the taxes and fees imposed by this chapter, the 80-cent fee increase in the replacement fee imposed by chapter 2009-71, Laws of Florida, is negated as provided in s. 320.0804.

Section 6. Subsection (3) and paragraph (a) of subsection (10) of section 320.27, Florida Statutes, are amended to read:

320.27 Motor vehicle dealers.—

(3) APPLICATION AND FEE.—The application for the license shall be in such form as may be prescribed by the department and shall be subject to such rules with respect thereto as may be so prescribed by it. Such application shall be verified by oath or affirmation and shall contain a full statement of the name and birth date of the person or persons applying therefor; the name of the firm or copartnership, with the names and places of

residence of all members thereof, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws the corporation is organized; the present and former place or places of residence of the applicant; and prior business in which the applicant has been engaged and the location thereof. Such application shall describe the exact location of the place of business and shall state whether the place of business is owned by the applicant and when acquired, or, if leased, a true copy of the lease shall be attached to the application. The applicant shall certify that the location provides an adequately equipped office and is not a residence; that the location affords sufficient unoccupied space upon and within which adequately to store all motor vehicles offered and displayed for sale; and that the location is a suitable place where the applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business, which shall be available at all reasonable hours to inspection by the department or any of its inspectors or other employees. The applicant shall certify that the business of a motor vehicle dealer is the principal business which shall be conducted at that location. The application shall contain a statement that the applicant is either franchised by a manufacturer of motor vehicles, in which case the name of each motor vehicle that the applicant is franchised to sell shall be included, or an independent (nonfranchised) motor vehicle dealer. The application shall contain other relevant information as may be required by the department, including evidence that

the applicant is insured under a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy, which shall include, at a minimum, $25,000 combined single-limit liability coverage including bodily injury and property damage protection and $10,000 personal injury protection. However, a salvage motor vehicle dealer as defined in subparagraph (1)(c)5. is exempt from the requirements for garage liability insurance and personal injury protection insurance on those vehicles that cannot be legally operated on roads, highways, or streets in this state. Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy. Such policy shall be for the license period, and evidence of a new or continued policy shall be delivered to the department at the beginning of each license period. A licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such policy or within 10 calendar days after any issuance of a new policy, a copy of the renewed, continued, changed, or new policy. Upon making initial application, the applicant shall pay to the department a fee of $300 in addition to any other fees required by law. Applicants may choose to extend the licensure period for 1 additional year for a total of 2 years. An initial applicant shall pay to the department a fee of $300 for the first year and $75 for the second year, in addition to any other fees required by law. An applicant for renewal shall pay to the department $75 for a 1-year renewal or $150 for a 2-year renewal, in addition to any

other fees required by law. Upon making an application for a change of location, the person shall pay a fee of $50 in addition to any other fees now required by law. The department shall, in the case of every application for initial licensure, verify whether certain facts set forth in the application are true. Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a corporate applicant, must file a set of fingerprints with the department for the purpose of determining any prior criminal record or any outstanding warrants. The department shall submit the fingerprints to the Department of Law Enforcement for state processing and forwarding to the Federal Bureau of Investigation for federal processing. The actual cost of state and federal processing shall be borne by the applicant and is in addition to the fee for licensure. The department may issue a license to an applicant pending the results of the fingerprint investigation, which license is fully revocable if the department subsequently determines that any facts set forth in the application are not true or correctly represented.

(10) SURETY BOND OR IRREVOCABLE LETTER OF CREDIT REQUIRED.—

(a) Annually, before any license shall be issued to a motor vehicle dealer, the applicant-dealer of new or used motor vehicles shall deliver to the department a good and sufficient surety bond or irrevocable letter of credit, executed by the applicant-dealer as principal, in the sum of $25,000. A licensee shall deliver to the department, in the manner prescribed by the department, within 10 calendar days after any renewal or continuation of or change in such surety bond or irrevocable letter of credit or within 10 calendar days after any issuance

of a new surety bond or irrevocable letter of credit, a copy of such renewed, continued, changed, or new surety bond or irrevocable letter of credit.

Section 7. Section 337.025, Florida Statutes, is amended to read:

337.025 Innovative transportation projects; department to establish program.—

(1) The department may establish a program for transportation projects demonstrating innovative techniques of highway and bridge design, construction, maintenance, and finance which have the intended effect of measuring resiliency and structural integrity and controlling time and cost increases on construction projects. Such techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and those techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, the department must use the existing process to award and administer construction and maintenance contracts. When specific innovative techniques are to be used, the department is not required to adhere to those provisions of law that would prevent, preclude, or in any way prohibit the department from using the innovative technique. However, before using an innovative technique that is inconsistent with another provision of law, the department must document in writing the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive. The department may enter into no more

than $120 million in contracts awarded annually for the purposes authorized by this section.

(2) The annual cap on contracts provided in subsection (1) does ~~shall~~ not apply to:

(a) Turnpike enterprise projects~~, and turnpike enterprise projects shall not be counted toward the department's annual cap~~.

(b) Low-bid design-build milling and resurfacing contracts ~~Transportation projects funded by the American Recovery and Reinvestment Act of 2009~~.

Section 8. Section 337.0262, Florida Statutes, is created to read:

337.0262 Purchase and use of clay, peat, gravel, sand, or any other solid substance extracted from borrow pits.—

(1) The department, and any contractor or subcontractor of the department, may not purchase or use any clay, peat, gravel, sand, or other solid substance extracted from a borrow pit as defined in s. 378.403 unless:

(a) Certification is provided to the department, contractor, or subcontractor by the operator of the borrow pit that it is in compliance with the notice requirements and substantive requirements of s. 378.801; and

(b) The operator of the borrow pit is in compliance with the performance standards in s. 378.803, including, but not limited to, providing proof of currently valid permits required by the Department of Environmental Protection and the appropriate water management district.

(2) All contracts and purchase orders executed by the department, and all subcontracts and purchase orders executed by

contractors or subcontractors after July 1, 2021, must include specific requirements for compliance with this section.

(3) In the event that the department determines that substances are being obtained and used from a borrow pit that is not in compliance with this section, the department must cease to accept any substances from that borrow pit within 48 hours after such determination. The department may resume acceptance of substances from the borrow pit once the borrow pit is in compliance with this section.

Section 9. Subsections (1), (4), and (7) of section 337.14, Florida Statutes, are amended to read:

337.14 Application for qualification; certificate of qualification; restrictions; request for hearing.—

(1) Any contractor desiring to bid for the performance of any construction contract in excess of $250,000 which the department proposes to let must first be certified by the department as qualified pursuant to this section and rules of the department. The rules of the department must address the qualification of contractors to bid on construction contracts in excess of $250,000 and must include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are necessary to perform the specific class of work for which the contractor seeks certification. Any contractor who desires to bid on contracts in excess of $50 million and who is not qualified and in good standing with the department as of January 1, 2019, must first be certified by the department as qualified and ~~desires to bid on contracts in excess of $50 million~~ must have satisfactorily completed two projects, each in excess of

$15 million, for the department or for any other state department of transportation. The department may limit the dollar amount of any contract upon which a contractor is qualified to bid or the aggregate total dollar volume of contracts such contractor is allowed to have under contract at any one time. Each applying contractor seeking qualification to bid on construction contracts in excess of $250,000 shall furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification must be accompanied by audited, certified financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in this state or another state. The audited, certified financial statements must be for the applying contractor and must have been prepared ~~the latest annual financial statement of the applying contractor completed~~ within the immediately preceding ~~last~~ 12 months. The department may not consider any financial information of the parent entity of the applying contractor, if any. The department may not certify as qualified any applying contractor who fails to submit the audited, certified financial statements required by this subsection. If the application or the annual financial statement shows the financial condition of the applying contractor more than 4 months before ~~prior to~~ the date on which the application is received by the department, the applicant must also submit ~~an~~ interim audited, certified financial statements prepared in accordance with generally accepted accounting principles and auditing standards by a certified public accountant licensed in

this state or another state ~~statement and an updated application must be submitted~~. The interim financial statements ~~statement~~ must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor no more than 4 months before ~~prior to~~ the date that the interim financial statements are ~~statement is~~ received by the department. However, upon the request of the applying contractor, an application and accompanying annual or interim financial statement received by the department within 15 days after either 4-month period under this subsection shall be considered timely. ~~Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant.~~ An applying contractor desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than $1 million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant. The information required by this subsection is confidential and exempt from s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The department may waive the requirements of this subsection for projects having a contract price of $500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.

(4) If the applicant is found to possess the prescribed qualifications, the department shall issue to him or her a certificate of qualification that, unless thereafter revoked by the department for good cause, will be valid for a period of 18

months after the date of the applicant's financial statement or such shorter period as the department prescribes. Submission of an application and subsequent approval do ~~shall~~ not affect expiration of the certificate of qualification, the ability factor of the applicant, or the maximum capacity rating of the applicant. If the department finds that an application is incomplete or contains inadequate information or information that cannot be verified, the department may request in writing that the applicant provide the necessary information to complete the application or provide the source from which any information in the application may be verified. If the applicant fails to comply with the initial written request within a reasonable period of time as specified therein, the department shall request the information a second time. If the applicant fails to comply with the second request within a reasonable period of time as specified therein, the application shall be denied.

(7) A "contractor" as defined in s. 337.165(1)(d) or his or her "affiliate" as defined in s. 337.165(1)(a) qualified with the department under this section may not also qualify under s. 287.055 or s. 337.105 to provide testing services, construction, engineering, and inspection services to the department. This limitation does not apply to any design-build prequalification under s. 337.11(7) and does not apply when the department otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the best interests of the public with respect to a particular contract for testing services, construction, engineering, and inspection services. This subsection does not authorize a contractor to provide testing services, or provide construction, engineering,

and inspection services, to the department in connection with a construction contract under which the contractor is performing any work. Notwithstanding any other provision of law to the contrary, for a project that is wholly or partially funded by the department and administered by a local governmental entity, except for a seaport listed in s. 311.09 or an airport as defined in s. 332.004, the entity performing design and construction engineering and inspection services may not be the same entity.

Section 10. Section 337.185, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 337.185, F.S., for present text.)

337.185 State Arbitration Board.—

(1) To facilitate the prompt resolution of claims arising out of or in connection with a construction or maintenance contract with the department, the Legislature establishes the State Arbitration Board, referred to in this section as the "board."

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

(a) "Claim" means the aggregate of all outstanding written requests for additional monetary compensation, time, or other adjustments to the contract, the entitlement or impact of which is disputed by the department and could not be resolved by negotiation between the department and the contractor.

(b) "Contractor" means a person or firm having a contract for rendering services to the department relating to the construction or maintenance of a transportation facility.

(c) "Final acceptance" means that the contractor has

completely performed the work provided for under the contract, the department or its agent has determined that the contractor has satisfactorily completed the work provided for under the contract, and the department or its agent has submitted written notice of final acceptance to the contractor.

(3) Every claim in an amount of up to $250,000 per contract that could not be resolved by negotiation between the department and the contractor must be arbitrated by the board. An award issued by the board pursuant to this section is final and enforceable by a court of law.

(4) The contractor may submit a claim greater than $250,000 up to $1 million per contract or, upon agreement of the parties, up to $2 million per contract to be arbitrated by the board. An award issued by the board pursuant to this subsection is final if a request for a trial de novo is not filed within the time provided by Rule 1.830, Florida Rules of Civil Procedure. At the trial de novo, the court may not admit evidence that there has been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Florida Evidence Code. If a request for trial de novo is not filed within the time provided, the award issued by the board is final and enforceable by a court of law.

(5) An arbitration request may not be made to the board before final acceptance but must be made to the board within 820 days after final acceptance.

(6) The board shall schedule a hearing within 45 days after an arbitration request and, if possible, shall conduct the

hearing within 90 days after the request. The board may administer oaths and conduct the proceedings as provided by the rules of the court. The hearing shall be conducted informally. Presentation of testimony and evidence shall be kept to a minimum, and matters shall be presented to the arbitrators primarily through the statements and arguments of counsel. The board shall address the scope of discovery, presentation of testimony, and evidence at a preliminary hearing by considering the size, subject matter, and complexity of the dispute. Any party to the arbitration may petition the board, for good cause shown, to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration and may petition the board for orders compelling such attendance and production at the arbitration. Subpoenas shall be served and are enforceable in the manner provided by law.

(7) The board must issue an award within 45 days after the conclusion of the arbitration hearing. If all three members of the board do not agree, the award agreed to by the majority shall constitute the award of the board.

(8) The board shall be composed of three members. The first member shall be appointed by the Secretary of Transportation, and the second member shall be elected by those construction or maintenance companies that are under contract with the department. The third member shall be chosen by agreement of the first and second members. If the first or second member has a conflict of interest regarding affiliation with one of the parties to an arbitration hearing, the appointing entity shall appoint an alternate member for that hearing. If the third

member has such a conflict of interest, the first and second members shall select an alternate member. Each member shall serve a 4-year term. The board shall elect a chair for each term, who shall be the administrator of the board and custodian of its records.

(9) The presence of all board members is required to conduct a meeting in person or via videoconferencing.

(10) The members of the board shall receive compensation for the performance of their duties from deposits made by the parties based on an estimate of compensation by the board, except that an employee of the department may not receive compensation from the board. All deposits will be held in escrow by the chair in advance of the hearing. Each member eligible for compensation shall be compensated at $200 per hour, up to a maximum of $1,500 per day. A member shall be reimbursed for the actual cost of his or her travel expenses. The board may allocate funds annually for clerical and other administrative services.

(11) To cover the cost of administration and initial compensation of the board, the party requesting arbitration shall pay a filing fee to the board, according to a schedule established by the board, of:

(a) Up to $500 for a claim that is $25,000 or less.

(b) Up to $1,000 for a claim that is more than $25,000 but is $50,000 or less.

(c) Up to $1,500 for a claim that is more than $50,000 but is $100,000 or less.

(d) Up to $2,000 for a claim that is more than $100,000 but is $200,000 or less.

(e) Up to $3,000 for a claim that is more than $200,000 but is $300,000 or less.

(f) Up to $4,000 for a claim that is more than $300,000 but is $400,000 or less.

(g) Up to $5,000 for a claim that is more than $400,000.

The board may apportion the filing fees and the cost of recording and preparing a transcript of the hearing among the parties in its award.

Section 11. Subsection (3) of section 338.166, Florida Statutes, is amended to read:

338.166 High-occupancy toll lanes or express lanes.—

(3) Any remaining toll revenue from the high-occupancy toll lanes or express lanes shall be used by the department for the construction, maintenance, or improvement of any road or to support public transportation projects that benefit the operation of high-occupancy toll lanes or express lanes on the State Highway System within the county or counties in which the toll revenues were collected or to support express bus service on the facility where the toll revenues were collected.

Section 12. Paragraph (f) of subsection (6) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(6) POWERS, DUTIES, AND RESPONSIBILITIES.—The powers, privileges, and authority of an M.P.O. are those specified in this section or incorporated in an interlocal agreement authorized under s. 163.01. Each M.P.O. shall perform all acts required by federal or state laws or rules, now and subsequently applicable, which are necessary to qualify for federal aid. It

is the intent of this section that each M.P.O. shall be involved in the planning and programming of transportation facilities, including, but not limited to, airports, intercity and high-speed rail lines, seaports, and intermodal facilities, to the extent permitted by state or federal law.

(f)~~1.~~ The department shall allocate to each M.P.O., for the purpose of accomplishing its transportation planning and programming duties, an appropriate amount of federal transportation planning funds.

~~2. In a county as defined in s. 125.011(1), the M.P.O. may not assess any fees for municipalities, counties, or other governmental entities that are members of the M.P.O.~~

Section 13. Part III of chapter 343, Florida Statutes, consisting of sections 343.80, 343.805, 343.81, 343.82, 343.83, 343.835, 343.836, 343.84, 343.85, 343.87, 343.875, 343.88, 343.881, 343.884, and 343.89, Florida Statutes, is repealed.

Section 14. Paragraph (c) of subsection (1) of section 348.754, Florida Statutes, is amended to read:

348.754 Purposes and powers.—

(1)

(c) Notwithstanding any other provision of this section to the contrary, to ensure the continued financial feasibility of the portion of the Wekiva Parkway to be constructed by the department, the authority may not, without ~~the~~ prior consultation with ~~consent of~~ the secretary of the department, construct any extensions, additions, or improvements to the expressway system in Lake County.

Section 15. Paragraph (d) of subsection (2) of section 349.04, Florida Statutes, is amended to read:

349.04 Purposes and powers.—

(2) The authority is hereby granted, and shall have and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes, including, but without being limited to, the right and power:

(d) To enter into and make leases for terms not exceeding 99 ~~40~~ years, as either lessee or lessor, in order to carry out the right to lease as set forth in this chapter.

Section 16. Present subsections (3) through (19) of section 378.403, Florida Statutes, are redesignated as subsections (4) through (20), respectively, and a new subsection (3) is added to that section, to read:

378.403 Definitions.—As used in this part, the term:

(3) "Borrow pit" means an area of land upon which excavation of surface resources has been conducted, is being conducted, or is planned to be conducted, as the term is commonly used in the mining trade, and is not considered a mine. Such resources are limited to soil, organic soil, sand, or clay that can be removed with construction excavating equipment and loaded on a haul truck with no additional processing.

Section 17. Section 378.801, Florida Statutes, is amended to read:

378.801 Other resources; notice of intent to extract ~~mine~~ required.—

(1) An ~~No~~ operator may not begin the operation of a borrow pit, or the process of extracting clay, peat, gravel, sand, or any other solid substance of commercial value found in natural deposits or in the earth, except fuller's earth clay, heavy minerals, limestone, or phosphate, which are regulated elsewhere

in this chapter, at a new location ~~mine~~ without notifying the secretary of the intention to extract ~~mine~~.

(2) The operator's notice of intent to extract ~~mine~~ shall consist of the operator's estimated life of the extraction location ~~mine~~ and the operator's signed acknowledgment of the performance standards provided by s. 378.803.

Section 18. Section 378.802, Florida Statutes, is amended to read:

378.802 Existing extraction locations ~~mines~~.—After January 1, 1989, all operators of existing locations ~~mines~~ for the extraction of resources as described in s. 378.801 shall meet the performance standards provided by s. 378.803 for any new surface area disturbed at such locations ~~mines~~.

Section 19. Subsection (5) of section 479.07, Florida Statutes, is amended to read:

479.07 Sign permits.—

(5)(a) For each permit issued, the department shall furnish to the applicant a serially numbered permanent metal permit tag. The permittee is responsible for maintaining a valid permit tag on each permitted sign facing at all times. The tag shall be securely attached to the upper 50 percent of the sign structure, and attached in such a manner as to be plainly visible from the main-traveled way. The permit tag must be properly and permanently displayed at the permitted site within 30 days after the date of permit issuance. If the permittee fails to erect a completed sign on the permitted site within 270 days after the date on which the permit was issued, the permit will be void, and the department may not issue a new permit to that permittee for the same location for 270 days after the date on which the

permit becomes void.

(b) If a permit tag is lost, stolen, or destroyed, the permittee to whom the tag was issued must apply to the department for a replacement tag. The department shall establish a service fee for replacement tags in an amount that will recover the actual cost of providing the replacement tag. Upon receipt of the application accompanied by the service fee, the department shall issue a replacement permit tag.

(c)1. As soon as practicable, the department shall create and implement a publicly accessible electronic database to include all permits issued by the department. At a minimum, the database must include the name and contact information of the permit operator, the structure identification number or numbers, the panel or face identification number or numbers, the latitude and longitude of the permitted sign, the compass bearing, images of the permitted sign once constructed, and the most recent date the department visually inspected the permitted sign.

2. Once the department creates and implements the publicly accessible electronic database:

a. The department may not furnish permanent metal permit tags or replacement tags to permittees;

b. The department may not enforce the provisions relating to permanent metal permit tags or replacement tags specified in paragraphs (a) and (b); and

c. Permittees are not required to return permit tags to the department as provided in subsection (8).

Section 20. Notwithstanding any other law, the Northwest Florida Transportation Corridor Authority is dissolved. The authority shall discharge or make provision for the authority's

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debts, obligations, and other liabilities; settle and close the authority's activities and affairs; and provide for distribution of the authority's assets, or the proceeds of such assets, such that each local general-purpose government represented on the authority's board receives a distribution generally in proportion to each entity's contribution to the acquisition of the assets.

Section 21. This act shall take effect July 1, 2021.

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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:	SJR 1238
INTRODUCER:	Senator Rodriguez
SUBJECT:	Percentage of Elector Votes Required to Approve an Amendment or a Revision
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rey	Roberts	EE	**Favorable**
2.	Rey	Phelps	RC	**Pre-meeting**

I. Summary:

SJR 1238 proposes an amendment to the state constitution to increase the percentage of elector votes required to pass a constitutional amendment or revision from 60 percent to two-thirds (66 2/3%) of those voting on the measure, and to allow an amendment to or a revision of the State Constitution to be repealed by the same percentage of electors that was required at the time of passage of such amendment or revision.

The SJR requires three-fifths vote of the membership of each house of the Legislature for passage.[1]

If adopted by at least 60% of electors voting on the measure at the 2022 general election, the passage threshold change would apply to all proposed amendments or revisions voted on or after January 10, 2023.[2]

II. Present Situation:

Amendments to the Florida Constitution can be proposed by four distinct methods: 1) joint legislative resolution 2) the Constitutional Revision Commission, 3) citizen's initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.[3] Depending on the method, all proposed amendments or revisions to the State Constitution must be submitted to the electors at the next general election held more than ninety (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

[1] Fla. Const. art. XI, s.1 (2020).
[2] Fla. Const. art. XI, s.5(e) (2020).
[3] *See* Fla. Const. art XI, ss. 1-4 and 6 (2020).

all the required signatures were submitted prior to February 1 of the year in which the general election will be held.[4]

The Florida Constitution mandates that all proposed amendments or revisions[5] be adopted by at least a 60% affirmative vote of those electors voting on the measure. The voters adopted the current threshold in 2006, approving a legislative proposal to increase the percentage from a simple majority of those voting on the measure.[6]

Since adopting the 60% passage threshold, voters have weighed in on 50 proposed constitutional amendments, approving 31 (62%) and rejecting 19 (38%).[7] However, in the last two general election cycles, voters have approved an overwhelming 14 of 18, or 78% of all proposed amendments. This limited data suggests a *possible* recent trend toward easier voter approval.

Repealing an amendment to or a revision of the Florida Constitution requires the same 60% passage threshold as amendments and revisions.

III. Effect of Proposed Changes:

Had the SJR's two-thirds passage threshold been in place since 2008, when the 60% threshold went into effect, more than half of the amendments that passed (17 of 31) would have been defeated — reducing the overall passage rate from almost two-thirds (62%; 31/50) to just over a quarter (28%; 14/50). The passage rate for the 2018 election cycle would have been significantly reduced, from over 90% to just one-third (33%) — with 7 additional amendments failing. The following chart summarizes the general election breakdown of approved amendments under each passage rate:

YEAR	60% Passage Rate	66 2/3% (two-thirds) Passage Rate
2008	71% (5 of 7)	29% (2 of 7)
2010	50% (3 of 6)	17% (1 of 6)
2012	27% (3 of 11)	0% (0 of 11)
2014	33% (1 of 3)	33% (1 of 3)
2016	80 % (4 of 5)	80% (4 of 5)
2018	92% (11 of 12)	33 % (4 of 12)
2020	**67% (4 of 6)**	**50% (3 of 6)**

The available data indicates that increasing the passage rate from 60% to 66 2/3% could have a consequential impact on marginal amendments and revisions.

The passage threshold for a repeal will be dependent on the amendment and revision it is repealing. The SJR creates a tiered system to repealing amendments and revisions to the State

[4] *See* Fla. Const. art XI, s. 5 (2020).
[5] When the State 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, s1 (2020).
[6] Am. HJR 1723, 2005, was adopted in 2006.
[7] Florida Div. of Elections, Initiatives/Amendments/Revisions Database, available at https://dos.elections.myflorida.com/initiatives/ (last accessed February 19, 2021).

Constitution. Amendments and revisions to the State Constitution passed prior to 2006 can be repealed by a simple majority of the electors voting on the measure. Those amendments and revisions passed between 2006 and up to the passage of SJR would have a passage threshold of 60%. Repeals of amendments and revisions passed after the SJR goes into effect will require a 66 2/3% affirmative vote of the electors voting on the measure.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments.

The Division has not completed an agency bill analysis for this bill or for the identical House Bill. Using the Division's 2019 general election estimate of $92.93 per word, this 432-word amendment should cost about **$40,145.76.**

VI. Technical Deficiencies:

None.

VII. Related Issues:

"An 'amendment' of a constitution repeals or changes some provision in, or adds something to, the instrument amended."[8] If SJR 1238 passes, proposed amendments would have to be reviewed to identify if they are repeals, and, in the case of repeals, to determine their passage threshold. For an amendment by initiative petition, the Attorney General could petition the Florida Supreme Court to include in its advisory opinion the passage threshold of the amendment.[9] Since "[t]he constitution does not expressly authorize judicial review of amendments proposed by the Legislature,"[10] the Legislature may wish to include in its analysis of legislative amendments whether the proposed amendment is a repeal and the passage threshold.

VIII. Statutes Affected:

The bill substantially amends Article XI, s. 5 of the Florida Constitution.

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.

[8] *Board of Public Instruction of Polk County v. Board of Com'rs of Polk County*, 58 Fla. 391, 392 (Fla. 1909).
[9] Section 16.061(1), F.S. Upon receipt from the Secretary of State of a proposed revision or amendment by initiative petition, the Attorney General has 30 days to petition the Supreme Court for an advisory petition regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution, whether the proposed amendment is facially invalid under the United States constitution, and the compliance of the proposed ballot title and substance with s. 101.161, F.S.
[10] *Armstrong v. Harris*, 773 So.2d 7, 13 – 14 (Fla. 2000).

By Senator Rodriguez

39-01234-21 20211238__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 5 of Article XI of the State Constitution to increase the percentage of elector votes required to approve an amendment to or a revision of the State Constitution from 60 percent to 66 and 2/3 percent, except that the repeal of an amendment or revision need only be approved by the same percentage of elector votes as was required at the time of passage of such amendment or revision.

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

That the following amendment to Section 5 of Article XI of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE XI

AMENDMENTS

SECTION 5. Amendment or revision election.—

(a) A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety 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, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the

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39-01234-21 20211238__

legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.

(b) A proposed amendment or revision of this constitution, or any part of it, by initiative shall be submitted to the electors at the general election provided the initiative petition is filed with the custodian of state records no later than February 1 of the year in which the general election is held.

(c) The legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3.

(d) Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, shall be published in one newspaper of general circulation in each county in which a newspaper is published.

(e) Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty-six and two-thirds ~~sixty~~ percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision. However, the repeal of an amendment to or a revision of this constitution only requires

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the approval by vote of at least the same percent of the electors as was required at the time of passage of such amendment or revision.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE XI, SECTION 5

PERCENTAGE OF ELECTOR VOTES REQUIRED TO APPROVE CONSTITUTIONAL AMENDMENT OR REVISION.—Proposing an amendment to the State Constitution to increase the percentage of elector votes required to approve an amendment to or a revision of the State Constitution from 60 percent to 66 and 2/3 percent, except that the repeal of an amendment or revision need only be approved by the same percentage of elector votes as was required at the time of passage of such amendment or revision.

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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 1274
INTRODUCER:	Rules Committee; Community Affairs Committee; and Senator Perry
SUBJECT:	Growth Management
DATE:	April 21, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Fav/CS**
2.	Paglialonga	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

The Community Planning Act requires each local government to adopt a comprehensive plan to provide for orderly and balanced future economic, social, physical, environmental, and fiscal development while taking into account projected population growth, public facility needs, development over a five-year and 10-year period, comprehensive plans of adjacent local governments, and future land use.

A comprehensive plan amendment may be classified as a small-scale amendment if the amendment involves less than 10 acres of land, does not impact land located in an area of critical state concern, preserves the internal consistency of the overall local comprehensive plan, and does not require substantive changes to the text of the plan. Small-scale plan amendments may be approved with a single hearing before the local government's governing body and do not require review by the Department of Economic Opportunity.

CS/CS/SB 1274 increases the maximum acreage of a small-scale comprehensive plan amendment from 10 acres to 50 acres. It also increases the maximum acreage for a small-scale comprehensive plan amendment within a rural area of opportunity from 20 acres to 100 acres.

Additionally, the bill provides that any landowner with a development order existing before the incorporation of a municipality may elect to abandon the development order and develop the vested density and intensity contained therein pursuant to the municipality's comprehensive plan and land development regulations so long as the vested uses, density, and intensity are consistent

with the municipality's comprehensive plan, and all existing concurrency obligations in the development order remain valid.

The bill also allows an entity created by interlocal agreement between local governments to acquire title to any water or wastewater plant utility facilities, other facilities, or property acquired by the use of eminent domain if 10 or more years have passed since the date of eminent domain acquisition.

The bill may have a positive fiscal impact on state and local governments.

II. Present Situation:

Community Planning Act

The Community Planning Act provides counties and municipalities with the power to plan for future development by adopting comprehensive plans.[1] Each county and municipality must maintain a comprehensive plan.[2] Municipal comprehensive plans cover the total area of the municipality's jurisdiction, and any unincorporated areas adjacent to the municipality that the municipality and the county agree should be covered by the municipality's plan.[3] County comprehensive plans cover the county's total unincorporated area, but plans for charter counties may include municipalities within their jurisdictions.[4] Counties and municipalities may also enter into interlocal agreements with other counties or municipalities to exercise their planning powers.[5]

Each county and municipality must establish a local planning agency.[6] The local planning agency is responsible for managing the comprehensive planning program.[7] The duties of the local planning agency include:[8]

- Preparing the comprehensive plan and plan amendments;
- Monitoring the effectiveness and status of the comprehensive plan and recommending changes to the local governing body, including periodic evaluation and appraisal of the plan as required by law;[9]
- Reviewing proposed land development regulations and land development codes for consistency with the adopted comprehensive plans; and
- Performing any other functions, duties, and responsibilities assigned by the local governing body, general law, or special law.

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[1] Section 163.3167(1), F.S.
[2] Section 163.3167(2), F.S. The Ready Creek Improvement District, an independent special district created by ch. 67-764, Laws of Fla., may exercise the powers of the act as if it were a municipality. Section 163.3167(6), F.S.
[3] Section 163.3171(1), F.S.
[4] Section 163.3171(2), F.S.
[5] Section 163.3171(3), F.S.
[6] Section 163.3174(1), F.S. If a county or municipality has entered into an interlocal agreement under s. 163.3171, F.S., to exercise its planning powers under the Community Planning Act, those counties and municipalities may establish a joint local planning agency.
[7] Section 163.3174(4), F.S.
[8] Section 163.3174(4)(a)-(d), F.S.
[9] Section 163.3191, F.S.

The local governing body may designate itself as the local planning agency or assign the powers to a local planning commission, a planning department, or another body.[10]

The Department of Economic Opportunity (DEO) serves as the state land planning agency.[11]

Community Planning and Development

The Community Planning Act[12] also governs community and land development in Florida. The Community Planning Act details how local governments create, adopt, and maintain their local comprehensive plans, which address a broad array of property rights, land use, and planning aspects of the land area within their jurisdiction.[13] A crucial aspect of a local government's community planning activities involves granting and denying rights related to real property use and development.

Development Permits and Orders

The Community Planning Act defines "development" as "the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels."[14] When a party wishes to engage in development activity, they must seek a development permit from the appropriate local government having jurisdiction. Under the Community Planning Act, a development permit includes "any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land."[15] Once a local government has officially granted or denied a development permit, the official action constitutes a development order.[16] A development order vests certain rights related to the land.[17]

Development Orders in Newly Incorporated Municipalities

Municipalities established after the effective date of the Community Planning Act must prepare and adopt a comprehensive plan within 3 years after the date of such incorporation. A county comprehensive plan is controlling until the municipality adopts a comprehensive plan. A municipal comprehensive plan adopted after January 1, 2019, and all land development regulations adopted to implement the comprehensive plan must incorporate each development order existing before the comprehensive plan's effective date, may not impair the completion of a development in accordance with such existing development order, and must vest the density[18]

[10] Section 163.3174(1), F.S.
[11] Section 163.3164(44), F.S.
[12] Part II of ch. 163, F.S.
[13] Section 163.3167(1)(b), F.S.
[14] Section 163.3164(14), F.S.
[15] *Id.* at (16).
[16] *See id.* at (15).
[17] *See* s. 163.3167(3), F.S.
[18] "Density" means an objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre. Section 163.3164(12), F.S.

and intensity[19] approved by such development order existing on the effective date of the comprehensive plan without limitation or modification.[20]

Comprehensive Plans and Plan Amendments

Comprehensive plans are intended to provide for "orderly and balanced future economic, social, physical, environmental, and fiscal development" in a county or municipality.[21] A comprehensive plan must take into account:[22]

- Projected seasonal and permanent population growth;
- Current and existing public facility needs;
- Coordination with the local comprehensive plans of adjacent municipalities and counties;
- Consideration of two planning periods, one covering at least five years and another covering at least 10 years; and
- A future land use plan element.

Comprehensive plan amendments fit into one of three categories based on both the size and nature of the area impacted by the proposed amendment. These categories include:[23]

- General amendments subject to the expedited state review process;
- Small-scale development amendments subject to the small-scale review process; and
- Amendments subject to the state coordinated review process.[24]

Expedited State Review Process

The expedited state review process is the default method for the consideration of local comprehensive plan amendments.[25] The process begins with a public hearing conducted by a county or municipality's governing body to approve of transmitting the proposed amendment for review.[26] Within 10 working days after the public hearing, the county or municipality must transmit the amendment, as well as any supporting documentation, to the following agencies for review:[27]

- DEO;
- The appropriate regional planning council;
- The appropriate water management district;
- Department of Environmental Protection;

[19] "Intensity" means an objective measurement of the extent to which land may be developed or used, including the consumption or use of the space above, on, or below ground; the measurement of the use of or demand on natural resources; and the measurement of the use of or demand on facilities and services. Section 163.3164(22), F.S.
[20] Section 163.3167(3), F.S.
[21] Section 163.3177(1), F.S.
[22] Section 163.3177(1), (3)-(6), F.S.
[23] Section 163.3184(2), F.S.
[24] Section 163.3184(2)(c), F.S. These amendments include amendments in areas of critical state concern pursuant to s. 380.05, F.S., propose a rural land stewardship area pursuant to s. 163.3248, F.S., propose or amend a sector plan pursuant to s .163.3245, F.S., update a comprehensive plan based on evaluation and appraisal pursuant to s. 163.3191, F.S., propose a development that is subject to state coordinated review pursuant to s. 380.06, F.S., and plans for newly incorporated municipalities adopted pursuant to s. 163.3167, F.S.
[25] *See* s. 163.3184(2)(a), F.S.
[26] Section 163.3184(3)(a), (11)(a), F.S.
[27] Section 163.3184(1)(c), (3)(b)1., F.S.

- Department of State;
- Department of Transportation;
- The commanding officer of any affected military installation listed in s. 163.3175, F.S.;
- Department of Education, if the plan amendment relates to public schools;
- The Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services, if the plan amendment is to a county comprehensive plan; and
- The county in which the municipality is located, if the plan amendment is to a municipal comprehensive plan.

The county or municipality also must transmit the amendment and supporting documentation to any other local government or government agency that made a written request with the governing body.[28] State agencies review the proposed amendment for any adverse impacts on important state resources and facilities that fall within their respective jurisdictions.[29] Regional planning councils consider any adverse impacts of the amendment on regional resources or facilities identified in the strategic regional policy plan and any extra-jurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region.[30] Comments from counties and municipalities are limited to the proposed amendment's impact on that local government's comprehensive plan.[31]

After receiving comments from the reviewing agencies and local governments, the county or municipality's governing body conducts a second public hearing to consider adopting the proposed amendment.[32] If the proposed amendment is adopted, the county or municipality's governing body must submit the amendment, as well as any supporting documentation, to DEO and any other agency or local government that provided timely comments within 10 working days after the hearing.[33] DEO must review the amendment for any deficiencies and inform the county or municipality within five working days.[34] The amendment becomes effective 31 days after DEO notifies the local government that the plan amendment package is complete unless the amendment has been timely challenged, in which case the amendment does not become effective until DEO or the Administration Commission enters a final order determining the adopted amendment is in compliance.[35]

[28] Section 163.3184(3)(b)1., F.S.
[29] Sections 163.3184(3)(b)2., (3)(b)4., F.S. DEO, as the state land planning agency, provides comments on the impacts of any important state resources and facilities outside of the jurisdiction of other commenting agencies.
[30] Section 163.3184(3)(b)3.a., F.S.
[31] Section 163.3184(3)(b)3.b.-c., F.S.
[32] Section 163.3184(3)(c)1., F.S. Except for amendments concerning developments of regional impact, an amendment is considered withdrawn if the public hearing is not conducted within 180 days after receiving agency comments.
[33] Section 163.3184(3)(c)2., F.S.
[34] Section 163.3184(3)(c)3., F.S.
[35] Section 163.3184(3)(c)4., F.S. The Administration Commission is composed of the Governor and Cabinet. Section 14.202, F.S.

Small-Scale Comprehensive Plan Amendments

A small-scale comprehensive plan amendment must meet four criteria:[36]

- The proposed amendment involves the use of 10 or fewer acres of land (20 acres in a rural area of opportunity);[37]
- The changes are limited to Future Land Use Map (FLUM) changes, with no text changes to the comprehensive plan except those that relate directly to, and are adopted simultaneously with, the small scale FLUM change;
- The property is not located in an area of critical state concern unless the project involves the construction of affordable housing units meeting statutory criteria;[38] and
- The amendment must preserve the internal consistency of the overall local comprehensive plan.

Small-scale comprehensive plan amendments require only a single hearing before the county's governing body or municipality for approval.[39] Small-scale comprehensive plan amendments do not require review by DEO or other state agencies.[40]

Any affected person may challenge the amendment by filing a petition with the Division of Administrative Hearings.[41] The challenge must be filed within 30 days of the local government's adoption of the amendment. The challenge is heard in the affected jurisdiction by an administrative law judge (ALJ) between 30 to 60 days after the petition is filed. The local government's determination that the small-scale amendment complies with the overall comprehensive plan is subject to the "fairly debatable" standard of review.[42]

If the ALJ finds that the amendment complies with the comprehensive plan, the ALJ sends a recommended order to DEO. Upon receipt of the recommended order, DEO may issue a final order within 30 days or send the matter to the Administration Commission if the department determines the amendment is not in compliance.[43] If the ALJ does not find that the amendment complies, the ALJ must send the recommended order directly to the Administration Commission, which has 90 days to issue a final order upon receipt.

A small-scale comprehensive plan amendment may not become effective until 31 days after adoption by the county or municipality's governing body.[44] If the amendment is challenged, the

[36] Section 163.3187(1)(a)-(d), (4), F.S., *see also* Dept. of Economic Opportunity, *Small Scale Amendments Defined; Adoption; Challenge: Effective Date*, http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/small-scale-amendments-defined-adoption-challenge-effective-date (last visited Mar. 25, 2021).
[37] Section 163.3187(3), F.S.
[38] *See* s. 420.0004(3), F.S.
[39] Section 163.3187(2), F.S.
[40] *Compare* s. 163.3187, F.S. (small-scale plan amendments are only reviewed by DEO if the plan is challenged) *with* s. 163.3184(3)-(4), F.S. (expedited state review process and state coordinated review process for comprehensive plan amendments require review by DEO and other state agencies).
[41] Section 163.3187(5)(a), F.S.
[42] *Id*.
[43] Section 163.3187(5)(b), F.S.
[44] Section 163.3187(5)(c), F.S.

amendment may not become effective until DEO or the Administration Commission issues a final order determining the amendment complies with the overall comprehensive plan.

Rural Area of Opportunity

A Rural Area of Opportunity (RAO) is a rural community or a region comprised of rural communities designated by the Governor that has been adversely affected by an extraordinary economic event, a natural disaster, or severe or chronic distress.[45] The area may also be classified as a RAO if it presents a unique economic development opportunity of regional impact.

The Governor may designate up to three RAO areas for five-year periods upon recommendation by the Rural and Economic Development Initiative (REDI).[46] These areas receive priority assignments for REDI, and the designation allows the Governor, acting through REDI, to waive certain criteria or requirements of any economic development incentives. Currently, there are three designated RAO areas:[47]

- Northwest RAO, consisting of Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington Counties, as well as the area within the city limits of Freeport and in Walton County north of the Choctawhatchee Bay and the intercoastal waterway;
- South Central RAO, consisting of DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties, as well as the municipalities of Pahokee, Belle Glade, and South Bay in Palm Beach County and Immokalee in Collier County; and
- North Central RAO, consisting of Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.

Interlocal Agreements

The Florida Interlocal Cooperation Act provides local governmental units the right to enter into mutually advantageous agreements to provide services or facilities to other localities.[48] This section of the law allows the state's public agencies to exercise joint governmental powers with any other public agency of the state, of any other state, or the United States Government.[49] To effectuate interlocal cooperation under this section, local governmental units jointly exercising power must form and execute a contract detailing the relationship's terms and conditions.[50]

[45] Section 288.0656(2)(d), F.S. A "rural community" is defined as any county with a population of 75,000 or fewer; any county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer; any municipality in a county that meets the aforementioned criteria; or any municipality or "unincorporated federal enterprise community" with a population of 25,000 or fewer and an employment base focused on traditional agriculture or resource-based industries located in a county not defined as rural and which suffers from three or more economic distress factors. Section 288.0656(2)(e), F.S.
[46] Section 288.0656(7)(a), F.S.
[47] Dept. of Economic Opportunity, *Rural Areas of Opportunity*, https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited Mar. 25, 2021).
[48] Section 163.01, F.S. *See also* s. 163.02, F.S. Councils of local public officials.
[49] *Id.* at (4)
[50] *Id.* at (5)

Section 163.01(9)(b), F.S., provides, in part: "An interlocal agreement does not relieve a public agency of any obligation or responsibility imposed upon it by law[.]" In regards to the authority of entities created by interlocal, s. 163.01(7)(g)7., F.S., provides in pertinent part the following:

> "[N]either the entity nor any of its members on behalf of the entity may exercise the power of eminent domain over the facilities or property of any existing water or wastewater plant utility system, nor may the entity acquire title to any water or wastewater plant utility facilities, other facilities, or property which was acquired by the use of eminent domain after the effective date of this act."

III. Effect of Proposed Changes:

Section 1 amends s. 163.01, F.S., to allow governmental entities created by an interlocal agreement between local governments may acquire title to any water or wastewater plant utility facilities, other facilities, or property acquired by the use of eminent domain if 10 or more years have passed since the date of eminent domain acquisition.

Section 2 amends s. 163.3167, F.S., to provide that any landowner with a development order existing before the incorporation of a municipality may elect to abandon the development order and develop the vested density and intensity contained therein pursuant to the municipality's comprehensive plan and land development regulations so long as the vested uses, density, and intensity are consistent with the municipality's comprehensive plan, and all existing concurrency obligations in the development order remain valid.

Section 3 amends s. 163.3187, F.S., to increase the maximum acreage for small-scale comprehensive plan amendments. The maximum acreage is increased from 10 acres to 50 acres generally. For small-scale comprehensive plan amendments within a rural area of opportunity, the bill increases the maximum acreage from 20 acres to 100 acres.

Section 4 provides an effective date of 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:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may reduce state government expenditures to the extent that agencies will no longer be required to review certain amendments that would previously have been subject to the expedited state review process. The bill may reduce local government expenditures to the extent that amendments that would previously have been subject to the expedited state review process would be eligible for review as small-scale development amendments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.01, 163.3167 and 163.3187.

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 20, 2021:
The committee substitute provides that entities created by an interlocal agreement may acquire title to any water or wastewater plant utility facilities, other facilities, or property acquired by the use of eminent domain if 10 or more years have passed since the date of eminent domain acquisition.

CS by Community Affairs on March 30, 2021:
The committee substitute clarifies that when a landowner elects to abandon a

development order and develop the vested density and intensity granted before the adoption of a municipality's comprehensive plan, all existing concurrency obligations in the development order remain valid.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Before line 14
insert:
Section 1. Paragraph (g) of subsection (7) of section 163.01, Florida Statutes, is amended to read:
163.01 Florida Interlocal Cooperation Act of 1969.—
(7)
(g)1. Notwithstanding any other provisions of this section, any separate legal entity created under this section, the membership of which is limited to municipalities and counties of



the state, and which may include a special district in addition to a municipality or county or both, may acquire, own, construct, improve, operate, and manage public facilities, or finance facilities on behalf of any person, relating to a governmental function or purpose, including, but not limited to, wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside of the members of the entity. Notwithstanding s. 367.171(7), any separate legal entity created under this paragraph is not subject to Public Service Commission jurisdiction. The separate legal entity may not provide utility services within the service area of an existing utility system unless it has received the consent of the utility.

2. For purposes of this paragraph, the term:

a. "Host government" means the governing body of the county, if the largest number of equivalent residential connections currently served by a system of the utility is located in the unincorporated area, or the governing body of a municipality, if the largest number of equivalent residential connections currently served by a system of the utility is located within that municipality's boundaries.

b. "Separate legal entity" means any entity created by interlocal agreement the membership of which is limited to two or more special districts, municipalities, or counties of the state, but which entity is legally separate and apart from any of its member governments.

c. "System" means a water or wastewater facility or group of such facilities owned by one entity or affiliate entities.

d. "Utility" means a water or wastewater utility and


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includes every person, separate legal entity, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation.

3. A separate legal entity that seeks to acquire any utility shall notify the host government in writing by certified mail about the contemplated acquisition not less than 30 days before any proposed transfer of ownership, use, or possession of any utility assets by such separate legal entity. The potential acquisition notice shall be provided to the legislative head of the governing body of the host government and to its chief administrative officer and shall provide the name and address of a contact person for the separate legal entity and information identified in s. 367.071(4)(a) concerning the contemplated acquisition.

4.a. Within 30 days following receipt of the notice, the host government may adopt a resolution to become a member of the separate legal entity, adopt a resolution to approve the utility acquisition, or adopt a resolution to prohibit the utility acquisition by the separate legal entity if the host government determines that the proposed acquisition is not in the public interest. A resolution adopted by the host government which prohibits the acquisition may include conditions that would make the proposal acceptable to the host government.

b. If a host government adopts a membership resolution, the separate legal entity shall accept the host government as a member on the same basis as its existing members before any transfer of ownership, use, or possession of the utility or the



utility facilities. If a host government adopts a resolution to approve the utility acquisition, the separate legal entity may complete the acquisition. If a host government adopts a prohibition resolution, the separate legal entity may not acquire the utility within that host government's territory without the specific consent of the host government by future resolution. If a host government does not adopt a prohibition resolution or an approval resolution, the separate legal entity may proceed to acquire the utility after the 30-day notice period without further notice.

5. After the acquisition or construction of any utility systems by a separate legal entity created under this paragraph, revenues or any other income may not be transferred or paid to a member of a separate legal entity, or to any other special district, county, or municipality, from user fees or other charges or revenues generated from customers that are not physically located within the jurisdictional or service delivery boundaries of the member, special district, county, or municipality receiving the transfer or payment. Any transfer or payment to a member, special district, or other local government must be solely from user fees or other charges or revenues generated from customers that are physically located within the jurisdictional or service delivery boundaries of the member, special district, or local government receiving the transfer of payment.

6. This section is an alternative provision otherwise provided by law as authorized in s. 4, Art. VIII of the State Constitution for any transfer of power as a result of an acquisition of a utility by a separate legal entity from a



municipality, county, or special district.

7. The entity may finance or refinance the acquisition, construction, expansion, and improvement of such facilities relating to a governmental function or purpose through the issuance of its bonds, notes, or other obligations under this section or as otherwise authorized by law. The entity has all the powers provided by the interlocal agreement under which it is created or which are necessary to finance, own, operate, or manage the public facility, including, without limitation, the power to establish rates, charges, and fees for products or services provided by it, the power to levy special assessments, the power to sell or finance all or a portion of such facility, and the power to contract with a public or private entity to manage and operate such facilities or to provide or receive facilities, services, or products. Except as may be limited by the interlocal agreement under which the entity is created, all of the privileges, benefits, powers, and terms of s. 125.01, relating to counties, and s. 166.021, relating to municipalities, are fully applicable to the entity. However, neither the entity nor any of its members on behalf of the entity may exercise the power of eminent domain over the facilities or property of any existing water or wastewater plant utility system, nor may the entity acquire title to any water or wastewater plant utility facilities, other facilities, or property which was acquired by the use of eminent domain after the effective date of this act<u>, unless 10 or more years have elapsed since the date of the acquisition by eminent domain</u>. Bonds, notes, and other obligations issued by the entity are issued on behalf of the public agencies that are members of the



entity.

8. Any entity created under this section may also issue bond anticipation notes in connection with the authorization, issuance, and sale of bonds. The bonds may be issued as serial bonds or as term bonds or both. Any entity may issue capital appreciation bonds or variable rate bonds. Any bonds, notes, or other obligations must be authorized by resolution of the governing body of the entity and bear the date or dates; mature at the time or times, not exceeding 40 years from their respective dates; bear interest at the rate or rates; be payable at the time or times; be in the denomination; be in the form; carry the registration privileges; be executed in the manner; be payable from the sources and in the medium or payment and at the place; and be subject to the terms of redemption, including redemption prior to maturity, as the resolution may provide. If any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes, or other obligations ceases to be an officer before the delivery of the bonds, notes, or other obligations, the signature or facsimile is valid and sufficient for all purposes as if he or she had remained in office until the delivery. The bonds, notes, or other obligations may be sold at public or private sale for such price as the governing body of the entity shall determine. Pending preparation of the definitive bonds, the entity may issue interim certificates, which shall be exchanged for the definitive bonds. The bonds may be secured by a form of credit enhancement, if any, as the entity deems appropriate. The bonds may be secured by an indenture of trust or trust agreement. In addition, the governing body of the legal entity may delegate, to an officer,


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official, or agent of the legal entity as the governing body of the legal entity may select, the power to determine the time; manner of sale, public or private; maturities; rate of interest, which may be fixed or may vary at the time and in accordance with a specified formula or method of determination; and other terms and conditions as may be deemed appropriate by the officer, official, or agent so designated by the governing body of the legal entity. However, the amount and maturity of the bonds, notes, or other obligations and the interest rate of the bonds, notes, or other obligations must be within the limits prescribed by the governing body of the legal entity and its resolution delegating to an officer, official, or agent the power to authorize the issuance and sale of the bonds, notes, or other obligations.

9. Bonds, notes, or other obligations issued under this paragraph may be validated as provided in chapter 75. The complaint in any action to validate the bonds, notes, or other obligations must be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 must be published in Leon County and in each county that is a member of the entity issuing the bonds, notes, or other obligations, or in which a member of the entity is located, and the complaint and order of the circuit court must be served only on the State Attorney of the Second Judicial Circuit and on the state attorney of each circuit in each county that is a member of the entity issuing the bonds, notes, or other obligations or in which a member of the entity is located. Section 75.04(2) does not apply to a complaint for validation brought by the legal entity.



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10. The accomplishment of the authorized purposes of a legal entity created under this paragraph is in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions. Since the legal entity will perform essential governmental functions for the public health, safety, and welfare in accomplishing its purposes, the legal entity is not required to pay any taxes or assessments of any kind whatsoever upon any property acquired or used by it for such purposes or upon any revenues at any time received by it, whether the property is within or outside the jurisdiction of members of the entity. The exemption provided in this paragraph applies regardless of whether the separate legal entity enters into agreements with private firms or entities to manage, operate, or improve the utilities owned by the separate legal entity. The bonds, notes, and other obligations of an entity, their transfer, and the income therefrom, including any profits made on the sale thereof, are at all times free from taxation of any kind by the state or by any political subdivision or other agency or instrumentality thereof. The exemption granted in this subparagraph is not applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

========== 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:

163.01, F.S.; providing an exception to a prohibition


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against legal entities and their members exercising the power of eminent domain over or acquiring title to certain facilities or property; amending s.

307734

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/20/2021	.	
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The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with title amendment)

Between lines 64 and 65
insert:

Section 3. Paragraph (c) of subsection (8) of section 163.3215, Florida Statutes, is amended to read:

163.3215 Standing to enforce local comprehensive plans through development orders.—

(8)

(c) Upon the motion of any party, the prevailing party in a challenge to a development order filed under subsection (3) is

307734

entitled to recover reasonable attorney fees and costs incurred in challenging or defending the order, including reasonable appellate attorney fees and costs, if the challenge is frivolous in nature and lacks any legal or factual merit. This paragraph does not apply to an intervening party as provided under Rule 1.230, Florida Rules of Civil Procedure.

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

And the title is amended as follows:

Delete line 10

and insert:

amendment may be adopted; amending s. 163.3215, F.S.; specifying conditions under which the prevailing party in a challenge to a development order is entitled to recover certain fees and costs; providing applicability; providing an effective date.

By the Committee on Community Affairs; and Senator Perry

578-03610-21 20211274c1

A bill to be entitled

An act relating to growth management; amending s. 163.3167, F.S.; authorizing landowners with development orders existing before the incorporation of a municipality to elect to abandon such orders and develop the vested density and intensity contained therein under specified conditions; amending s. 163.3187, F.S.; revising the required acreage thresholds under which a small scale development amendment may be adopted; providing an effective date.

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

Section 1. Subsection (5) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(5) Nothing in this act shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to chapter 380 or who has been issued a final local development order and development has commenced and is continuing in good faith. Any landowner with a development order existing before the incorporation of a municipality may elect to abandon the development order and develop the vested density and intensity contained therein pursuant to the municipality's comprehensive plan and land development regulations adopted pursuant to subsection (3) so long as the vested uses, density, and intensity are consistent with the municipality's comprehensive plan and all existing obligations in the development order

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

578-03610-21 20211274c1

regarding concurrency remain.

Section 2. Subsections (1) and (3) of section 163.3187, Florida Statutes, are amended to read:

163.3187 Process for adoption of small scale ~~small-scale~~ comprehensive plan amendment.—

(1) A small scale development amendment may be adopted under the following conditions:

(a) The proposed amendment involves a use of 50 ~~10~~ acres or fewer. ~~and:~~

(b) The proposed amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity. However, text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment shall be permissible under this section.

(c) The property that is the subject of the proposed amendment is not located within an area of critical state concern, unless the project subject to the proposed amendment involves the construction of affordable housing units meeting the criteria of s. 420.0004(3), and is located within an area of critical state concern designated by s. 380.0552 or by the Administration Commission pursuant to s. 380.05(1).

(3) If the small scale development amendment involves a site within a rural area of opportunity as defined under s. 288.0656(2)(d) for the duration of such designation, the acreage ~~10 acre~~ limit listed in subsection (1) shall be increased by 100 percent ~~to 20 acres~~. The local government approving the small scale plan amendment shall certify to the state land planning

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

agency that the plan amendment furthers the economic objectives set forth in the executive order issued under s. 288.0656(7), and the property subject to the plan amendment shall undergo public review to ensure that all concurrency requirements and federal, state, and local environmental permit requirements are met.

Section 3. This act shall take effect July 1, 2021.

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: April 2, 2021

I respectfully request that **Senate Bill #1274**, relating to Growth Management, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Statement of Intent:
This bill would give local government's greater autonomy over their future land use and clarify how development orders may be implemented on property incorporated into a city.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

SB 1274
Bill Number (if applicable)

Topic Growth Management

307734
Amendment Barcode (if applicable)

Name Jane West

Job Title Policy + Planning Director

Address 24 Cathedral Pl
Street

Phone 904-671-4008

St. Augustine FL 32084
City *State* *Zip*

Email jwest@1000fof.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing 1000 Friends 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.

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)

04/20/2024
Meeting Date

SB 1274
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic GROWTH MANAGEMENT

Name HOWARD E. "GENE" ADAMS

Job Title ATTORNEY

Address 215 SOUTH MONROE ST.
Street

Phone 850-222-3533

TALLAHASSEE FLA 32301
City *State* *Zip*

Email GENE@PENNINGTONLAW.COM

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

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

Representing FLA. GOVERNMENTAL UTILITY AUTHORITY

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

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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

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)

4/20/21
Meeting Date

SB 1274
Bill Number (if applicable)

307434
Amendment Barcode (if applicable)

Topic PLAN AMENDMENTS

Name TRISH NEELY

Job Title DIRECTOR

Address 2024 SHANGRI LA
Street

TALLY FL 32303
City *State* *Zip*

Phone 850 322 3317

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing LWV

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.

This information was not read 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:	CS/SB 1294
INTRODUCER:	Rules Committee and Senator Brodeur
SUBJECT:	Cottage Food Operations
DATE:	April 20, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Favorable**
2.	Reeve	McKay	CM	**Favorable**
3.	Oxamendi	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1294 revises the regulations on cottage food operations and cottage food sales. A cottage food operation is a natural person who produces or packages cottage food products, defined by the Department of Agriculture as any food that is not a potentially hazardous food, at his or her residence.

The bill allows individual cottage food operations to sell, offer for sale, and accept payment for cottage food products as a business entity. The bill also allows cottage food products to be sold, offered for sale, and paid for by mail order, and permits cottage food products to be delivered by mail.

Cottage food operations are exempt from food permitting requirements if the cottage food seller complies with s. 500.80, F.S., and has annual gross sales of up to $50,000. The bill increases the maximum allowable gross sales to $250,000.

The bill preempts the regulation of cottage food operations to the state. However, cottage food operations must comply with all applicable county and municipal laws and ordinances regulating traffic, parking, noise, signage, and hours of retail operation.

The bill provides that this act may be cited as the "Home Sweet Home Act."

The bill takes effect July 1, 2021.

II. Present Situation:

Food Safety Laws

The Division of Food Safety within the Department of Agriculture and Consumer Services (department) ensures that safe, wholesome, and properly labeled food is available to the public through the permitting and inspection of food establishments, and inspection of food products that are sold or produced in Florida.[1] The department works in cooperation with the United States Department of Agriculture and the Food and Drug Administration to help ensure compliance with both state and federal regulations.[2]

Cottage Food Operations

A cottage food operation is an unincorporated business operated by a natural person who, under certain conditions and restrictions, produces or packages food that is not potentially hazardous in their residence.[3]

A cottage food product is any food that is not a potentially hazardous food as defined by department rule which is sold by a cottage food operation in accordance with s. 500.80, F.S.[4] The department has not adopted a rule defining the term "potentially hazardous food," but it has adopted the U.S. Food and Drug Administration's 2017 Food Code (Food Code).[5]

The Food Code defines the term "time/temperature controlled for safety food," formerly referred to as "potentially hazardous food," as a "food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation." The term includes:

- Animal food that is raw or heat-treated;
- Plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and
- Garlic-in-oil mixtures that are not modified so that they are unable to support pathogenic micro-organism growth or toxin formation.[6]

The department has identified the following foods as not potentially hazardous and therefore permitted to be produced by a cottage food operation:

- Loaf breads, rolls, biscuits;
- Cakes, pastries, and cookies;

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[1] Florida Department of Agriculture and Consumer Services, *Division of Food Safety*, *available at* http://www.freshfromflorida.com/Divisions-Offices/Food-Safety (last visited Mar. 19, 2021). *See also* ch. 500, F.S., the Florida Food Safety Act.
[2] Florida Department of Agriculture and Consumer Services, *Food Establishments*, *available at* https://www.fdacs.gov/Business-Services/Food/Food-Establishments (last visited Mar. 19, 2021).
[3] Sections 500.03(j), (k), and 500.80, F.S.
[4] Section 500.03(k), F.S.
[5] Fla. Admin. Code R. 5K-4.002(4)(a).
[6] U.S. Food and Drug Administration, 2017 Food Code, subpart 1-201.10, defining "Time/Temperature Control for Safety Food (formerly "potentially hazardous food" (PHF))" Certain foods may be designated as "product assessment required" due to the interaction of their water content and pH values after heat treatment or packaging to control vegetative cells and spores. Such foods are considered TCS food until further study proves otherwise.

- Honey;
- Jams, jellies, and preserves made from high acid-fruits only;
- Fruit pies and dried fruits;
- Dry herbs, seasonings, and mixtures;
- Homemade pasta;
- Cereals, trail mixes, and granola;
- Coated or uncoated nuts;
- Vinegar and flavored vinegars;
- Popcorn and popcorn balls; and
- Nut butters, including almond, peanut, cashew, etc. [7]

Under s. 500.80, F.S., cottage food operations are exempt from food safety production standards, are not subject to inspection by a governmental entity, and are not required to meet state food permitting requirements under s. 500.12, F.S. However, cottage food operations must comply with the cottage food law and limit annual gross sales of cottage food products to less than $50,000. A cottage food operation must provide the department with written documentation to verify its annual gross sales upon the department's request to do so.

Cottage food operations may sell and accept payments for cottage food products over the Internet, but such products must be delivered in person. Cottage food operations are currently prohibited from selling or delivering cottage food products by mail order or at wholesale.[8] A cottage food operation may only sell cottage food products that are stored on the premises of the operation.[9]

Cottage food products must be prepackaged with a label that contains:
- The name and address of the cottage food operation;
- The name of the cottage food product;
- The ingredients of the cottage food product, in descending order of predominance by weight;
- The net weight or net volume of the cottage food product;
- Allergen information as specified by federal labeling requirements;
- Appropriate nutritional information as specified by federal labeling requirements, if any nutritional claim is made;[10] and
- The statement, "Made in a cottage food operation that is not subject to Florida's food safety regulation" printed in 10-point type in a color that provides a clear contrast to the background of the label.[11]

Cottage food operations are not exempt from any state or federal tax law, rule, regulation, or certificate that applies to all cottage food operations,[12] and must comply with all applicable

[7] *See* Department of Agriculture and Consumer Services, *Division of Food Safety: Cottage Food Operations (August 2020), available at* https://www.fdacs.gov/content/download/70108/file/Cottage-Food-Operations.pdf (last visited Mar. 19, 2021).
[8] Section 500.80(2), F.S.
[9] Section 500.80(4), F.S.
[10] *See* Food Labeling, 21 C.F.R. § 101.
[11] Section 500.80(3), F.S.
[12] Section 500.80(5), F.S.

county and municipal laws and ordinances regulating the preparation, processing, storage, and sale of cottage food products.[13]

Cottage Food Operations Investigations and Complaints

The department may investigate complaints that a cottage food operation has violated an applicable provision of state food products law[14] or rule adopted under such law.[15] Upon receiving a complaint, an officer or employee of the department may inspect the cottage food operation's premises to determine compliance with applicable to state law and departmental rules. An operation's refusal to permit an authorized officer or employee to enter and inspect the premises is grounds for administrative disciplinary action under s. 500.121, F.S.[16]

State law regarding cottage food operations does not apply to any person operating under a food permit issued pursuant to s. 500.12, F.S.[17]

In 2020, the department responded to 233 consumer complaints regarding unpermitted food establishments, many of which were cottage food operations not complying with the existing food laws.[18]

Cottage Food Sales in Other States

Nationwide, 49 states and the District of Columbia have cottage food programs; many states have comparable regulations to the existing cottage food laws in Florida. While not all states have imposed a gross income limit, the average allowable gross income in states with limits ranges from $15,000 to $35,000 annually. States without income limits have various prohibitions against mail deliveries and out-of-state sales of cottage food products.[19]

III. Effect of Proposed Changes:

The bill expands the definition of "cottage food operation" in s. 500.03(1)(j), F.S., to include entities that produce or package cottage food products at the residence of a natural person with an ownership interest in the entity.

The bill increases the maximum annual gross sales limit for cottage foods operations from $50,000 to $250,000.

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[13] Sections 500.80(6), F.S.
[14] Chapter 500, F.S.
[15] Section 500.80(7)(a), F.S.
[16] Section 500.121, F.S., provides disciplinary procedures for violations of ch. 500, F.S., and applicable rules, including the imposition of Class II administrative fines against a cottage food operation that violates ch. 500, F.S. A violation in the Class II category carries a fine not to exceed $5,000 for each violation. *See* s. 570.971(1)(b), F.S.
[17] Section 500.12, F.S., requires a permit issued by the department for any person operating a food establishment or retail food store.
[18] Department of Agriculture and Consumer Services, *Agency Analysis for SB 1294*, (Feb. 23, 2021) (on file with the Senate Committee on Regulated Industries).
[19] *Id. See also* Harvard Food Law and Policy Clinic, *Cottage Food Laws in the United States (August 2018), available at* https://www.chlpi.org/wp-content/uploads/2013/12/FLPC_Cottage-Foods-Report_August-2018.pdf (last visited Mar. 19, 2021).

The bill permits cottage food operations to sell and accept payment for cottage food products by mail order and to deliver cottage food products by mail.

The bill also preempts the regulation of cottage food operations to the state. Under the bill, a local law, ordinance, or regulation may not prohibit a cottage food operation or regulate the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a person's residence. However, cottage food operations must comply with all applicable county and municipal laws and ordinances regulating traffic, parking, noise, signage, and hours of retail operation.

This act may be cited as the "Home Sweet Home Act."

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services indicates that the increase in gross sales limits for cottage food operators may result in increased food safety health events and complaints, and therefore increase the department's workload. The department cannot recover these enforcement expenses because cottage food operations do not pay a permit fee. An increase in the annual gross sales limit will also result in fewer food establishments permitted and inspected by the department, which may have a negative fiscal impact on the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Increasing the allowable gross sales for cottage food operations would remove larger operations from permitting requirements and inspections for sanitation and compliance with food safety regulations. The department states that, without proper training and oversight, small businesses may expose themselves to greater liability resulting from harming persons through foodborne illnesses.[20]

VIII. Statutes Affected:

This bill substantially amends sections 500.03 and 500.80 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 20, 2021:
The committee substitute requires cottage food operations must comply with all applicable county and municipal laws and ordinances regulating traffic, parking, noise, signage, and hours of retail operation.

B. Amendments:

None.

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

[20] *Supra* note 18.

849448

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
	.	
	.	
	.	

The Committee on Rules (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete lines 49 - 51
and insert:
~~regulating~~ the preparation, processing, storage, or ~~and~~ sale of cottage food products by a cottage food operation; however a cottage food operation must comply with all applicable county and municipal laws and ordinances regulating traffic, parking, noise, signage, and hours of retail operation ~~or from a person's residence~~.

849448

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 13
and insert:
products by cottage food operations; requiring cottage food operations to comply with certain applicable county and municipal laws and ordinances; providing an effective date.

By Senator Brodeur

9-01409-21 20211294__

A bill to be entitled

An act relating to cottage food operations; providing a short title; amending s. 500.03, F.S.; revising the definition of "cottage food operation"; amending s. 500.80, F.S.; increasing the annual gross sales limitation for exempting cottage food operations from certain food and building permitting requirements; authorizing the sale, offer for sale, acceptance of payment, and delivery of cottage food products by mail; preempting the regulation of cottage food operations to the state; prohibiting local governments from prohibiting or regulating cottage food operations; providing an effective date.

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

Section 1. This act may be cited as the "Home Sweet Home Act."

Section 2. Paragraph (j) of subsection (1) of section 500.03, Florida Statutes, is amended to read:

500.03 Definitions; construction; applicability.—

(1) For the purpose of this chapter, the term:

(j) "Cottage food operation" means a natural person or an entity that ~~who~~ produces or packages cottage food products at the ~~his or her~~ residence of the natural person or at the residence of a natural person who has an ownership interest in the entity, and sells such products in accordance with s. 500.80.

Section 3. Paragraph (a) of subsection (1) and subsections

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

9-01409-21 20211294__

(2) and (6) of section 500.80, Florida Statutes, are amended to read:

500.80 Cottage food operations.—

(1)(a) A cottage food operation must comply with the applicable requirements of this chapter but is exempt from the permitting requirements of s. 500.12 if the cottage food operation complies with this section and has annual gross sales of cottage food products that do not exceed $250,000 ~~$50,000~~.

(2) A cottage food operation may sell, offer for sale, and accept payment for cottage food products over the Internet or by mail order. Such~~, but such~~ products may ~~must~~ be delivered in person directly to the consumer, ~~or~~ to a specific event venue, or by mail. A cottage food operation may not sell, offer for sale, or deliver cottage food products ~~by mail order or~~ at wholesale.

(6) The regulation of cottage food operations is preempted to the state. A local law, ordinance, or regulation may not prohibit a cottage food operation or regulate ~~must comply with all applicable county and municipal laws and ordinances regulating~~ the preparation, processing, storage, and sale of cottage food products by a cottage food operation or from a person's residence.

Section 4. This act shall take effect July 1, 2021.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JASON BRODEUR
9th District

COMMITTEES:
Environment and Natural Resources, *Chair*
Health Policy, *Vice Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs
Community Affairs

SELECT COMMITTEE:
Select Committee on Pandemic Preparedness and Response

JOINT COMMITTEE:
Joint Administrative Procedures Committee

March 23, 2021

Honorable Kathleen Passidomo
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Passidomo,

I am writing to request that **SB 1294**, **Cottage Food Operations**, be placed on the agenda to be heard in the Committee on Rules.

I appreciate your consideration in this matter.

Sincerely,

Jason Brodeur

Jason Brodeur

Cc: John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
❒ 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

4/20/21
Meeting Date

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

1127
Bill Number (if applicable)

Topic SB Cottage Food ~ 1294

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI

Job Title Legislative Liaison

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

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)

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/20/2021
Meeting Date

1294
Bill Number (if applicab

849448
Amendment Barcode (if applica

Topic Cottage Food Operations

Name Tara Taggart

Job Title Legislative Policy Analyst

Address 301 S. Bronough Street
Street

Phone 850-701-3603

Tallahassee FL 32301
City *State* *Zip*

Email ttaggart@flcities.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ N

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

SB 1294
Bill Number (if applicable)

89448
Amendment Barcode (if applicable)

Topic COTTAGE FOODS

Name CHRISTIAN CAMARGO

Job Title

Address PO BOX 122
Street

TALLAHASSEE FL 32302
City *State* *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

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)

4/20/21
Meeting Date

SB 1294
Bill Number (if applicable)

Topic COTTAGE FOODS

Amendment Barcode (if applicable)

Name CHRISTIAN CAMARA

Job Title

Address PO Box 122
Street

Phone 305 608 4307

TALLAHASSEE FL 32302
City *State* *Zip*

Email

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.

This information was not read 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:	CS/SB 1324
INTRODUCER:	Rules Committee and Senator Harrell
SUBJECT:	Digital Driver Licenses and Identification Cards
DATE:	April 20, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	**Favorable**
2.	Wells	Sadberry	AP	**Favorable**
3.	Proctor	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1324 requires the Department of Highway Safety and Motor Vehicles (DHSMV) to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards. The DHSMV may contract with one or more private entities to develop an electronic credentialing system. The electronic credentialing system may not retain internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.

The bill prohibits a private entity from storing, selling, or sharing personal information collected by scanning a digital proof of driver license or identification card unless consent has been provided by the individual. The bill creates a civil penalty of up to $5,000 per occurrence for violations of these provisions.

Notwithstanding any law prescribing the design for, or information required to be displayed on, a driver license or identification card, a digital proof of driver license or identification may comprise a limited profile that includes only information necessary to conduct a specific transaction on the electronic credentialing system.

A person may not be issued a digital proof of driver license or identification card until the person satisfies all requirements for issuance of the respective driver license or identification card and has been issued a printed driver license or identification card. Related to false digital identification cards, the bill creates a third degree felony for a person who manufacturers a false

card and a second degree misdemeanor for a person who possesses a false card, similar to current penalties related to false digital driver licenses.

The bill may have an insignificant fiscal impact on state government. The bill has an effective date of July 1, 2021.

II. Present Situation:

Digital Driver License

Eleven states are testing mobile driver's licenses or planning pilot projects, including Florida, Arkansas, Colorado, Oklahoma, Louisiana, Iowa, Delaware, Idaho, Maryland, Wyoming and the District of Columbia. New Jersey and Texas have passed legislation to start the process. "A digital driver's license would come in the form of a phone app protected by biometrics or a PIN. Instead of handing over a physical license to a police officer or store clerk, an individual could display the relevant information or send it electronically."[1]

Florida Digital Proof of Driver License

Current Florida law provides for the establishment of a digital proof of driver license. Specifically, current law requires the DHSMV to begin to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license. The statute authorizes the DHSMV to contract with one or more private entities to develop a digital proof of driver license system.[2]

The digital proof of driver license developed by the DHSMV or by an entity contracted by DHSMV must be in a format that allows law enforcement to verify the authenticity of the digital proof of driver license.[3] The DHSMV may adopt rules to ensure valid authentication of digital driver licenses by law enforcement.[4] A person may not be issued a digital proof of driver license until he or she has satisfied all of the statutory requirements relating to the issuance of a physical driver license.[5]

False Digital Proof of Driver License

Current law also establishes certain penalties for a person who manufacturers or possesses a false digital proof of driver license.[6] Specifically, a person who:

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[1] Veronica Combs, *Mobile Driver's License Would Replace the Physical Card With a Digital Identity*, Tech Republic, April 15, 2020, https://www.techrepublic.com/article/mobile-drivers-license-would-replace-the-physical-card-with-a-digital-identity/ (last visited March 12, 2021).
[2] Section 322.032(1), F.S.
[3] Section 322.032(2), F.S.
[4] *Id.*
[5] Section 322.032(3), F.S.
[6] Section 322.032(4), F.S.

- Manufactures a false digital proof of driver license commits a third degree felony, punishable by up to five years in prison[7] and a fine not to exceed $5,000,[8] or punishable under the habitual felony offender statute.[9]
- Possesses a false digital proof of driver license commits a second degree misdemeanor, punishable by up to 60 days in prison[10] and a fine not to exceed $500.[11]

AAMVA and Mobile Driver Licenses

The American Association of Motor Vehicle Administrators (AAMVA) has worked since 2012 to develop identity credential standards, cross-jurisdictional use, authentication, data privacy protection, and other uses of mobile driver licenses. AAMVA has collaborated with Underwriter Laboratories to establish international guidelines and interoperability for industry leaders to test their mobile driver license solutions with one another.[12]

Motorist Modernization

The DHSMV's Motorist Modernization Project is a multi-phased program to modernize legacy applications and processes. The Motorist Modernization Project has committed resources and approved funding to procure a mobile driver license solution as part of Phase II of the Motorist Modernization effort. The Fiscal Year 2020-2021 appropriation for Motorist Modernization Phase II was $9,877,400. Of this amount, $400,000 was allocated for mobile driver license. The mobile driver license includes a digital identification, which is a digital representation of a person's identity; however, the actual mobile driver license is a digital representation of a physical credential and driving privileges. The DHSMV has branded this effort as the "Florida Smart ID." Below is an overview of the Florida Smart ID timeline:

- Received legislative authority to implement in 2014;
- AAMVA standards completed in 2019;
- Vendor awarded contract in June 2020;
- Started work in July 2020; and
- Pilot program slated to start March 25, 2021, and planned to run for 90 days.[13]

[7] Section 775.082, F.S.
[8] Section 775.083(1)(c), F.S.
[9] Section 775.084, F.S.
[10] *Supra* note 7.
[11] Section 775.083(1)(e), F.S.
[12] Department of Highway Safety and Motor Vehicles, *2021 Agency Legislative Bill Analysis SB 1324*, (March 5, 2021), p. 2 (on file with the Senate Committee on Transportation).
[13] *Id*. at p. 3.

Florida Smart ID

The Florida Smart ID has multiple interactions occurring between the systems components comprising the Florida Smart ID solution, including a credential service provider (CSP),[14] the Florida Smart ID device, and an associated verifier device.[15]

The CSP is the gateway or broker between the Florida Smart ID and verifier device interactions with the DHSMV. The CSP uses open data standards and public key infrastructure[16] to accomplish the required communications and security. Interactions from the Florida Smart ID, the verifier device, and the CSP are performed over secure web communications.[17]

The Florida Smart ID is used by customers to present proof of identity or age. The application is downloaded from the Apple App or Google Play store and installed on a smart device, such as a smartphone or tablet. Once downloaded, a secure enrollment process occurs using the DHSMV's Virtual Office website. The DHSMV validates the identity and eligibility to activate the Florida Smart ID for use on the device.[18]

Once activated, the Florida Smart ID can be used to interact with retailer or law enforcement verifier devices. This interaction occurs at the consent of the customer and uses Bluetooth, near field communication,[19] or Wi-Fi Direct to communicate with the verifier device. The communication method is determined by a "handshake" between the devices where one device displays a QR code[20] to the other device's camera, which signals how the devices can communicate to each other. The customer selects the type of verification needed (proof of age or law enforcement) and presents a QR to be scanned by the verifier device.[21]

The Florida Smart ID Verifier application may also be integrated into a point of sale system for a seamless interaction with customers to verify a customer's identity or proof or age. When the

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[14] A credential service provider (CSP) is a trusted entity that issues or registers subscriber tokens and issues electronic credentials to subscribers. The CSP may encompass registration authorities and verifiers that it operates. A CSP may be an independent third party, or may issue credentials for its own use. National Information Technology Laboratory, Computer Security Resource Center, *Glossary*, https://csrc.nist.gov/glossary/term/credential_service_provider (last visited March 12, 2021).

[15] Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, Email to Senate Committee on Transportation, *Mobile DL info*, February 23, 2021.

[16] "Public Key Infrastructure (PKI) is the combination of software, encryption technologies, and services that enables entities to protect the security of their communications and business transactions on networks. Using a combination of private (e.g., secret) key and public key cryptography, PKI enables a number of other security services, including data confidentiality, data integrity and non-repudiation. PKI integrates digital certificates, public key cryptography, and certification authorities into one complete network security architecture." U.S. General Services Administration, Fed ID Card, *What is PKI (Public Key Infrastructure) and why do I need it?*, https://www.fedidcard.gov/faq/what-pki-public-key-infrastructure-and-why-do-i-need-it# (last visited March 12, 2021).

[17] *Supra* note 15.

[18] *Id*.

[19] Near field communication (NFC) is a set of short-range wireless technologies, typically requiring a distance of 4 cm or less to initiate a connection. Developers, *Documentation Guides*, *Near field communication overview*, https://developer.android.com/guide/topics/connectivity/nfc (last visited March 11, 2021).

[20] QR codes or quick response codes are two-dimensional codes that are scanned with a smartphone, connecting individuals to additional online content or information. They are made up of modules arranged on a contrasting background. Digital.gov, *QR Codes*, https://digital.gov/2013/02/14/qr-codes/ (last visited March 11, 2021).

[21] *Supra* note 15.

customer's QR code is scanned, the required information displays on the verifier device. The interaction with the customer device does not store any data, which is protected using encryption within the process.[22]

Verification can be performed in an offline or online mode depending on the verification type. For example, age verification by a retailer is completely offline and does not need to "call back" or interact with the CSP, and would utilize methods, such as Bluetooth, to communicate with the customer's Florida Smart ID. Law enforcement online verification could interact with the CSP to receive the customer's most current driving record.[23]

III. Effect of Proposed Changes:

Digital Proof of Driver License or Identification Card

The bill revises the current law related to DHSMV review and development of an optional digital proof of driver license to require the DHSMV to establish a secure and uniform system that also includes identification cards.[24]

Section 1 amends s. 322.032, F.S., to authorize the DHSMV to contract with one or more private entities to develop an electronic credentialing system, which is defined as a computer system accessed using a computer, a cellphone, or any other personal device which queries the DHSMV's driver license and identification card records, displays or transmits digital proofs of driver licenses and identification cards, and verifies the authenticity of those electronic credentials. The electronic credentialing system may not retain internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.

A digital proof of driver license or identification card established by the DHSMV or by a contracted entity must be in a format that allows verification of the authenticity of the digital proof of driver license or identification card. The bill removes the limitation on the use of the digital proof of driver license or identification card to only law enforcement verification.

Unlike the requirements for a physical driver license or identification card, the bill allows a digital proof of driver license or identification card to comprise a limited profile that includes only information necessary to conduct a specific transaction on the electronic credentialing system.[25]

A person may not be issued a digital proof of driver license or identification card until the person satisfies all requirements for issuance of the respective driver license or identification card and has been issued a printed driver license or identification card. The electronic credentialing system must, upon each presentation of a digital driver license or identification card, display or

[22] *Id*.
[23] *Id*.
[24] The bill defines the terms "digital proof of driver license" and "digital proof of identification card" to mean an electronic credential viewable on an electronic credentialing system.
[25] The bill defines the term "limited profile" to mean an electronic credential containing some, but not all, of the information displayed on a printed driver license or identification card.

transmit current records for the driver license or identification card. If a licensee's driving privilege is suspended, revoked, or disqualified, or if the person's driver license is otherwise canceled or expired, a digital proof of driver license may not be issued; however, a digital proof of identification card may be issued if the licensee is otherwise eligible for an identification card.

Personal Information

The DHSMV may use a telephone number submitted by a licensee or cardholder in connection with a digital driver license or identification card only for purposes of communication regarding the digital proof of driver license or identification card or the motor vehicle records of the licensee or cardholder.

The bill authorizes the DHSMV to enter into a contract with a private entity that authorizes online data calls or offline data verification through the electronic credentialing system that queries the DHSMV's driver license and identification card records, displays or transmits digital proofs of driver licenses or identification cards, or verifies the authenticity of such electronic credentials.

An individual may consent to allow a private entity to collect and store personal information obtained by scanning[26] the individual's digital proof of driver license or identification card. However, the individual must be informed of what information is collected and the purpose or purposes for which the information will be used. If the individual does not want the private entity to scan the digital proof of the individual's driver license or identification card, the private entity may manually collect personal information from the individual.

Except as provided above, a private entity that scans a digital proof of driver license or identification card may not store, sell, or share personal information collected from such scanning of the digital proof of driver license or identification card.

A private entity that violates these provisions is subject to a civil penalty not to exceed $5,000 per occurrence. However, this does not apply to a financial institution as defined in s. 655.005(1)(i), F.S.[27]

SB 1326, which is linked to this bill, creates public records exemptions for:

- Secure login credentials held by the DHSMV; and
- Internet protocol addresses, geolocation data, and other information held by the DHSMV which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal.

[26] The bill defines the term "scanning" to mean obtaining data from a digital proof of driver license or identification card in an electronic format.

[27] Section 655.005(1)(i), F.S., defines "financial institution" to mean a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

False Digital Proof of Identification Card

The bill establishes penalties for a person who manufacturers or possesses a false digital identification card. Specifically, a person who:

- Manufactures a false digital proof of identification card commits a third degree felony, punishable by up to five years in prison[28] and a fine not to exceed $5,000,[29] or punishable under the habitual felony offender statute.[30]
- Possesses a false digital proof of identification card commits a second degree misdemeanor, punishable by up to 60 days in prison[31] and a fine not to exceed $500.[32]

Rulemaking Authority

The bill authorizes the DHSMV to adopt rules to ensure valid authentication of digital driver licenses and identification cards.

Other Related Changes

Section 2 amends s. 322.14, F.S., to clarify that upon successful completion of all required examinations and payment of the required fee the DHSMV will issue to every qualified applicant a *printed* driver license.

Section 3 amends s. 322.15, F.S., to provide that if a law enforcement officer or authorized representative of the DHSMV is unable to immediately verify the digital proof of driver license, upon the demand of the law enforcement officer or authorized representative of the DHSMV, the licensee must present or submit the licensee's printed driver license.

Section 4 reenacts s. 322.15(2), F.S., to incorporate changes made by the bill.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill does not change any current public records exemptions. SB 1326, which is linked to this bill, creates a public records exemption for certain information related to the credentialing system.

[28] Section 775.082, F.S.
[29] Section 775.083(1)(c), F.S.
[30] Section 775.084, F.S.
[31] Section 775.082, F.S.
[32] Section 775.083(1)(e), F.S.

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 an indeterminate fiscal impact on the private sector. Businesses who wish to provide electronic verification of Florida Smart ID will need the retail reader application installed on a mobile device that supports either the android or IOS operating systems. Additionally, if the business prefers to integrate the verification process into its point of sale systems rather than use a mobile device it would require development to be done by the business to integrate a retail reader application into the point of sale systems.[33]

The bill creates a civil penalty of up to $5,000 for each violation of provisions related to personal information and data collection.

C. Government Sector Impact:

State and local law enforcement agencies will need to train their members and update associated enforcement policies for the Florida Smart ID. This may have an indeterminate, likely insignificant fiscal impact on state and local government.[34]

The DHSMV has already undertaken development of the Florida Smart ID through existing law and therefore already has the resources to continue with the expanded requirements of the bill. Due to this, the fiscal impact on the DHSMV is minimal and can be handled within existing resources.[35]

The Criminal Justice Estimating Conference met on March 24, 2021, and estimated that the bill would have an impact of an increase of 10 or fewer prison beds (positive

[33] *Supra* note 12 at p. 7.
[34] *Id*. at p. 6.
[35] *Id*.

insignificant impact). The bill creates a third degree felony for manufacturing a false digital proof of driver license.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the DHSMV to adopt rules to ensure valid authentication of digital driver licenses and identification cards.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 322.032, 322.14, and 322.15.

The bill reenacts section 322.121 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 Committee on Rules on April 20, 2021:

- Ensures that any entity, and not just those contracting with the DHSMV, who scans a digital driver license or ID card, may not store, sell, or share personal information collected from the digital driver license or ID card without an individual's consent.

B. Amendments:

None.

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

744864

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
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The Committee on Rules (Harrell) recommended the following:

Senate Amendment (with title amendment)

Delete line 130

and insert:

entity that scans a

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

And the title is amended as follows:

Delete lines 21 - 22

and insert:

entities for a specified purpose; prohibiting entities

744864

from storing, selling, or sharing

384118

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2021	.	
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The Committee on Rules (Harrell) recommended the following:

Senate Amendment (with title amendment)

Between lines 154 and 155

insert:

Section 2. Subsection (1) of section 322.135, Florida Statutes, is amended to read:

322.135 Driver license agents.—

(1)(a) The department shall, upon application, authorize by interagency agreement any or all of the tax collectors who are constitutional officers under s. 1(d), Art. VIII of the State Constitution in the several counties of the state, subject to

384118

the requirements of law, in accordance with rules of the department, to serve as the department's ~~its~~ agent for the provision of specified driver license services.

~~(a)~~ These services shall be limited to the issuance of driver licenses and identification cards as authorized by this chapter.

(b)1. The Legislature finds that, while digital technologies enhance access to driver license services for most residents, there are underserved populations that remain best served in person by trained professionals, such as license plate agencies, within local communities.

2. Effective October 1, 2021, the tax collectors of Broward and Miami-Dade Counties, at each tax collector's discretion, may participate in a pilot project in which the tax collector contracts with one or more license plate agencies for the provision of all the following specified driver license services:

a. Processing a licensee's application and collecting the required fees for renewal of any driver license that is currently compliant with federal REAL ID Act requirements.

b. Processing a licensee's application for reinstatement of a suspended driver license and collecting the required fees therefor, if the only condition of reinstatement is payment of such fees.

c. Processing a licensee's or cardholder's request to change his or her address and application for a replacement driver license or identification card, and collecting the

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required fees therefor, if the driver license or identification card is currently compliant with federal REAL ID Act requirements.

3. A participating tax collector of Broward or Miami-Dade Counties who, at each tax collector's discretion, participates in a pilot project through which the tax collector contracts with one or more license plate agencies for the provision of specified driver license services shall require each license plate agency with which he or she contracts to enter into a memorandum of understanding with the department pertaining to the specified driver license services and to cover the costs associated with any background checks and equipment and services needed to allow the license plate agency to provide driver license services.

4. The department shall, upon application of each tax collector electing to participate in the pilot project, authorize the tax collector by interagency agreement, subject to the requirements of law and in accordance with department rule, to provide these services as the department's agent through one or more license plate agencies.

5. The department shall prescribe the best manner of delivering the data access and functionalities to license plate agencies for the purpose of providing specified driver license services to ensure compliance with 6 C.F.R. s. 37.

6. A participating tax collector's election to contract with a license plate agency under this paragraph does not

384118

require the tax collector to provide all driver license services authorized under paragraph (a).

7. This paragraph does not authorize a license plate agency to issue driver licenses or identification cards or possess any blank driver licenses or identification cards.

8. Before providing driver license services under this paragraph, all employees of a license plate agency who are engaged in the delivery of driver license services must be fingerprinted, undergo background checks, and are subject to disqualification from providing such services, to the extent required by 6 C.F.R. s. 37.45.

9. Notwithstanding s. 97.057, information gathered under this paragraph for completion of a driver license or identification card renewal or change of address may not be transferred automatically to a voter registration application. A license plate agency providing services under this paragraph shall provide to each licensee or cardholder, in the format prescribed by the department, a printed notice with instructions on how to register to vote or update a voter registration record.

10. If funds to be deposited into the State Treasury are collected under this paragraph by a license plate agency, the funds shall be paid into the State Treasury within the period specified in subsection (6) calculated from the date the funds are collected by the license plate agency.

11. Each participating tax collector shall review implementation of the pilot project and the provision of the

384118

specified driver license services by license plate agencies in its county. The tax collector shall submit a preliminary report of its findings and recommendations to the department by October 1, 2024, and the department shall return comments to the tax collector. By December 31, 2024, the tax collector shall submit a final report, together with the department's comments, to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives.

12. This paragraph expires July 1, 2025.

(c) ~~(b)~~ Each tax collector who is authorized by the department to provide driver license services shall bear all costs associated with providing those services.

(d) ~~(c)~~ A service fee of $6.25 must be charged, in addition to the fees set forth in this chapter, for providing all services pursuant to this chapter. The service fee may not be charged:

1. More than once per customer during a single visit to a tax collector's office.

2. For a reexamination requested by the Medical Advisory Board or required pursuant to s. 322.221.

3. For a voter registration transaction.

4. In violation of any federal or state law.

5. To a veteran receiving any service pursuant to this chapter, upon presentation of a copy of the veteran's:

a. DD Form 214, issued by the United States Department of Defense;

384118

b. Veteran health identification card, issued by the United States Department of Veterans Affairs;

c. Veteran identification card, issued by the United States Department of Veterans Affairs pursuant to the Veterans Identification Card Act of 2015, Pub. L. No. 114-31; or

d. Other acceptable form specified by the Department of Veterans' Affairs.

Section 3. Paragraph (c) of subsection (11) of section 322.20, Florida Statutes, is amended to read:

322.20 Records of the department; fees; destruction of records.—

(11)

(c) The clerks of court and tax collectors authorized under s. 322.135, may provide 3-year, 7-year, or complete driver records to any person requesting such records upon payment of the appropriate fees. In addition to the fees authorized under paragraph (a), clerks of court and tax collectors may assess the fee listed in s. 322.135(1)(d) ~~s. 322.135(1)(c)~~ for this service. The applicable record fees listed in paragraph (a) must be remitted to the department no later than 5 days after payment is received, unless a shorter remittance period is required by law.

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

And the title is amended as follows:

Between lines 34 and 35

insert:

384118

322.135, F.S.; providing legislative findings; authorizing certain tax collectors to participate in a pilot project for the provision of specified driver license services by license plate agencies; providing for participating tax collectors to contract with license plate agencies for the provision of specified driver license services; requiring the department to enter into interagency agreements with participating tax collectors; requiring the department to prescribe the best manner of delivering data access and functionalities to license plate agencies; providing construction; requiring certain license plate agency employees to be fingerprinted and undergo background checks according to specified federal requirements; prohibiting certain driver license or identification card information gathered by license plate agencies from being transferred automatically to a voter registration application; requiring license plate agencies providing certain driver license or identification card services to provide licensees and cardholders with certain printed notices about voter registration; providing for the deposit of funds collected by license plate agencies; requiring each participating tax collector to submit reports relating to the pilot project to the department and to the Governor and the Legislature by specified dates; providing for expiration; amending s. 322.20, F.S.; conforming a cross-reference; amending s.

564816

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/21/2021	.	
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	.	

The Committee on Rules (Harrell) recommended the following:

Senate Amendment (with title amendment)

Between lines 154 and 155

insert:

Section 2. Subsection (1) of section 322.135, Florida Statutes, is amended to read:

322.135 Driver license agents.—

(1)(a) The department shall, upon application, authorize by interagency agreement any or all of the tax collectors who are constitutional officers under s. 1(d), Art. VIII of the State Constitution in the several counties of the state, subject to

564816

the requirements of law, in accordance with rules of the department, to serve as the department's ~~its~~ agent for the provision of specified driver license services.

~~(a)~~ These services shall be limited to the issuance of driver licenses and identification cards as authorized by this chapter.

(b)1. The Legislature finds that, while digital technologies enhance access to driver license services for most residents, there are underserved populations that remain best served in person by trained professionals, such as license plate agencies, within local communities.

2. Effective October 1, 2021, the tax collectors of Broward and Miami-Dade Counties, at each tax collector's discretion, may participate in a pilot project in which the tax collector contracts with one or more license plate agencies for the provision of all the following specified driver license services in compliance with state and federal law, including, but not limited to, the National Voter Registration Act of 1993:

a. Processing a licensee's application and collecting the required fees for renewal of any driver license that is currently compliant with federal REAL ID Act requirements.

b. Processing a licensee's application for reinstatement of a suspended driver license and collecting the required fees therefor, if the only condition of reinstatement is payment of such fees.

c. Processing a licensee's or cardholder's request to change his or her address and application for a replacement

564816

driver license or identification card, and collecting the required fees therefor, if the driver license or identification card is currently compliant with federal REAL ID Act requirements.

3. A participating tax collector of Broward or Miami-Dade Counties who, at each tax collector's discretion, participates in a pilot project through which the tax collector contracts with one or more license plate agencies for the provision of specified driver license services shall require each license plate agency with which he or she contracts to enter into a memorandum of understanding with the department pertaining to the specified driver license services and to cover the costs associated with any background checks and equipment and services needed to allow the license plate agency to provide driver license services. The memorandum of understanding between the department and a license plate agency must address, at a minimum, the authority and responsibility of the department, the tax collector, and the license plate agency; data security and privacy; disclosure of fees to customers to be charged by the license plate agency; approved uses and security of the computer network and equipment used for driver license services; the criminal background checks required of license plate agency owners and employees; fraud prevention and reporting; training for employees of the license plate agency; compliance with department procedures and state and federal law; the license plate agency's duty to supervise its employees; bonding;

564816

remittance of state funds; and grounds for termination of the memorandum of understanding.

4. The department shall, upon application of each tax collector electing to participate in the pilot project, authorize the tax collector by interagency agreement, subject to the requirements of law and in accordance with department rule, to provide these services as the department's agent through one or more license plate agencies.

5. The department shall prescribe the best manner of delivering the data access and functionalities to license plate agencies for the purpose of providing specified driver license services to ensure compliance with 6 C.F.R. s. 37.

6. A participating tax collector's election to contract with a license plate agency under this paragraph does not require the tax collector to provide all driver license services authorized under paragraph (a).

7. This paragraph does not authorize a license plate agency to issue driver licenses or identification cards or possess any blank driver licenses or identification cards.

8. Before providing driver license services under this paragraph, all employees of a license plate agency who are engaged in the delivery of driver license services must be fingerprinted, undergo background checks, and are subject to disqualification from providing such services, to the extent required by 6 C.F.R. s. 37.45.

9. If funds to be deposited into the State Treasury are collected under this paragraph by a license plate agency, the

564816

funds shall be paid into the State Treasury within the period specified in subsection (6) calculated from the date the funds are collected by the license plate agency.

10. Each participating tax collector shall review implementation of the pilot project and the provision of the specified driver license services by license plate agencies in its county. The tax collector shall submit a preliminary report of its findings and recommendations to the department by October 1, 2024, and the department shall return comments to the tax collector. By December 31, 2024, the tax collector shall submit a final report, together with the department's comments, to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives.

11. This paragraph expires July 1, 2025.

(c) ~~(b)~~ Each tax collector who is authorized by the department to provide driver license services shall bear all costs associated with providing those services.

(d) ~~(c)~~ A service fee of $6.25 must be charged, in addition to the fees set forth in this chapter, for providing all services pursuant to this chapter. The service fee may not be charged:

1. More than once per customer during a single visit to a tax collector's office.

2. For a reexamination requested by the Medical Advisory Board or required pursuant to s. 322.221.

3. For a voter registration transaction.

4. In violation of any federal or state law.

564816

5. To a veteran receiving any service pursuant to this chapter, upon presentation of a copy of the veteran's:

a. DD Form 214, issued by the United States Department of Defense;

b. Veteran health identification card, issued by the United States Department of Veterans Affairs;

c. Veteran identification card, issued by the United States Department of Veterans Affairs pursuant to the Veterans Identification Card Act of 2015, Pub. L. No. 114-31; or

d. Other acceptable form specified by the Department of Veterans' Affairs.

Section 3. Paragraph (c) of subsection (11) of section 322.20, Florida Statutes, is amended to read:

322.20 Records of the department; fees; destruction of records.—

(11)

(c) The clerks of court and tax collectors authorized under s. 322.135, may provide 3-year, 7-year, or complete driver records to any person requesting such records upon payment of the appropriate fees. In addition to the fees authorized under paragraph (a), clerks of court and tax collectors may assess the fee listed in s. 322.135(1)(d) ~~s. 322.135(1)(c)~~ for this service. The applicable record fees listed in paragraph (a) must be remitted to the department no later than 5 days after payment is received, unless a shorter remittance period is required by law.

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

564816

And the title is amended as follows:

Between lines 34 and 35

insert:

322.135, F.S.; providing legislative findings; authorizing certain tax collectors to participate in a pilot project for the provision of specified driver license services by license plate agencies; providing for participating tax collectors to contract with license plate agencies for the provision of specified driver license services; requiring the department to enter into interagency agreements with participating tax collectors; requiring the department to prescribe the best manner of delivering data access and functionalities to license plate agencies; providing construction; requiring certain license plate agency employees to be fingerprinted and undergo background checks according to specified federal requirements; requiring license plate agencies providing certain driver license or identification card services to provide licensees and cardholders with certain printed notices about voter registration; providing for the deposit of funds collected by license plate agencies; requiring each participating tax collector to submit reports relating to the pilot project to the department and to the Governor and the Legislature by specified dates; providing for expiration; amending s. 322.20, F.S.; conforming a cross-reference; amending s.

802498

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/21/2021	.	
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The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (564816) (with title amendment)

Delete line 105
and insert:
11. A license plate agency must charge the same fees as those charged by a tax collector. All standards specified in statute which apply to services provided by tax collectors also apply to services provided by license plate agencies.
12. This paragraph expires July 1, 2025.

802498

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 172
and insert:
specified dates; requiring license plate agencies to charge the same fees as those charged by tax collectors; providing that all standards specified in statute which apply to services provided by tax collectors also apply to services provided by license plate agencies; providing for expiration; amending s.

By Senator Harrell

25-01611A-21 20211324__

A bill to be entitled

An act relating to digital driver licenses and identification cards; amending s. 322.032, F.S.; defining terms; requiring the Department of Highway Safety and Motor Vehicles to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards; authorizing the department to contract with one or more private entities to develop an electronic credentialing system; prohibiting such electronic credentialing system from retaining certain information; revising requirements for digital proofs of driver licenses and providing requirements for digital proofs of identification cards; revising the department's rulemaking authority; revising requirements for the issuance of digital proofs of driver licenses and identification cards; authorizing the department to use telephone numbers submitted by licensees and cardholders for specified purposes only; authorizing the department to enter into contracts with private entities for a specified purpose; prohibiting such private entities from storing, selling, or sharing personal information collected from scanning the digital proofs of driver licenses and identification cards; providing an exception by authorizing individuals to consent to allow private entities to collect and store such personal information; requiring that an individual is informed what information is collected in such scans and the purposes for which the

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

25-01611A-21 20211324__

information will be used; authorizing private entities to manually collect personal information from individuals under certain circumstances; providing a civil penalty; providing applicability; conforming provisions to changes made by the act; amending s. 322.14, F.S.; conforming a provision to changes made by the act; amending s. 322.15, F.S.; conforming a provision to changes made by the act; requiring a licensee to present or submit his or her printed driver license to a law enforcement officer or an authorized representative of the department under specified circumstances; reenacting s. 322.121(2), F.S., relating to periodic reexamination of all drivers, to incorporate the amendment made to s. 322.15, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 322.032, Florida Statutes, is amended to read:

322.032 Digital proof of driver license or identification card.—

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

(a) "Digital proof of driver license" means an electronic credential viewable on an electronic credentialing system.

(b) "Digital proof of identification card" means an electronic credential viewable on an electronic credentialing system.

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

(c) "Electronic credentialing system" means a computer system accessed using a computer, a cellular telephone, or any other personal device which queries the department's driver license and identification card records, displays or transmits digital proofs of driver licenses and identification cards, and verifies the authenticity of those electronic credentials.

(d) "Limited profile" means an electronic credential containing some, but not all, of the information displayed on a printed driver license or identification card.

(e) "Scanning" means obtaining data from a digital proof of driver license or identification card in an electronic format.

(2)(a) The department shall establish ~~begin to review and prepare for the development of~~ a secure and uniform system for issuing an optional digital proof of driver license or identification card. The department may contract with one or more private entities to develop an electronic credentialing ~~a digital proof of driver license~~ system.

(b) The electronic credentialing system may not retain Internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.

(3)(a) ~~(2)~~ The digital proof of driver license or identification card established ~~developed~~ by the department or by an entity contracted by the department must be in such a format as to allow verification of ~~law enforcement to verify~~ the authenticity of the digital proof of driver license or identification card. The department may adopt rules to ensure valid authentication of digital driver licenses and

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

identification cards ~~by law enforcement~~.

(b)1. Notwithstanding ss. 322.14, 322.141, 322.142, and any other law prescribing the design for, or information required to be displayed on, a driver license, a digital proof of driver license may comprise a limited profile that includes only information necessary to conduct a specific transaction on the electronic credentialing system.

2. Notwithstanding ss. 322.051, 322.141, and any other law prescribing the design for, or information required to be displayed on, an identification card, a digital proof of identification card may comprise a limited profile that includes only information necessary to conduct a specific transaction on the electronic credentialing system.

(4) ~~(3)~~ A person may not be issued a digital proof of driver license or identification card until he or she satisfies all ~~has satisfied all of the~~ requirements of this chapter for issuance of the respective ~~a physical~~ driver license or identification card and has been issued a printed driver license or identification card. The electronic credentialing system must, upon each presentation of a digital driver license or identification card, display or transmit current records for the driver license or identification card. If a licensee's driving privilege is suspended, revoked, or disqualified, or if his or her driver license is otherwise canceled or expired, a digital proof of driver license may not be issued; however, a digital proof of identification card may be issued if the licensee is otherwise eligible for an identification card under s. 322.051 ~~as provided in this chapter~~.

(5) The department may use a telephone number submitted by

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

a licensee or cardholder in connection with a digital driver license or identification card only for purposes of communication regarding the digital proof of driver license or identification card or the motor vehicle records, as defined in s. 119.0712(2)(a), of the licensee or cardholder.

(6) The department may enter into a contract with a private entity which authorizes online data calls or offline data verification through the electronic credentialing system that queries the department's driver license and identification card records, displays or transmits digital proofs of driver licenses or identification cards, or verifies the authenticity of such electronic credentials.

(7)(a) Except as provided in paragraph (b), a private entity that contracts with the department and that scans a digital proof of driver license or identification card may not store, sell, or share personal information collected from such scanning of the digital proof of driver license or identification card.

(b) An individual may consent to allow a private entity to collect and store personal information obtained by scanning his or her digital proof of driver license or identification card. However, the individual must be informed what information is collected and the purpose or purposes for which the information will be used. If the individual does not want the private entity to scan his or her digital proof of the individual's driver license or identification card, the private entity may manually collect personal information from the individual.

(c) A private entity that violates this subsection is subject to a civil penalty not to exceed $5,000 per occurrence.

(d) This subsection does not apply to a financial institution as defined in s. 655.005(1)(i).

(8)~~(4)~~ A person who:

(a) Manufactures a false digital proof of driver license or identification card commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Possesses a false digital proof of driver license or identification card commits a misdemeanor of the second degree, punishable as provided in s. 775.082.

Section 2. Paragraph (a) of subsection (1) of section 322.14, Florida Statutes, is amended to read:

322.14 Licenses issued to drivers.—

(1)(a) The department shall, upon successful completion of all required examinations and payment of the required fee, issue to every qualified applicant a printed driver license that must bear a color photograph or digital image of the licensee; the name of the state; a distinguishing number assigned to the licensee; and the licensee's full name, date of birth, and residence address; a brief description of the licensee, including, but not limited to, the licensee's gender and height; and the dates of issuance and expiration of the license. A space shall be provided upon which the licensee shall affix his or her usual signature. A license is invalid until it has been signed by the licensee except that the signature of the licensee is not required if it appears thereon in facsimile or if the licensee is not present within the state at the time of issuance.

Section 3. Subsection (1) of section 322.15, Florida Statutes, is amended to read:

322.15 License to be carried and exhibited on demand;

fingerprint to be imprinted upon a citation.—

(1) Every licensee shall have his or her driver license, which must be fully legible with no portion of such license faded, altered, mutilated, or defaced, in his or her immediate possession at all times when operating a motor vehicle and shall present or submit the same upon the demand of a law enforcement officer or an authorized representative of the department. A licensee may present or submit a digital proof of driver license as provided in s. 322.032 in lieu of his or her printed ~~a physical~~ driver license; however, if the law enforcement officer or authorized representative of the department is unable to immediately verify the digital proof of driver license, upon the demand of the law enforcement officer or authorized representative of the department, the licensee must present or submit his or her printed driver license.

Section 4. For the purpose of incorporating the amendment made by this act to section 322.15, Florida Statutes, in a reference thereto, subsection (2) of section 322.121, Florida Statutes, is reenacted to read:

322.121 Periodic reexamination of all drivers.—

(2) For each licensee whose driving record does not show any revocations, disqualifications, or suspensions for the preceding 7 years or any convictions for the preceding 3 years except for convictions of the following nonmoving violations:

(a) Failure to exhibit a vehicle registration certificate, rental agreement, or cab card pursuant to s. 320.0605;

(b) Failure to renew a motor vehicle or mobile home registration that has been expired for 6 months or less pursuant to s. 320.07(3)(a);

(c) Operating a motor vehicle with an expired license that has been expired for 6 months or less pursuant to s. 322.065;

(d) Failure to carry or exhibit a license pursuant to s. 322.15(1); or

(e) Failure to notify the department of a change of address or name within 10 days pursuant to s. 322.19,

the department shall cause such licensee's license to be prominently marked with the notation "Safe Driver."

Section 5. 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)

4/20/21
Meeting Date

1324
Bill Number (if applicable)

564816
Amendment Barcode (if applicable)

Topic Driver Licenses

Name Kelly Mallette

Job Title

Address 104 W. Jefferson St
Street
Tallahassee, FL 32301
City *State* *Zip*

Phone (850) 224-3427

Email kelly@rlbookpa.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fl. Association of Motorist Service Providers

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

4/20/2021 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1324

Meeting Date *Bill Number (if applicable)*

384118

Amendment Barcode (if applicable)

Topic Digital Driver Licenses

Name Timothy Qualls

Job Title General Counsel

Address 216 South Monroe St. Phone 850 222 7206

Street

Tallahassee FL 32301 Email tqualls@gvlaw.net

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against

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

Representing FL Tax Collectors 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.

This information was not read 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:	CS/SB 1326
INTRODUCER:	Transportation Committee and Senator Harrell
SUBJECT:	Public Records/Department of Highway Safety and Motor Vehicles
DATE:	April 19, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	**Fav/CS**
2.	Wells	Sadberry	AP	**Favorable**
3.	Proctor	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1326 creates public record exemptions related to creation of a digital proof of driver license and identification card and an electronic credentialing system to use such digital cards. The bill makes the following information exempt from public records:

- Secure login credentials held by the Department of Highway Safety and Motor Vehicles (DHSMV); and
- Internet protocol addresses, geolocation data, and other information held by the DHSMV which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses the public-facing portal.

The bill is subject to the Open Government Sunset Review Act and the new exemptions will be repealed on October 2, 2026, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each chamber of the Legislature is required for passage.

The bill takes effect on the same date that SB 1324 or similar legislation takes effect (July 1, 2021), if such legislation is adopted in the same legislative session or an extension thereof and becomes a 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, 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 chamber of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate* (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives* (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).

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 Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended[17] 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]

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[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).
[11] *Id*. *See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[16] Section 119.15, F.S.
[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[18] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[19] Section 119.15(3), F.S.
[20] Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

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 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]

Driver Privacy Protection Act of 1994

Motorist personal information, when held by the DHSMV in motor vehicle records, is confidential pursuant to the Driver's Privacy Protection Act of 1994.[27] Personal information covered by the act includes: access to an individual's social security number, driver license or identification card number, name, address (except the zip code), telephone number, and medical or disability information contained in motor vehicle and driver license records. Additionally, emergency contact information and email addresses are restricted pursuant to s. 119.0712(2), F.S.[28]

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[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] 18 USC 2721 et seq., and s. 119.0712(2), F.S.
[28] DHSMV, *Privacy Statement: Driver Privacy Protection Act*, available at https://www.flhsmv.gov/privacy-statement/driver-privacy-protection-act/ (last visited on April 8, 2021).

Information that is not covered by the Driver's Privacy Protection Act, and therefore considered public information, includes non-personal information contained in motor vehicle and driver license records such as vehicular crash records, driving violations, and driver status information.[29]

The Driver's Privacy Protection Act allows the release of personal information in motor vehicle and driver license records for specific permissible uses. These include uses for:[30]

- Matters related to motor vehicle or driver safety and theft, motor vehicle recalls;
- By any government agency, including any court or law enforcement agency, in carrying out its functions;
- Verifying personal information submitted in the normal course of business by a legitimate business or its agents, employees, or contractors;
- Claims investigation activities, antifraud activities, rating, or underwriting by insurers;
- Other activities when there is consent of the individual to whom the information pertains; and
- Other specifically authorized activities under state law if such use is related to the operation of a motor vehicle or public safety.

SB 1324 – Digital Driver Licenses and Identification Cards

SB 1324 requires the Department of Highway Safety and Motor Vehicles (DHSMV) to establish a secure and uniform system for issuing optional digital proofs of driver licenses and identification cards. The bill amends s. 322.032, F.S., to authorize the DHSMV to contract with one or more private entities to develop an electronic credentialing system, which is defined as a computer system accessed using a computer, a cellphone, or any other personal device which queries the DHSMV's driver license and identification card records, displays or transmits digital proofs of driver licenses and identification cards, and verifies the authenticity of those electronic credentials. The electronic credentialing system may not retain internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system. The bill prohibits a private entity who contracts for data verification through an electronic credentialing system with the DHSMV from storing, selling, or sharing personal information collected by scanning a digital proof of driver license or identification card unless consent has been provided by the individual.

III. Effect of Proposed Changes:

The bill amends s. 119.0712, F.S., creating public record exemptions for the following information held by the DHSMV before, on, or after the effective date of the exemption (July 1, 2021):

- Secure login credentials; and
- Internet protocol addresses, geolocation data, and other information held by the DHSMV that describes the location, computer, computer system, or computer network from which a user

[29] *Id*.
[30] 18 USC 2721(b) (2000). *See also* Driver's Privacy Protection Act exemptions listed in DHSMV forms *Driver License Records Request*, HSMV 90511 (Revised 11/19), available at https://www.flhsmv.gov/pdf/forms/90511.pdf and *Motor Vehicle, Vessel, and Mobile Home Records Request*, HSMV 90510 (Revised 03/19), available at https://www.flhsmv.gov/pdf/forms/90510.pdf (both last visited April 8, 2021).

accesses a public-facing portal and the dates and times that a user accesses a public-facing portal.

The bill defines "secure login credentials" as:

- Information collected or issued by the DHSMV to authenticate a user logging into an account on a computer, computer system, computer network, or an electronic device; or
- An online user account accessible over the Internet by a mobile device, website, or other electronic means.
- The term includes user identifications and passwords; personal identification numbers; security questions and answers; and e-mail addresses, telephone numbers, and human biometric information used for authentication or password recovery.

The bill defines "public-facing portal" as a web portal or computer application accessible by the public over the Internet, whether through a mobile device, website, or other electronic means, which is established for administering motor vehicle titles and registrations, driver licenses, identification cards, vessel titles and registrations, or any other provision of law conferring duties upon the DHSMV.

The bill is subject to the Open Government Sunset Review Act and the exemptions will be repealed on October 2, 2026, unless reviewed and reenacted by the Legislature. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each chamber of the Legislature is required for passage.

The bill contains a public necessity statement as required by the Florida Constitution. It provides that the Legislature finds that:

- Safeguarding the integrity and accuracy of data systems maintained by the DHSMV is of paramount public importance. Because the data systems contain critical information related to driver licenses, state identification cards, motor vehicles and vessels, and Florida Highway Patrol law enforcement records, some of which is also protected from disclosure by the federal Driver's Privacy Protection Act, unauthorized access to the systems poses a serious threat to the integrity and accuracy of the data contained therein. Additionally, unauthorized disclosure of personal information contained in those systems may subject users to identity theft, financial harm, or other adverse impacts.
- Development in information technology allows the DHSMV to make secure transactions more readily available to the public through expanded use of online user accounts accessible over the Internet. However, public release of users secure login credentials, Internet protocol addresses, and geolocation data could make the data systems vulnerable to unauthorized access.
- To safeguard user accounts from unauthorized access and avert the unauthorized disclosure of personal information it is a public necessity that secure login credentials, Internet protocol addresses, and geolocation data be exempt from public records requirements. Without the public records exemption, the effective and efficient administration of user accounts would be hindered.

The bill is effective on the same date that SB 1324 or similar legislation takes effect (July 1, 2021), if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for secure login credentials held by the DHSMV and Internet protocol addresses, geolocation data, and other information held by the DHSMV that describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal and the dates and times that a user accesses a public-facing portal. 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, 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 secure login credentials and certain Internet protocol addresses, geolocation data, and other information held by the DHSMV. This bill exempts only that specific 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 identified.

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 119.0712 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 Transportation on March 10, 2021:

- Amends the effective date to reflect the linked bill SB 1324.

B. Amendments:

None.

By the Committee on Transportation; and Senator Harrell

596-02656-21 20211326c1

A bill to be entitled

An act relating to public records; amending s. 119.0712, F.S.; providing exemptions from public records requirements for secure login credentials, Internet protocol addresses, and geolocation data held by the Department of Highway Safety and Motor Vehicles; providing retroactive application; defining the terms "secure login credentials" and "public-facing portal"; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (e) is added to subsection (2) of section 119.0712, Florida Statutes, to read:

119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.—

(2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—

(e)1. Secure login credentials held by the Department of Highway Safety and Motor Vehicles are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to secure login credentials held by the department before, on, or after the effective date of the exemption. For purposes of this subparagraph, the term "secure login credentials" means information collected or issued by the department for purposes of authenticating a user logging into a user account on a computer, a computer system, a computer

network, or an electronic device; or an online user account accessible over the Internet, whether through a mobile device, a website, or any other electronic means. The term includes, but is not limited to, user identifications and passwords; personal identification numbers; security questions and answers; and e-mail addresses, telephone numbers, and human biometric information used for authentication or password recovery.

2. Internet protocol addresses, geolocation data, and other information held by the Department of Highway Safety and Motor Vehicles which describes the location, computer, computer system, or computer network from which a user accesses a public-facing portal, and the dates and times that a user accesses a public-facing portal, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by the department before, on, or after the effective date of the exemption. For purposes of this subparagraph, the term "public-facing portal" means a web portal or computer application accessible by the public over the Internet, whether through a mobile device, website, or other electronic means, which is established for administering chapter 319, chapter 320, chapter 322, chapter 328, or any other provision of law conferring duties upon the department.

3. 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 secure login credentials, Internet protocol addresses, and geolocation data held by the Department of

Highway Safety and Motor Vehicles for purposes of authenticating a user logging into a user account be exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that safeguarding the integrity and accuracy of data systems maintained by the Department of Highway Safety and Motor Vehicles is of paramount public importance. Those systems comprise critical information related to driver licenses, state identification cards, motor vehicles and vessels, and Florida Highway Patrol law enforcement records. Those systems also comprise personal information restricted from public disclosure by the federal Driver's Privacy Protection Act of 1994. Accordingly, unauthorized access to those systems poses a serious threat to the integrity and accuracy of the data contained therein. Moreover, the unauthorized disclosure of personal information contained in those systems may subject users to identity theft, financial harm, or other adverse impacts. The Legislature further finds that development in information technology allows the Department of Highway Safety and Motor Vehicles to make secure transactions more readily available to the public through expanded use of online user accounts accessible over the Internet, including applications such as digital driver licenses. The public release of secure login credentials, Internet protocol addresses, and geolocation data would render these data systems vulnerable to unauthorized access. The Legislature finds that, to safeguard user accounts from unauthorized access and avert the unauthorized disclosure of personal information, it is a public necessity that secure login credentials, Internet protocol addresses, and geolocation data be exempt from public records

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

requirements and, without the public records exemption, the effective and efficient administration of user accounts would be hindered.

Section 3. This act shall take effect on the same date that SB 1324 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1408
INTRODUCER:	Banking and Insurance Committee and Senator Burgess
SUBJECT:	Department of Financial Services
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	**Fav/CS**
2.	Sanders	Sadberry	AP	**Favorable**
3.	Schrader	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1408 amends sections of Florida Statutes governing the following Department of Financial Services (DFS) Divisions: Investigative and Forensic Services; Public Assistance Fraud; Funeral, Cemetery, and Consumer Services; and State Fire Marshal. The bill:

- Designates the Division of Public Assistance Fraud a criminal justice agency;
- Adds firefighter cancer into the self-insurance coverages provided by Risk Management and requires the Department of Management Services to verify and approve such payments prior to distribution from the State Risk Management Trust Fund;
- Prohibits employees who fall under the State Risk Management Trust Fund from engaging in retaliatory conduct against a sexual harassment victim;
- Provides that willful and knowing dissemination of the identifying information of a sexual harassment victim is a misdemeanor of the first degree;
- Amends the composition requirements of the Board of Funeral, Cemetery, and Consumer Services; clarifies member requirements; amends the definition of "quorum" to enable ease of business; removes term staggering requirements; and clarifies rulemaking responsibilities;
- Clarifies and provides grounds for disqualification of Funeral, Cemetery, and Consumer Services licensure applicants based on criminal history;
- Amends provisions for criminal background checks for Funeral, Cemetery, and Consumer Services licensure applicants;
- Prohibits specific unlicensed funeral activity and increases the penalty to a third-degree felony;

- Increases criminal penalties associated with unlicensed Funeral, Cemetery, and Consumer Services activity;
- Updates the definition of "two-component explosive" to reflect changes in the marketplace;
- Allows contractors to begin repairs on a previously permitted fire alarm prior to receiving a permit to do so, yet maintains that such repair will not be compliant until permitted and approved;
- Amends continuing education requirements for individuals licensed to solicit, sell, or adjust insurance in the state;
- Amends provisions regarding appointments to transact insurance or adjust claims on behalf of an insurer or employer to apply certain deadlines to renewal appointments and to revise procedures and requirements when an individual was not properly appointed by inadvertent error;
- Increases the maximum license suspension time for title insurance agents and agencies;
- Removes a requirement for personal residential property agents to notify an insured regarding coverage from Citizens Property Insurance Corporation before exporting a policy to the surplus lines marketplace;
- Prohibits an insurance agent or agency from giving, or a lender from requiring, a copy of an insurer's proprietary underwriting information as a condition precedent to extending credit secured by real estate and prohibiting an insurance agent or agency from providing such information without authorization;
- Allows flood insurance coverage to be exported to a surplus lines insurer without the agent first seeking to place the coverage with an admitted insurer;
- Amends the Fire and Emergency Incident Information Reporting Program by replacing "fire protection agencies" with "fire service providers" and defines the term "fire service provider";
- Revises the composition of the Fire and Emergency Incident Information System Technical Advisory Panel;
- Extends assessment and compliance deadlines by three years with regards to minimum radio signal strength for fire department communications and two-way radio systems;
- Prohibits influencing a firesafety inspector to violate applicable law through threats, coercion, trickery, or compensation, and prohibits a firesafety inspector knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept a bribe;
- Revises the composition of the Firefighters Employment, Standards, and Training Council;
- Allows fire service providers to hire volunteer firefighters, and allows them to continue to function in a volunteer firefighter capacity for the first year of employment while they obtain career firefighter certifications;
- Creates a criminal penalty for aiding and abetting a person engaged in unlicensed bail bond agent activity; and
- Expands the applicability of criminal penalties for impersonation of investigators and personnel of the DFS.

The DFS has indicated minor modifications will need to be made to the Division of Insurance Agent and Agency Services systems in order to create a tool for enabling or disabling the ability of a party to appoint licensees. The DFS indicates these changes can be addressed during ongoing system updates and within existing resources.

The bill has an indeterminate negative fiscal impact to the State Risk Management Trust Fund. The DFS estimates expenses relating to self-insuring firefighter cancer benefits to be less than $100,000 annually.

The Criminal Justice Impact Conference has not yet adopted a prison bed impact for this legislation and the fiscal impact relating to those penalties is positive/negative indeterminate.

The bill, except as otherwise expressly provided, has an effective date of July 1, 2021.

II. Present Situation:

The Department of Financial Services (DFS) is statutorily responsible for:

- Carrying out the state's accounting and auditing functions, including preparing the state's Comprehensive Annual Financial Report; monitoring state contracts; and making payment for state expenditures.
- Implementing state fire prevention and control measures, including the investigation of arson and other suspicious fires; training and certification of firefighter candidates; and regulation of explosive storage and use.
- Operating the state's risk management program and securing insurance and reinsurance for covered state liabilities.
- Managing the state Treasury and directing safekeeping and the investment of all state funds.
- Managing the deferred compensation program for state employees.
- Investigating fraud, including insurance fraud, public assistance fraud, and false claims against the state.
- Regulating cemeteries and funeral homes.
- Licensing and oversight of insurance agents and agencies.
- Ensuring that Florida employers provide workers' compensation coverage for their employees in a cost effective manner.
- Assisting consumers in the resolution of issues pertaining to insurance and funeral services.
- Collecting and returning unclaimed property belonging to Florida residents.[1]

The DFS is composed of the following divisions:

- Accounting and Auditing;
- Administration;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;

[1] Florida Department of Financial Services, *Statement of Agency Organization and Operation*, https://www.myfloridacfo.com/sitepages/required/agencyorg.aspx (last visited March 4, 2021).

- Unclaimed Property; and
- Workers' Compensation.[2]

Division of Public Assistance Fraud

The Division of Public Assistance Fraud (DPAF) is responsible for enforcing state laws regarding program eligibility and proper use of public assistance benefits. The DPAF is responsible for investigating allegations of fraud related to the Cash Assistance/Temporary Assistance for Needy Families (TANF) program, the Supplemental Nutritional Assistance Program (SNAP), Medicaid recipients, disaster assistance/emergency benefits, the School Readiness and Voluntary Pre-Kindergarten programs, and Social Security Disability benefits.[3]

According to the DFS, the DPAF has operated as a criminal justice agency since its inception in 1972.[4] However, when the Division of Investigative and Forensic Services (DIFS) was created in 2016, under ch. 20, F.S., the DPAF was not designated as a criminal justice agency, thereby limiting the DPAF's access to information within criminal records systems. Under Florida law, a criminal justice agency is defined, in part, as any governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.[5] The DPAF currently operates, in part, as a criminal justice agency. However, current law does not definitively reflect this designation.

State Risk Management

The State Risk Management Trust Fund (trust fund) is administered by the DFS and is a self-insurance fund.[6] The trust fund provides various types of insurance to all departments of the State of Florida, including their employees, agents, and volunteers.[7] The trust fund provides the following insurance coverage:

- Property claims for all buildings, whether financed in whole or in part by revenue bonds or certificates, and the contents thereof of any other buildings leased or rented by the state, to include manufactured homes and contents. This coverage includes:[8]

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[2] Florida Department of Financial Services, *Divisions and Offices* https://www.myfloridacfo.com/ (last visited March 4, 2021)
[3] Division of Public Assistance, https://myfloridacfo.com/Division/PAF/ (last visited March 6, 2021).
[4] Department of Financial Services, *Legislative Bill Analysis of SB 1408* (March 4, 2021) (on file with Senate Banking and Insurance Committee).
[5] Section 943.045(11)(e), F.S. *See also*: s. 943.045(2), F.S.; the term "administration of criminal justice" means "performing functions of detection, apprehension, detention, pretrial release, post trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders by governmental agencies. The administration of criminal justice includes criminal identification activities and the collection, processing, storage, and dissemination of criminal justice information by governmental agencies." Section 943.045(11)(a)-(e), F.S., defines a criminal justice agency as a court, the Department of Law Enforcement, the Department of Juvenile Justice, the protective investigations component of the Department of Children and Families, which investigates the crime of crimes of abuse and neglect, and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule court and that allocates a substantial part of its annual budget to the administration of criminal justice.
[6] Section 284.30, F.S.
[7] Section 284.31, F.S.
[8] Section 284.01, F.S.

- Loss from fire, lightning, sinkholes, and hazards customarily insured by extended coverage;
- Loss from removal of personal property from such properties when endangered by covered perils;
- Flood insurance to the extent necessary to meet self-insurance requirements under the National Flood Insurance Program;
- Rental value insurance is provided to indemnify the state or its agencies for loss of income when such rental income insurance is required to be carried by bonding or revenue certificates or resolutions; and
- Rental value insurance is also provided to indemnify the state or its agencies for loss of income from those buildings operated and maintained by the Department of Management Services from the Supervision Trust Fund.

- Casualty claims, to include:[9]
  - Workers' compensation;
  - General liability:
    - Premises and operations;
    - Personal injury; and
    - Professional malpractice liability;[10]
  - Fleet automotive liability;
  - Federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes; and
  - Court-awarded fees in other proceedings against the state, except for such awards in eminent domain or for inverse condemnation or awards by the Public Employees Relations Commission.

Separate accounts must be kept for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, and court-awarded attorney's fees barring certain exceptions.[11]

Each entity covered by the trust fund must develop and implement a loss prevention program, provide for regular and periodic facility and equipment inspections, investigate job-related employee accidents, and establish a program to promote increased safety awareness among employees.[12] The Division of Risk Management, within the DFS, provides loss prevention services and technical assistance to state agencies and universities for managing risk.[13]

Premiums, as calculated on all coverages, are billed and charged to each state agency according to coverages obtained from the trust fund.[14, 15] All premiums paid into the trust fund and all moneys received from the trust fund from investment or any other source, are held by the DFS

[9] Section 284.30, F.S.
[10] Department of Financial Services, Division of Risk Management, *Insurance Coverage Provided*, https://www.myfloridacfo.com/Division/Risk/liability/LiabilityInsuranceCoverage.htm (last visited March 4, 2021).
[11] Section 284.31, F.S.
[12] Section 284.501(1), F.S.
[13] Department of Financial Services, Division of Risk Management, *Welcome to the Division of Risk Management*, https://www.myfloridacfo.com/Division/Risk/ (last visited March 6, 2021).
[14] Section 284.02(1), F.S.
[15] Section 284.36, F.S.

for the purpose of paying losses, expenses incurred in adjustment of losses, premiums for reinsurance, risk and claims management, and operating expenses.[16, 17]

Firefighters

A "firefighter" is defined as a person who is employed full-time by the state or local governments and whose primary responsibilities are the prevention and extinguishing of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.[18]

Benefits in Lieu of Workers Compensation Benefits

Upon a diagnosis of cancer as defined in s. 112.1816, F.S., a firefighter is entitled to certain benefits, as an alternative to pursuing workers' compensation benefits under ch. 440, F.S., if the firefighter has been employed by his or her employer for at least five continuous years, has not used tobacco products for at least the preceding five years, and has not been employed in any other position in the preceding five years which is proven to create a higher risk for cancer. The benefits are:

- Cancer treatment covered within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse the firefighter for out-of-pocket deductible, copayment, or coinsurance costs incurred by the firefighter.
- A one-time cash payout of $25,000, upon the firefighter's initial diagnosis of cancer.[19]

If the firefighter elects to continue coverage in the employer-sponsored health plan or group health insurance trust fund after he or she terminates employment, the benefits must be made available by a former employer of a firefighter for 10 years following the date that the firefighter terminates employment, so long as the firefighter has otherwise met the employment criteria when he or she terminated employment and was not subsequently employed as a firefighter following that date. A firefighter's cancer diagnosis must be considered an injury or illness incurred in the line of duty by the employer for purposes of determining leave time and employee retention policies.[20]

Confidentiality of the Personal Identifying Information of Sexual Harassment Victims

Under s. 119.071(2)(n), F.S., the personal identifying information of an alleged victim in an allegation of sexual harassment is confidential and exempt from the public records requirements specified in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. However, the information may be disclosed to a governmental entity when such disclosure is in the furtherance of such entity's official duties and responsibilities.

[16] Section 284.02(2), F.S.
[17] Section 284.37, F.S.
[18] *See* ss. 112.81, 112.191, 112.1816, and 633.102(9), F.S.
[19] Section 112.1816(2)
[20] *Id.*

Funeral, Cemetery, and Consumer Services

Composition and Business of the Board of Funeral, Cemetery, and Consumer Services

Section 20.121(4), F.S., creates the Board of Funeral, Cemetery, and Consumer Services (board) within the Division of Funeral, Cemetery, and Consumer Services of the DFS. The board acts as the licensing and rulemaking authority for the purposes of certain matters related to examinations and other substantive requirements for licensure within the death care industry under ch. 497, F.S., including facility requirements.[21]

Currently, the board must have 10 members; one member must be the State Health Officer, or their designee, and the remaining nine members must be nominated by the Chief Financial Officer (CFO), appointed by the Governor, and confirmed by the Senate.[22] The composition of the board must be as follows:

- The State Health Officer;
- Two funeral directors who are:
  - Licensed under part III of ch. 497, F.S., as funeral directors, and
  - Associated with a funeral establishment;
- One funeral director who is:
  - Licensed under part III of ch. 497, F.S.,
  - Associated with a funeral establishment licensed under part III of ch. 497, F.S., that has a valid preneed license issued pursuant to ch. 497, F.S., and
  - Operates an incinerator facility that is approved under ch. 403, F.S., and licensed under part IV of ch. 497, F.S.;
- Two persons whose primary occupation is associated with a licensed cemetery;
- Three consumers who:
  - Are residents of Florida;
  - Have never been licensed funeral directors or embalmers;
  - Are not connected with a cemetery or licensed cemetery company;
  - Are not connected to the death care industry or the practice of embalming, funeral directing, or direct disposition;
  - At least one of which is at least 60 years of age; and
  - At least one of which is a licensed certified public accountant; and
- One principal of a monument establishment licensed under ch. 497, F.S., as a monument builder.

Two or more members must not be principals or employees of the same company or partnership, or group of companies or partnerships under common control.[23] The DFS reports that the CFO often does not receive a sufficient amount of applications to fill member positions.[24] For

[21] *See* s. 497.103(1)(a)-(cc), F.S. Licenses available to natural persons include: embalmer apprentice and intern; funeral directors and intern; funeral director and embalmer, direct disposer, monument establishment sales agent, and preneed sales agent. Section 497.141(12)(a), F.S. Licenses available to natural persons, corporations, limited liability companies, and partnerships include: funeral establishment, centralized embalming facility, refrigeration facility, direct disposal establishment, monument establishment, cinerator facility, removal service, preneed sales business under s. 497.453, F.S., and cemetery. Section 497.141(12)(b)-(c), F.S.

[22] Section 497.101(1), F.S.

[23] Section 497.101(2), F.S.

[24] *See supra* note 4.

example, the position that must be filled by a certified public accountant has remained vacant since September 2017.[25]

Board members are appointed for four-year terms, except for the State Health Officer, who serves as long as they hold office.[26] The CFO was directed to stagger the terms of members after the terms of the initial members expired[27] and this has already occurred at the initiation of the board.[28]

A quorum is necessary to conduct the business of the board. A quorum consists of six members of the board.[29] The DFS indicates that it can be difficult to obtain this number due to board vacancies, absenteeism, and necessary recusal.[30]

The DFS is required to adopt rules regarding application forms and procedures for appointment to the board.[31]

Disqualification of Licensure Applicants Licensing Background Checks

Currently, Florida law does not specifically disqualify applicants for licensure relating to funeral, cemetery, and consumer services under ch. 497, F.S., if said applicants have been found guilty of certain crimes. However, such applicants must provide certified true copies of any crime committed in any jurisdiction, within the 10 years preceding their application, in order to deem the application complete.[32] Currently, regardless of whether adjudication is entered or withheld by a court, disclosure of the following crimes is required:

- Any felony or misdemeanor, no matter when committed, that was directly or indirectly related to the practice or business of funeral directing, embalming, direct disposition, cremation, funeral or cemetery preneed sales, funeral establishment operations, cemetery operations, or cemetery monument or marker sales or installation;[33]
- Any other felony that was committed within the 20 years immediately preceding the application under this chapter;[34] and
- Any other misdemeanor that was committed within the five years preceding the application under this chapter.[35]

Unlicensed Practice

Chapter 497, F.S., requires individuals to maintain a license for specified death care industry practices. The DFS is authorized to issue administrative complaints against entities believed to be in violation of licensure requirements.[36] Section 497.159, F.S., additionally provides for

[25] *Id.*
[26] Section 497.101(3), F.S.
[27] *Id.*
[28] *See supra* note 4.
[29] Section 497.101(6), F.S.
[30] *See supra* note 4.
[31] *Id.*, s. 497.103(2)(c), F.S.
[32] Section 497.142(9), F.S.
[33] Section 497.142(10)(c)1., F.S.
[34] Section 97.142(10)(c)2., F.S.
[35] Section 497.142(10)(c)3., F.S.
[36] Section 497.157(2), F.S.

criminal penalties for unlicensed activities, with such activities being a second degree misdemeanor, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.[37]

Continuing Education Requirements

Pursuant to s. 626.2815, F.S., individuals licensed to engage in the sale of insurance or adjustment of insurance claims in Florida are required to fulfill certain continuing education requirements. Currently, licensees, except title insurance agents, are required to complete a five-hour update course every two years, specific to the license they hold.[38] Unless otherwise provided, licensees must also complete 19 hours of elective continuing education courses every two years.[39] If a licensee has been licensed for six years or more, this requirement drops to 15 hours.[40] For licensees licensed 25 years or more, and is a chartered life underwriter, is a chartered property and casualty underwriter, or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses, the elective continuing education course requirement is five hours every two years. For those individuals holding a license as a customer representative, and not a licensed life or health agent, the elective continuing education course requirement is also five hours every two years. An individual subject to ch. 648, F.S., relating to bail bond agents, is required to complete a five-hour update course and a minimum of nine hours of elective continuing education courses every two years.[41]

If continuing education requirements are not met, the DFS has the authority to immediately terminate or refuse to renew the appointment of an agent or adjuster, following notification from the DFS, unless an extension or waiver has been granted.[42]

State Fire Marshal

Explosives

Chapter 552, F.S., sets forth the requirements to lawfully engage in the business of a manufacturer-distributor, or to acquire, sell, possess, store, or engage in the use of explosives in this state. The chapter's current definition of a two-component explosive requires the use of a "No. 6 blasting cap" for detonation.[43] According to the DFS, No. 6 blasting caps are now out of production and current blasting caps no longer use the same rating system.[44]

Uniform Fire Alarm Permit Application for Previously Permitted Fire Alarm Systems

Contractors are required to file a Uniform Fire Alarm Permit Application with a local law enforcement agency, and must receive the permit before installing, replacing, or repairing an

[37] Section 497.159(6), F.S.
[38] Section 626.2815(3), F.S.
[39] Section 626.2815(3)(a), F.S.
[40] Section 626.2815(3)(b), F.S.
[41] Section 626.2815(3)(e), F.S.
[42] Section 626.2815(9), F.S.
[43] Section 552.081(13), F.S.
[44] *See supra* note 4.

existing fire alarm that was previously permitted by the local enforcement agency, if the local enforcement agency requires a permit for the repair.[45]

Fire and Emergency Incident Information Reporting Program

The Florida Fire Incident Reporting System (FFIRS) is located within the Division of State Fire Marshal. The FFIRS was created by rule and is a means for fire protection agencies to report and maintain computerized records of fires and other fire department incidents in a uniform manner.[46] Annual reports are furnished to the Governor, Legislature and fire protection agencies, and upon request, the public.[47]

Established in 2005 by s. 633.115, F.S., the Fire and Emergency Incident Reporting Program included the creation of the Fire and Emergency Incident Information Technical Advisory Panel (panel) and codified FFIRS language. The FFIRS is the Florida coordinating officer for the National Fire Incident Reporting Section (NFIRS).[48] The NFIRS provides system resources and an overview of the standard national reporting system used by the United States fire departments to report fires and other incidents to which they respond and to maintain records of such incidents in a uniform manner.[49] The NFIRS provides software and training at no cost to fire departments.[50]

The panel was created to advise, review and make recommendations to the State Fire Marshal. Currently, membership in the panel comprises 15 members: [51]

- Thirteen members of the Firefighters Employment, Standards, and Training Council;[52]
- One member from the Florida Forest Service, Department of Agriculture and Consumer Services; and
- One member from the Department of Health, appointed by the State Surgeon General.

Florida Fire Prevention Code

The State Fire Marshal, by rule, adopts the Florida Fire Prevention Code (fire code), which contains all firesafety 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 firesafety laws and rules.[53] The State Fire Marshal adopts a new edition of the fire code every three years.[54] The 7th edition of the fire code took effect on December 31, 2020.[55] State law requires all municipalities, counties, and special districts with firesafety

[45] Section 553.7921(1)(b), F.S.
[46] Department of Financial Services, Division of State Fire Marshal, *Florida Fire and Incident Reporting System*, https://www.myfloridacfo.com/Division/SFM/FFIRS/ (last visited March 5, 2021).
[47] Section 633.136, F.S.
[48] *See supra* note 46.
[49] *Id.*
[50] *Id*.
[51] Section 633.136(2), F.S.
[52] *See* s. 633.402, F.S., for the composition of this Council.
[53] Chapter 69A-60.002(1), F.A.C.
[54] Section 633.202, F.S.
[55] State Fire Marshal of Florida, *Florida Fire Prevention Code*, available online at: https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited March 5, 2021).

responsibilities to enforce the fire code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.[56]

Firesafety Inspectors

Section 633.216, F.S., requires each county, municipality, and special district that has firesafety enforcement responsibilities to employ or contract with a firesafety inspector. Subject to certain exceptions, the firesafety inspector is responsible for conducting all firesafety inspections required by law.[57] These firesafety inspections include the inspection of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with firesafety responsibilities.[58]

The CFO is designated as the "State Fire Marshal."[59] In any county, municipality, or special district that does not employ or appoint a firesafety inspector, the State Fire Marshal assumes the duties of the local county, municipality, or independent special fire control district with respect to firesafety inspections of educational property.[60]

A person who violates any provision of ch. 633, F.S., Fire Prevention and Control, any order or rules of the State Fire Marshal, or any order to cease and desist or to correct conditions, commits a misdemeanor of the second degree.[61]

It is unlawful to impersonate the State Fire Marshal or a firesafety inspector. A person who impersonates either official commits a felony of the third degree, and if the impersonation occurs during the commission of a separate felony, a person commits a felony of the first degree.[62] Section 468.629, F.S., makes it illegal for a person to influence a building code enforcement official by coercion or compensation.[63] Any person who commits such acts commits a misdemeanor of the first degree, and, if the person was previously convicted of such act, a felony of the third degree.[64]

Firefighters Employment, Standards, and Training Council (Council)

The council comprises 14 members and the members are appointed as follows:

- Two fire chiefs appointed by the Florida Fire Chiefs Association;
- Two firefighters, who are not officers, appointed by the Florida Professional Firefighters Association;
- Two firefighter officers, who are not fire chiefs, appointed by the State Fire Marshal;
- One individual appointed by the Florida League of Cities;
- One individual appointed by the Florida Association of Counties;
- One individual appointed by the Florida Association of Special Districts;

[56] Sections 633.108 and 633.208, F.S.
[57] Section 633.216(1), F.S.
[58] Section 633.102(12), F.S.
[59] Section 633.104(1), F.S.
[60] Section 633.104(7), F.S.
[61] Section 633.124(1), F.S.
[62] Section 633.122, F.S.
[63] Section 468.629(1)(f) and (g), F.S.
[64] Section 468.629(2), F.S.

- One individual appointed by the Florida Fire Marshals' and Inspectors' Association;
- One employee of the Florida Forest Service of the Department of Agriculture and Consumer Services appointed by the director of the Florida Forest Service;
- One individual appointed by the State Fire Marshal;
- One director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal; and
- The remaining member, who shall be appointed by the State Fire Marshal, may not be a member or representative of the firefighting profession or of any local government.[65]

There are certain eligibility requirements set forth for membership. Members shall serve only as long as they continue to meet the criteria under which they were appointed or unless a member has failed to appear at three consecutive and properly noticed meetings unless excused by the chair.[66] Members are appointed for four year terms, are not eligible to serve more than two consecutive terms,[67] and serve without compensation, but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.[68]

The council has special powers in connection with the employment and training of firefighters to recommend for adoption by the Division of State Fire Marshal: [69]

- Uniform minimum standards for the employment and training of firefighters and training of volunteer firefighters;
- Minimum curriculum requirements for schools operated by or for any fire service provider for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters; and
- Matters relating to the funding, general operation, and administration of the Bureau of Fire Standards and Training (Florida State Fire College), including, but not limited to, all standards, training, curriculum, and the issuance of any certificate of competency required by this chapter.

In addition, the council may make or support studies on any aspect of firefighting employment, education, and training or recruitment or may make recommendations concerning any matter within its purview.[70]

Volunteer Firefighter Employment

The National Fire Prevention Association estimates that there were 1,115,000 career and volunteer firefighters in the United States in 2018; of this total, 370,000 (33 percent) were career firefighters and 745,000 (67 percent) were volunteer firefighters.[71] At least 315 Florida fire departments utilize volunteers to sustain operations and, according to the Division of State Fire

[65] Section 633.402(1)(a), F.S.
[66] Section 633.402(1)(b), F.S.
[67] Section 633.402(2), F.S.
[68] Section 633.402(7), F.S.
[69] Section 633.402(9), F.S.
[70] Section 633.402(9)(d)-(e), F.S
[71] National Fire Prevention Association, *U.S. Fire Department Profile – 2018 Supporting Tables*, (Feb. 2020) https://www.nfpa.org//-/media/Files/News-and-Research/Fire-statistics-and-reports/Emergency-responders/osFDProfileTables.pdf (last visited March 17, 2021).

Marshal, approximately 12 million Florida residents depend on volunteer firefighters to protect their communities.[72] The Firefighter Assistance Grant Program (FAGP), created in 2016 to improve the emergency response capability of fire departments reliant on volunteer firefighters, provides grant money to such fire departments to provide volunteer firefighter training and procure firefighter personal protective equipment.[73] The FAGP funds of one million dollars is only available for instructor reimbursement for skills sign-offs, personal protection equipment (PPE), supplied air respirators (SCBA), and cost share subsidy for Federal Emergency Management Agency's Assistance to Firefighters Grants Program (AFG) apparatus awards.[74] Since its inception, the FAGP has awarded 84 grants.[75, 76, 77]

Florida fire service providers are currently prohibited from employing an individual to extinguish fires, or to supervise those who do, unless the individual holds a current and valid Firefighter Certificate of Compliance.[78] Thus, fire service providers are currently prohibited from employing volunteer firefighters, who hold a Volunteer Firefighter Certificate of Completion. Volunteer firefighters can enter immediately dangerous to life and health (IDLH) environments. However, if employed by the same department prior to achieving a Firefighter Certificate of Compliance they would not be allowed to enter the IDLH environments they were authorized to enter the day before beginning career employment.[79]

False Personation

Pursuant to s. 843.08, F.S., any person who falsely assumes or pretends to be an officer of a specified type commits a felony of the third degree, a felony of the second degree when committed with another felony, and a felony in the first degree if the felony is the cause of death or personal injury of another individual.[80] A person who impersonates an officer of the DFS is subject to these criminal penalties.[81] However, there is no criminal penalty for impersonating an investigator or personnel of the DFS. According to the DFS, it employs personnel who are not officers but have access to active criminal cases and conduct criminal investigations.[82]

[72] *Id*.
[73] Section 633.135 F.S.
[74] Department of Financial Services, Division of State Fire Marshal, *FY 2019 – 2020 Florida Firefighter Assistance Grant Program*, https://www.myfloridacfo.com/division/sfm/volff/ff-grant.htm (last visited March 17, 2021).
[75] Department of Financial Services, Division of State Fire Marshal, *FY2017 Florida Firefighter Assistance Grant Award Outcomes*, https://www.myfloridacfo.com/division/sfm/VOLFF/FY2017_GrantOutcomes.pdf, (last visited March 17, 2021).
[76] Department of Financial Services, Division of State Fire Marshal, *FY2018 Florida Firefighter Assistance Grant Award Outcomes*, https://myfloridacfo.com/Division/SFM/VOLFF/FY2018_GrantOutcomes.pdf, (last visited March 17, 2021).
[77] Department of Financial Services, Division of State Fire Marshal, *FY2019 Florida Firefighter Assistance Grant Award Outcomes*, https://www.myfloridacfo.com/division/sfm/VOLFF/FY2019_GrantOutcomes.pdf (last visited March 17, 2021).
[78] Section 633.416(1)(a), F.S.
[79] *See supra* note 4; and s. 633.416(1)(a), F.S.
[80] Section 843.08, F.S., contains a list specifying which types of officers it is unlawful to impersonate. This list includes, but is not limited to, firefighters, sheriffs, officers of agencies, and school guardians.
[81] Section 843.08, F.S.
[82] *See supra* note 4.

Insurance Field Representatives and Operations

Appointment Requirements

Section 626.112(1)(a), F.S., states that a person may not be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by the DFS and appointed by an appropriate appointing entity or person to represent an insurer. Section 626.371(1), F.S., requires all initial appointments be submitted to the DFS no later than 45 days after the date of appointment. Where it appears to the DFS that a formerly or currently licensed person has been, or is, actively engaged as an appointee without being appointed as required, the DFS still may issue an appointment submitted upon finding that such failure was an inadvertent error on the part of the insurer. The DFS may condition such approval on the payment of all fees and taxes that would have been due, had the person been properly appointed.

Duration of Suspension or Revocation for Title Insurance Agents

Section 626.844, F.S., authorizes the DFS to suspend or revoke the license or appointment of any title insurance agent or agency, and it may suspend or revoke the eligibility to hold a license or appointment of any such title insurance agent or agency, upon certain specified grounds. However, an order may not suspend such license or appointment for more than one year.[83]

Eligibility for Export of Insurance Coverage and Export of Flood Insurance Policies

In general, insurance policies written in Florida must be done so by Florida authorized insurers. However, standard insurance companies authorized to do business in Florida may not be able to, or unwilling to, take on certain unusual or high risks. These types of risks could include older homes near the coast, yachts, home day-care liability, medical malpractice, and professional athletes insuring certain body parts.[84] These policies are instead written in the surplus lines market and are sold through surplus lines agents.[85] To "export" an insurance policy means to place a policy with a surplus lines insurer who is not part of the standard/admitted insurance market.[86] Section 626.916(1), F.S., requires that insurance coverage is not eligible for export unless all of certain conditions are met. These conditions include:

- The full amount of insurance required must not be procurable, after a diligent effort has been made by the producing agent to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in Florida, and the amount of insurance exported shall be only the excess over the amount so procurable from authorized insurers.
- The premium rate at which the coverage is exported may not be lower than that rate applicable, if any, in actual and current use by a majority of the authorized insurers for the same coverage on a similar risk.
- The policy or contract form under which the insurance is exported may not be more favorable to the insured as to the coverage or rate than under similar contracts on file and in

[83] Section 626.8443(1), F.S.
[84] Department of Financial Services, Florida Surplus Lines Office, *Understanding Florida's Excess and Surplus Market,* https://www.myfloridacfo.com/division/consumers/understandingcoverage/guides/documents/SurplusLinesConsumerBrochure.pdf (last visited March 17, 2021).
[85] *Id.*
[86] *Id;* s. 626.914(3), F.S.

actual current use in this state by the majority of authorized insurers actually writing similar coverages on similar risks, subject to certain exceptions.
- Except as to extended coverage in connection with fire insurance policies and except as to windstorm insurance, the policy or contract under which the insurance is exported may provide not for deductible amounts, in determining the existence or extent of the insurer's liability, other than those available under similar policies or contracts actually and currently used by a Florida authorized insurer.
- For personal residential property risks, the retail or producing agent must provide specified notice to the insured that coverage may be available, and may be less expensive, from Citizens Property Insurance Corporation.

There is no clear language in the Florida Insurance Code that allows a surplus lines agent to export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage. A provision in s. 627.715, F.S., which allowed surplus lines agents to do so, expired on July 1, 2019.

Currently, the private residential flood insurance market is a small but growing percentage of total policies written in the state. The vast majority of residential flood insurance policies are written by the National Flood Insurance Program—a federal insurance program. While Florida has the largest private residential market in the United States, only three percent of residential flood insurance policies are written by private insurers.[87]

Provision of Replacement Cost Estimator and Other Underwriting Information Relating to Real Estate Loans

According to the DFS, many lenders require consumers or their insurance agent or broker to provide, as a condition precedent or condition subsequent to the lending of money or extension of credit to be secured by real property, the replacement cost estimator or other underwriting information that is the proprietary business information of the insurer underwriting the insurance policy covering such property.[88] In some situations, lenders have used this proprietary business information of the insurers for reasons that are outside the scope of the insurance policy.

Unlicensed Bail Bond Agent Activity

Section 648.30, F.S., addresses the unlicensed activity relating to bail bond agents and temporary bail bond agents. Specifically, the section states that one may not act as a bail bond agent or temporary bail bond agent unless qualified, licensed, and appointed as provided in ch. 648, F.S. The section also prohibits one from representing himself or herself to be a bail enforcement agent, bounty hunter, or other similar title and also provides restrictions on whom may apprehend, detain, or arrest a principal on a bond. The section, however, does not provide a specific penalty for persons aiding and abetting another person violating the section.[89]

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[87] Brett Lingle and Carolyn Kousky, *Issue Brief: Florida's Private Residential Insurance Market,* Wharton School of Business at the University of Pennsylvania: Risk Management and Decision Processes Center (Sep. 2018), *available at:* https://riskcenter.wharton.upenn.edu/wp-content/uploads/2018/09/Florida-Private-Flood-Issue-Brief.pdf. (last visited March 17, 2021)
[88] *See supra* note 4.
[89] *Id.*

Public Records Law

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.[90] 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.[91]

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 ss. 11.0431(2) and (3), F.S., and the statutory provisions are adopted in the rules of each house of the Legislature.[92] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[93] 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.[94]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[95] 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."[96]

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

[90] FLA. CONST. art. I, s. 24(a).
[91] *Id*.
[92] *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 1, (2020-2022).
[93] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[94] 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."
[95] 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."
[96] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.[97] A violation of the Public Records Act may result in civil or criminal liability.[98]

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.[99] 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.[100]

General exemptions from the public records requirements are contained in the Public Records Act.[101] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[102]

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.[103] Custodians of records designated as "confidential and exempt" may not disclose the record, except under circumstances specifically defined by the Legislature.[104]

Open Government Sunset Review Act

The Open Government Sunset Review Act[105] (the Sunset Review Act) prescribes a legislative review process for newly created or substantially amended[106] public records or open meetings exemptions, with specified exceptions.[107] It requires the automatic repeal of each such exemption on October 2nd of the fifth year after it is created or substantially amended, unless the Legislature reenacts the exemption.[108] However, an exemption may be reviewed under the Sunset Review Act prior to the fifth year since enactment.

The Sunset Review 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

[97] Section 119.07(1)(a), F.S.
[98] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[99] FLA. CONST. art. I, s. 24(c).
[100] *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).
[101] *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).
[102] *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).
[103] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[104] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[105] Section 119.15, F.S.
[106] 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.
[107] 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.
[108] Section 119.15(3), F.S.

necessary.[109] 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;[110]
- 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;[111] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[112]

The Sunset Review Act also requires specified questions to be considered during the review process.[113] In examining an exemption, the Sunset Review of 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.[114] 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.[115]

General Public Records Exemptions for State Agency Personnel

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's social security number, medical information, and personal identifying information of dependent children who are insured by an agency group insurance plan.[116]

[109] Section 119.15(6)(b), F.S.
[110] Section 119.15(6)(b)1., F.S.
[111] Section 119.15(6)(b)2., F.S.
[112] Section 119.15(6)(b)3., F.S.
[113] 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?

[114] *See generally* s. 119.15, F.S.
[115] Section 119.15(7), F.S.
[116] Section 119.071(4)(a) and (b), F.S.

Social Security Numbers

Social security numbers of all current and former agency personnel, which are held by an employing agency, are confidential and exempt.[117] An employing agency may only release social security numbers for the following reasons:

- It is required by state or federal law, or court order.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.[118]

In addition, there is a general exemption for social security numbers that applies to the public that makes social security numbers confidential and exempt.[119] This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.[120]

Medical Information

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current, and former employees.[121]

Personal Identifying Information

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.[122]

Public Records Exemptions for Enumerated Personnel

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses, and their children. The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency that holds the employee's information.[123] Additionally, all of these exemptions have retroactive application.[124] In order to have such exemption applied to a court record or an official record held by a clerk of court, the party must make a request specifying the document name, type, identification number, and page number.[125] Any enumerated personnel who has his or her public records held exempt may file a written and notarized request to any record custodian to have the records released to an identified party.[126]

[117] Section 119.071(4)(a)1., F.S
[118] Section 119.071(4)(a), F.S.
[119] Section 119.071(5)(a)5., F.S.
[120] Section 119.071(5)(a)6.f. and g., F.S.
[121] Section 119.071(4)(b)1., F.S
[122] Section 119.071(4)(b)2., F.S.
[123] Section 119.071(4)(d)3., F.S.
[124] Section 119.071(4)(d)5., F.S.
[125] Section 119.0714(2)(f) and (3)(f), F.S.
[126] Section 119.071(4)(d)4., F.S.

Confidential and Exempt – Alleged Sexual Harassment Victim

Section 119.071(2)(n), F.S., provides that personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt.[127] Such information may be disclosed to another governmental entity in the furtherance of its official duties.[128]

Section 119.10(2)(a), F.S., provides that any person who willfully and knowingly violates any provisions of ch. 119, F.S., commits a first degree misdemeanor punishable by imprisonment up to one year or a fine up to $1,000.

III. Effect of Proposed Changes:

Division of Public Assistance Fraud (Sections 1 and 27)

Section 1 amends s. 20.121(2)(f), F.S., to designate the Department of Financial Services (DFS), Division of Public Assistance Fraud (DPAF) as a criminal justice agency for the purposes of ss. 943.045-943.08, F.S. The DFS asserts that the designation allows the DPAF to continue having access to criminal justice information contained in Florida Crime Information Center (FCIC) and National Crime Information Center (NCIC) systems of criminal records when conducting criminal investigations and other law enforcement support functions.[129]

Section 26 amends s. 943.045, F.S., to include the DPAF in the definition of "criminal justice agency."

State Risk Management

Benefits in Lieu of Workers Compensation Benefits – Florida Firefighters

Section 2 amends s. 284.30, F.S., to add benefits payable to firefighters diagnosed with cancer pursuant to s. 112.1816(2), F.S., to the self-insurance coverage provided through the State Risk Management Trust Fund (trust fund).

Section 3 amends s. 284.31, F.S., to require separate accounting in the trust fund for benefits payable to firefighters who are employees of a state agency and diagnosed with cancer.

Section 4 amends s. 284.385, F.S., to require the Department of Management Services to validate and approve firefighter cancer benefits before such benefits may be disbursed from the trust fund.

Workplace Sexual Harassment

Section 5 creates s. 284.45, F.S., to define a sexual harassment victim as an individual employed with, or being considered for, employment with an entity participating in the trust fund, who becomes a victim of workplace sexual harassment within the entity. The bill prohibits individuals

[127] Section 119(2)n, F.S., and s. 24(a), Art. 1 of the State Constitution
[128] Subject to the Open Government Sunset Review Act and stands repeal on October 2, 2022 unless reviewed and saved from repeal through reenactment by the Legislature.
[129] *See supra* note 4.

working for an entity covered by the trust fund from engaging in retaliatory conduct, of any kind, toward a sexual harassment victim.

The section also prohibits the willful and knowing distribution of personal identifying information of a sexual harassment victim. Personal identifying information of a victim may not be distributed to any party other than a government entity, in furtherance of its official duties, or pursuant to a court order. Any violation results in a first degree misdemeanor, punishable as provided in s. 775.082, F.S.

Funeral, Cemetery, and Consumer Services

Composition and Business of Board of Funeral, Cemetery, and Consumer Services (Board)

Section 6 amends s. 497.101, F.S., to reduce the minimum number of nominations the Chief Financial Officer (CFO) must make for nine board member positions from three nominations to one, though the CFO may still nominate up to three persons to fill one or more vacancies. The bill also reduces from three to two the number of positions on the board that must be filled by consumers who are residents of Florida; have never been licensed funeral directors or embalmers; are not connected with a cemetery or licensed cemetery company; and are not connected to the death care industry or the practice of embalming, funeral directing, or direct disposition. The board must also now have a consumer member who is: a resident; a licensed certified public accountant (CPS) who has never been licensed as a funeral director or embalmer; is not a principal or employee of any ch. 497, F.S., licensee; and is not otherwise in control (as defined in s. 497.005, F.S.) over any ch. 497, F.S., licensee. This change essentially requires the appointment of a licensed CPA who has some knowledge of and association with, but not a controlling interest in, licensees in the death care industry.

Necessary conforming changes have also been made to properly implement the above changes. This includes revising the definition of a "quorum" for the purposes of conducting board business to constitute a simple majority of eligible members instead of six members. The bill also allows members to appear electronically and still be counted in regards to a determination of quorum.

The section also eliminates outdated statutory provisions regarding the implementation of staggered terms of board members upon the expiration of the initial terms of the board members. This staggering of terms has already been established and is no longer needed. The bill eliminates the DFS' rulemaking responsibilities concerning the application process, which the DFS asserts is unnecessary, as the Governor makes the appointments.[130]

Disqualification of Funeral, Cemetery, and Consumer Services Licensure Applicants

Section 7 of the bill creates s. 497.1411, F.S., to provide and clarify grounds for disqualification of Funeral, Cemetery, and Consumer Services licensure applicants under ch. 497, F.S., based on such applicant's criminal history.

[130] *Id.*

Subsection (1) defines "applicant," "felony of the first degree," "capital felony," and "financial services business."

Subsection (2) enumerates crimes that, if an applicant is found guilty of or pleads nolo contendere to, regardless of adjudication, permanently bar the applicant from licensure under ch. 497, F.S. These crimes are a first degree felony, a capital felony, a felony money laundering offense, or a felony embezzlement.

Subsection (3) provides the following disqualifying periods for other specified crimes:

- A 10-year disqualifying period for all felonies involving moral turpitude not subject to a permanent bar on licensure as specified in subsection (2); and
- A five-year disqualifying period for all other felonies, and for all misdemeanors directly related to the financial services business. The section defines "financial services business" as any financial activity regulated by the DFS, the Office of Insurance Regulation, or the Office of Financial Regulation.

These specifications are intended to provide clarity beyond the current statutory scheme, which provides no guidelines to determine whether a specific crime is considered "directly or indirectly related to or involving any aspect of the practice or business" of death care industry functions. The DFS suggests that the lack of clarity and guidance in current law has led to inconsistencies in recommendations and board rulings on applications.[131]

Subsection (4) requires the DFS to adopt rules to administer the section. The rules must provide for additional disqualifying periods due to the commitment of multiple crimes and may include other factors reasonably related to the applicant's criminal history. The rules must also provide mitigating and aggravating factors, except that mitigation may not result in a disqualification period of less than five years.

Subsection (5) specifies that a disqualifying period begins upon an applicant's final release from supervision or upon completion of the applicant's criminal sentence. The subsection further prohibits the DFS from issuing a license unless all related fines, court costs and fees, and court-ordered restitutions have been paid.

Subsection (6) places the burden of proof for rehabilitation on the applicant.

Subsection (7) allows the DFS to award a license, despite a conviction, upon a grant of a pardon or restoration of civil rights.

Subsection (8) authorizes the board to grant an exemption from a criminal record related disqualification, and provides standards for mitigating factors. The subsection also clarifies that ch. 120, F.S., provides administrative remedies available to applicants for whom the board has granted or denied an exemption.

Subsection (9) clarifies that the disqualification periods provided in this section do not apply to the renewal of a license or to a new licensure application if the applicant has an active license as

[131] *Id.*

of July 1, 2021, and the applicable criminal history was considered by the board on the prior active license approval.

Licensing Background Checks

Section 8 amends s. 497.142, F.S., to require certified true copies of any crime committed in any jurisdiction in order to deem an application under ch. 497, F.S., complete, regardless of how many years have passed. The bill requires disclosure of all felonies, regardless of when committed and regardless of adjudication. It also requires disclosure of any misdemeanor directly or indirectly related to the financial services business,[132] no matter when committed.

Unlicensed Practice

Section 9 of the bill amends s. 497.157, F.S., to increase penalties for unlicensed activity under ch. 497, F.S., from a misdemeanor of the second degree (as provided in s. 497.159(6), F.S.) to a felony of the third degree. Section 9 also expands unlicensed activity to include acting, advertising, or otherwise holding oneself out to be a funeral director, embalmer, direct disposer, or preneed sales agent, unless currently licensed and appointed (as necessary) as such.

Section 10 of the bill amends s. 497.159, F.S., by making a conforming change to remove the second-degree misdemeanor penalty for unlicensed activity under ch. 497, F.S.

Explosives

Section 11 updates the definition of "two-component explosives" in s. 552.081, F.S., by removing the requirement of a "No. 6 blasting cap," and replacing it with a "detonator." According to the DFS, the No. 6 blasting cap is no longer manufactured and the statutory revision brings the section in line with current practices.[133]

Fire Alarm Permits

Section 12 amends s. 553.7921, F.S., to authorize contractors to begin repairs on existing, permitted fire alarms upon filing a Uniform Fire Alarm Permit Application but prior to receiving the permit for the repair. However, fire alarms repaired under such circumstances are not compliant until the permit is issued and the local law enforcement agency approves the repair.

Continuing Education Requirements

Section 13 amends s. 626.2815, F.S., by lowering the update course requirement to four hours for individuals licensed to solicit, sell, or adjust insurance in the state, barring title insurance agents. The update course is raised to six hours for an individual who holds a license as a customer representative, and who is not a licensed life or health agent. Licensees must complete 20 hours of elective continuing education every two years, and if a licensee has been licensed for six years or more, he or she must complete 16 hours of continuing education every two years. Lastly, individuals subject to chapter 648, F.S., relating to bail bond agents, are required to

[132] The bill defines financial services business as "any financial activity regulated by the Department of Financial Services, the Office of Insurance Regulation, or the Office of Financial Regulation."
[133] *Supra* note 4.

complete a four-hour update course and a minimum of 10 hours of continuing education every two years.

The effective date of this section is January 1, 2022.

Appointments to Transact Insurance or Adjust Claims on Behalf of an Insurer or Employer

Section 14 amends s. 626.371, F.S., to indicate that all appointments, including renewal appointments, must be submitted no later than 45 days from the effective date of the appointment. The section also specifies that if the DFS determines an individual was not properly appointed and that said appointment was an inadvertent error, the appointing entity will be informed of its obligation by the DFS and must pay all associated fees and taxes within 21 days. Upon payment of said fees, the DFS may issue or authorize issuance of appointment and consider the inadvertent failure to no longer be a violation. If said fees and taxes are not paid on time, the DFS must suspend the appointing entity's authority to appoint licensees until all outstanding fees have been paid.

Title Insurance License and Appointment Suspension Period for Violations of the Florida Insurance Code

Section 15 amends s. 626.8443, F.S., to increase the maximum license suspension time for title insurance agents and agencies from one year to two years. This change is consistent with similar language related to other agent and agency types, including insurance representatives,[134] viatical settlement providers,[135] and Patient Protection and Affordable Care Act health exchange navigators.[136]

Insurance Coverage Eligibility for Export

Section 16 amends s. 626.916, F.S., to remove the requirement for personal residential property agents to notify an insured in writing, prior to exporting coverage to the surplus lines marketplace, that less expensive coverage may be available from Citizens Property Insurance Corporation.

Coercion to Provide Proprietary Underwriting Information

Section 17 amends s. 626.9551, F.S., to prohibit an insurance agent or agency from giving, or a lender from requiring, a copy of an insurer's proprietary underwriting information—including the replacement cost estimator—as a condition precedent to lending money or extending credit which is to be secured by real property. The section also prohibits an insurance agent or agency from providing such information without authorization from the insurer.

[134] Section 626.641(1), F.S.
[135] Section 626.9914(2), F.S.
[136] Section 626.9957(9), F.S.

Exporting of Flood Insurance Coverage

Section 18 amends s. 627.715, F.S., to allow flood insurance coverage to be exported to an eligible surplus lines insurer without the agent complying with the requirement of s. 626.916(1)(a), F.S., to make a diligent effort to seek coverage with at least three authorized insurers.

Florida Fire Marshal – Florida Fire Prevention and Control

Fire and Emergency Incident Information Reporting Program

Section 19 amends s. 633.136, F.S., by replacing "fire protection agencies" with "fire service providers," specifies that "fire service provider" is defined as in s. 633.102, F.S., and removes a requirement that Division of State Fire Marshal define by rule the term "fire protection agency." Section 633.102(13), F.S., defines "fire services provider" as a municipality or county, the state, the Division of State Fire Marshall, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.

This section also revises the composition of the Fire and Emergency Incident Information System Technical Advisory Panel (panel) to retain 15 members on the panel as currently provided in statute, but to remove requirements that the panel have one member from the Florida Forest Service and the Department of Health.

Florida Fire Prevention Code

Section 20 amends s. 633.202(18), F.S., to extend by one year to January 1, 2023, the deadline for existing high-rise buildings to comply with requirements for minimum radio strength for fire department communications. The section eliminates a requirement that existing high-rise buildings not in compliance with the requirements for minimum radio strength for fire department communications apply for appropriate permitting by December 31, 2019. The section does, however, require that such buildings complete a minimum radio strength assessment by January 1, 2022, with compliance by January 1, 2023.

The bill eliminates the requirement that existing apartment buildings apply for a permit for the required communications installation by December 31, 2022, and instead requires completion of a minimum radio strength assessment by that date.

Influencing a Firesafety Inspector

Section 21 creates s. 633.217, F.S., to prohibit influencing or attempting to influence a firesafety inspector by threatening, coercing, tricking, or offering compensation for the purpose of inducing the firesafety inspector to violate any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S. Subsection (2) prohibits a firesafety inspector from knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept a bribe. Section 633.124(1), F.S., provides that any person who violates any

provision of ch. 633, F.S., commits a misdemeanor of the second degree. Thus, a violation of s. 633.217, F.S., would carry such a penalty.

Firefighters Employment, Standards and Training Council

Section 22 amends s. 633.402, F.S., to revise the composition of the Firefighters Employment, Standards, and Training Council to include one individual from the Department of Health, appointed by the Surgeon General. This increases the size of the board from 14 to 15 members.

Volunteer Firefighter Employment

Section 23 amends s. 633.416, F.S., to authorize fire service providers to employ volunteer firefighters and allow them to act in volunteer firefighter capacity for up to one year under the direct supervision of an individual holding a valid firefighter certificate of compliance while they obtain career firefighter certifications. This will increase the availability of firefighters capable of entering immediately dangerous to life and health environments and protecting their communities. The DFS anticipates that this change will improve rural and small agency recruitment and retention efforts by facilitating the hiring of local candidates who are more inclined to remain in the area instead of hiring candidates from other parts of the state who are inclined to return to their home communities once gaining some experience.[137]

Aiding and Abetting Unlicensed Bail Bond Agent

Section 24 amends s. 648.30, F.S., to make it a felony of the third degree for a licensee to knowingly aid or abet a person in violating the section. Section 648.30, F.S., prohibits: acting as a bond agent or temporary bail bond agent without being qualified, licensed, and appointed as provided in ch. 648; representing oneself as a bail enforcement agent, bounty hunter, or other similar title; and apprehending, detaining, or arresting a principal on a bond unless said person is a law enforcement officer or is qualified, licensed, and appointed as provided in ch. 648 or licensed as a bail bond agent or bail bond enforcement agent (or holds an equivalent license from where the bond in question was written).

Presently, s. 777.011, F.S., includes as a "principal in the first degree" a person who aids, abets, counsels, hires, or otherwise procures a criminal office to be committed. Thus, such person may be charged, convicted, and punished, with the underlying criminal offense even if they were actually or constructively present at the commission of such offense. Accordingly, given current statutory provisions regarding aiding and abetting, appears to merely clarify or restate existing law.

False Personation

Section 25 of the bill amends s. 843.08, F.S., to expand the applicability of criminal penalties associated with false personation of an officer to apply to the impersonation of any personnel or representative of the Division of Investigative and Forensic Services.

[137] *See supra* note 4.

Reenactment

Section 27 reenacts s. 497.141, F.S., to incorporate changes made to s. 497.142, F.S., in Section 8 of the bill.

Effective Date

Section 28 provides, except as otherwise expressly provided and except for Section 28, which shall take effect upon the act becoming law, the bill has an effective date of 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:

The bill has an indeterminate negative impact to state revenues and expenditures.

The Department of Financial Services (DFS) has indicated minor modifications will need to be made to the Division of Insurance Agent and Agency Services systems in order to create a tool for enabling of disabling the ability of a party to appoint licensees. The DFS

indicates these changes can be addressed during ongoing system updates and within existing resources.[138]

The bill has an indeterminate negative fiscal impact to the State Risk Management Trust Fund. The DFS estimates expenses relating to self-insuring firefighter cancer benefits to be less than $100,000 annually.[139]

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill.

Section 9 of the bill amends and increases the penalty related to unlicensed activity pursuant to ch. 497, F.S., from a second degree misdemeanor to a third degree felony, and extends this penalty to impersonating a funeral director, embalmer, direct disposer, or a preneed sales agent. Section 21 of the bill creates a new criminal violation, a second degree misdemeanor, for improperly influencing a firesafety inspector or a firesafety inspector accepting an attempt at such influence. Section 25 expands false personation, which carries first, second and third degree felony penalties, to include all personnel or representatives of the Division of Investigative and Forensic Services. These changes could increase an indeterminate number of people who are subject to misdemeanor or felony penalties. The bill has a positive/negative indeterminate prison bed impact.

VI. Technical Deficiencies:

Section 5 of the bill, creating s. 284.45, F.S., prohibits individuals working for an entity covered by the State Risk Management Trust Fund from engaging in retaliatory conduct of any kind against a sexual harassment victim in subsection (1). While the provision specifies the prohibited behavior, it does not provide any punishment or other consequences for violation. Also, in proposed s. 284.45(2), F.S., a prohibition of the willful and knowing dissemination of personal identifying information of a sexual harassment victim is provided. Based on the placement of this provision in ch. 284, F.S., and the context provided by subsection (1), this provision appears to only apply to individuals working for entities covered by the State Risk Management Trust Fund, however, the subsection does not state this explicitly. Given that this provision provides for a criminal penalty, and that such provisions are strictly construed,[140] the Legislature should consider specifically defining to whom the provisions of subsection (2) apply.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.121, 284.30, 284.31, 284.385, 497.101, 497.142, 497.157, 497.159, 552.081, 553.7921, 626.2815, 626.371,

[138] *See supra* note 4.
[139] *Id.*
[140] Section 775.021(1), F.S., provides that "offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused."

626.8443, 626.916, 626.9551, 627.715, 633.136, 633.202, 633.402, 633.416, 648.30, 843.08, and 943.045.

This bill creates the following sections of the Florida Statutes: 284.45, 497.1411, and 633.217.

This bill reenacts section 497.141 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on March 10, 2021:
The committee substitute:

- Clarifies that payments for firefighter cancer benefits are to be made to employees of state agencies;
- In regards to the disclosure of the personal identifying information of sexual harassment victims, a definition of "personal identifying information" is deleted. This deletion addresses a potential issue where this definition could have been construed as expanding an existing public record exception, thereby necessitating a separate bill;
- Clarifies that when the Department of Financial Services (DFS) determines an individual was not properly appointed and that said appointment was an inadvertent error by the insurer or employer, both back taxes and fees must be paid to have the DFS make the appointment and for the appointing entity to avoid suspension of their authority to appoint licensees;
- Clarifies and simplifies language prohibiting an insurance agent from giving, or a lender from requiring, a copy of an insurer's proprietary underwriting information as a condition precedent to extending credit secured by real estate;
- Clarifies language allowing flood insurance coverage to be exported to a surplus lines insurer without the agent first seeking to place the coverage with an admitted insurer;
- Deletes a provision revising the scope of fire protection system work for persons certified as a contractors by the Division of State Fire Marshal; and
- Clarifies a provision prohibiting a firesafety inspector from knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept a bribe.

B. Amendments:

None.

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

369026

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/20/2021	.	
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The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with title amendment)

Delete lines 734 - 751.

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

And the title is amended as follows:

Delete lines 95 - 98

and insert:

written authorization; amending s.

By the Committee on Banking and Insurance; and Senator Burgess

597-02693-21 20211408c1

A bill to be entitled

An act relating to the Department of Financial Services; amending s. 20.121, F.S.; specifying powers and duties of the Division of Public Assistance Fraud; amending s. 284.30, F.S.; requiring the State Risk Management Trust Fund to provide insurance for certain firefighter cancer-related benefits; making technical changes; amending s. 284.31, F.S.; requiring the Insurance Risk Management Trust Fund to provide a separate account for certain firefighter cancer-related benefits; making technical changes; amending s. 284.385, F.S.; specifying a condition that must be met before certain firefighter cancer-related benefits may be paid from the State Risk Management Trust Fund; making technical changes; creating s. 284.45, F.S.; prohibiting individuals working for entities covered by the State Risk Management Trust Fund from engaging in retaliatory conduct against sexual harassment victims; defining the term "sexual harassment victim"; specifying a criminal penalty for the willful and knowing dissemination of a sexual harassment victim's personal identifying information, except under certain circumstances; amending s. 497.101, F.S.; revising provisions relating to membership of the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services; authorizing use of communications media technology for board member participation and determination of a quorum of the board; defining the term "communications media

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597-02693-21 20211408c1

technology"; deleting a requirement for the department to adopt certain rules; making technical changes; creating s. 497.1411, F.S.; defining terms; providing for permanent disqualification of applicants for licensure under ch. 497, F.S., for certain offenses; providing for disqualifying periods for applicants for certain offenses; requiring the board to adopt rules; providing for calculation of disqualifying periods; providing conditions for licensure after completion of a disqualifying period; specifying the effect of a pardon or restoration of civil rights; providing for exemptions from disqualification if certain conditions are met; requiring an applicant for an exemption to provide certain evidence that he or she will not present a danger if licensed; granting the board the discretion to approve or deny an exemption; providing applicability; providing construction; amending s. 497.142, F.S.; revising criminal history disclosure requirements for applicants seeking licensure under ch. 497, F.S.; amending s. 497.157, F.S.; prohibiting persons from acting as or advertising themselves as being funeral directors, embalmers, direct disposers, or preneed sales agents unless they are so licensed; prohibiting persons from engaging in certain activities requiring licensure without holding required licenses; revising the criminal penalty for unlicensed activity; making technical changes; amending s. 497.159, F.S.; conforming a provision to changes made by the act; amending s. 552.081, F.S.;

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revising the definition of the term "two-component explosives" for the purpose of regulation by the Division of State Fire Marshal; amending s. 553.7921, F.S.; authorizing a contractor repairing certain existing fire alarm systems to begin work after filing an application for a required permit but before receiving the permit; providing construction; amending s. 626.2815, F.S.; revising continuing education requirements for certain persons licensed to solicit, sell, or adjust insurance; amending s. 626.371, F.S.; requiring submission of renewal appointments of certain insurance representatives within a certain timeframe; requiring the department to notify certain insurers or employers regarding inadvertent failures to appoint; requiring insurers and employers to pay certain fees and taxes within a certain timeframe; authorizing the department to issue appointments under certain circumstances; prohibiting the department from considering inadvertent failures to appoint to be violations under certain circumstances; requiring the department to suspend an insurer's or employer's authority to appoint licensees under certain circumstances; amending s. 626.8443, F.S.; increasing the maximum period of suspension of a title insurance agent's or agency's license; making technical changes; amending s. 626.916, F.S.; deleting a requirement for agents to advise insureds that certain coverage may be available for personal residential property risks to be eligible for export under the Surplus Lines Law;

amending s. 626.9551, F.S.; prohibiting a person from requiring an insurance agent or agency to provide replacement cost estimators or certain other proprietary business information under certain circumstances; prohibiting an insurance agent or agency from providing replacement cost estimators or certain other proprietary business information without written authorization; amending s. 627.715, F.S.; providing an exemption from a diligent effort requirement for agents exporting contracts or endorsements providing flood coverage; amending s. 633.136, F.S.; replacing fire protection agencies in the Fire and Emergency Incident Information Reporting Program with fire service providers; revising the composition of the Fire and Emergency Incident Information System Technical Advisory Panel; defining the term "fire service provider"; amending s. 633.202, F.S.; extending a deadline for certain buildings to comply with a minimum radio signal strength requirement under the Florida Fire Prevention Code; requiring such buildings to meet certain conditions by a specified date; revising a condition that existing apartment buildings must meet by a specified date; making technical changes; creating s. 633.217, F.S.; prohibiting certain acts to influence a firesafety inspector to violate certain laws; prohibiting a firesafety inspector from knowingly and intentionally requesting, soliciting, accepting, or agreeing to accept certain compensation; amending s. 633.402,

F.S.; revising the composition of the Firefighters Employment, Standards, and Training Council; amending s. 633.416, F.S.; providing that certain persons serving as volunteer firefighters may serve as a regular or permanent firefighter for a limited period, subject to certain restrictions; amending s. 648.30, F.S.; prohibiting the aiding or abetting of unlicensed activity of a bail bond agent or temporary bail bond agent; providing criminal penalties; amending s. 843.08, F.S.; prohibiting false personation of personnel or representatives of the Division of Investigative and Forensic Services; amending s. 943.045, F.S.; revising the definition of the term "criminal justice agency" to include the investigations component of the department which investigates certain crimes; reenacting s. 497.141(5)(a), F.S., relating to licensing and general application procedures, to incorporate the amendment made to s. 497.142, F.S., in a reference thereto; providing effective dates.

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

Section 1. Paragraph (f) of subsection (2) of section 20.121, Florida Statutes, is amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions and office:

(f) The Division of Public Assistance Fraud, which shall function as a criminal justice agency for purposes of ss. 943.045-943.08. The division shall conduct investigations pursuant to s. 414.411 within or outside of this state as it deems necessary. If, during an investigation, the division has reason to believe that any criminal law of this state has or may have been violated, it shall refer any records supporting such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

Section 2. Section 284.30, Florida Statutes, is amended to read:

284.30 State Risk Management Trust Fund; coverages to be provided.—A state self-insurance fund, designated as the "State Risk Management Trust Fund," is created to be set up by the Department of Financial Services and administered with a program of risk management, which fund is to provide insurance, as authorized by s. 284.33, for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, benefits payable under s. 112.1816(2), and court-awarded attorney ~~attorney's~~ fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission. A party to a suit in any court, to be entitled to have his or her attorney ~~attorney's~~ fees paid by the state or any of its agencies, must serve a copy of the pleading claiming the fees on the Department of Financial Services; and thereafter the department shall be entitled to participate with the agency

in the defense of the suit and any appeal thereof with respect to such fees.

Section 3. Section 284.31, Florida Statutes, is amended to read:

284.31 Scope and types of coverages; separate accounts.—The Insurance Risk Management Trust Fund must ~~shall~~, unless specifically excluded by the Department of Financial Services, cover all departments of the State of Florida and their employees, agents, and volunteers and must ~~shall~~ provide separate accounts for workers' compensation, general liability, fleet automotive liability, federal civil rights actions under 42 U.S.C. s. 1983 or similar federal statutes, benefits payable to an employee of a state agency under s. 112.1816(2), and court-awarded attorney ~~attorney's~~ fees in other proceedings against the state except for such awards in eminent domain or for inverse condemnation or for awards by the Public Employees Relations Commission. Unless specifically excluded by the Department of Financial Services, the Insurance Risk Management Trust Fund must ~~shall~~ provide fleet automotive liability coverage to motor vehicles titled to the state, or to any department of the state, when such motor vehicles are used by community transportation coordinators performing, under contract to the appropriate department of the state, services for the transportation disadvantaged under part I of chapter 427. Such fleet automotive liability coverage is ~~shall be~~ primary and is ~~shall be~~ subject to ~~the provisions of~~ s. 768.28 and parts II and III of chapter 284, and applicable rules adopted thereunder, and the terms and conditions of the certificate of coverage issued by the Department of Financial Services.

Section 4. Section 284.385, Florida Statutes, is amended to read:

284.385 Reporting and handling of claims.—

(1) All departments covered by the State Risk Management Trust Fund under this part shall immediately report all known or potential claims to the Department of Financial Services for handling, except employment complaints that ~~which~~ have not been filed with the Florida Human Relations Commission, Equal Employment Opportunity Commission, or any similar agency. When deemed necessary, the Department of Financial Services shall assign or reassign the claim to counsel. The assigned counsel shall report regularly to the Department of Financial Services or to the covered department on the status of any such claims or litigation as required by the Department of Financial Services. ~~No~~ Such claims may not ~~claim shall~~ be compromised or settled for monetary compensation without the prior approval of the Department of Financial Services and prior notification to the covered department. All departments shall cooperate with the Department of Financial Services in its handling of claims. The Department of Financial Services and the Department of Management Services, with the cooperation of the state attorneys and the clerks of the courts, shall develop a system to coordinate the exchange of information concerning claims for and against the state, its agencies, and its subdivisions, to assist in collection of amounts due to them. The covered department is responsible ~~shall have the responsibility~~ for the settlement of any claim for injunctive or affirmative relief under 42 U.S.C. s. 1983 or similar federal or state statutes. The payment of a settlement or judgment for any claim covered and reported under

this part may ~~shall~~ be made only from the State Risk Management Trust Fund.

(2) Benefits provided under s. 112.1816(2) may not be paid from the fund until each request for any out-of-pocket deductible, copayment, or coinsurance costs and one-time cash payout has been validated and approved by the Department of Management Services.

Section 5. Section 284.45, Florida Statutes, is created to read:

284.45 Sexual harassment victims.—

(1) An individual working for an entity covered by the State Risk Management Trust Fund may not engage in retaliatory conduct of any kind against a sexual harassment victim. As used in this section, the term "sexual harassment victim" means an individual employed, or being considered for employment, with an entity participating in the State Risk Management Trust Fund who becomes a victim of workplace sexual harassment through the course of employment, or while being considered for employment, with the entity.

(2) The willful and knowing dissemination of personal identifying information of a sexual harassment victim, which is confidential and exempt pursuant to s. 119.071(2)(n), to any party other than a governmental entity in furtherance of its official duties or pursuant to a court order is a misdemeanor of the first degree, punishable as provided in s. 775.082.

Section 6. Subsections (1), (2), (3), (6), and (8) of section 497.101, Florida Statutes, are amended to read:

497.101 Board of Funeral, Cemetery, and Consumer Services; membership; appointment; terms.—

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(1) The Board of Funeral, Cemetery, and Consumer Services is created within the Department of Financial Services and shall consist of 10 members, 9 of whom shall be appointed by the Governor from nominations made by the Chief Financial Officer and confirmed by the Senate. The Chief Financial Officer shall nominate one to three persons for each of the nine vacancies on the board, and the Governor shall fill each vacancy on the board by appointing one of the ~~three~~ persons nominated by the Chief Financial Officer to fill that vacancy. If the Governor objects to each of the ~~three~~ nominations for a vacancy, she or he shall inform the Chief Financial Officer in writing. Upon notification of an objection by the Governor, the Chief Financial Officer shall submit one to three additional nominations for that vacancy until the vacancy is filled. One member must be the State Health Officer or her or his designee.

(2) Two members of the board must ~~shall~~ be funeral directors licensed under part III of this chapter who are associated with a funeral establishment. One member of the board must ~~shall~~ be a funeral director licensed under part III of this chapter who is associated with a funeral establishment licensed under part III of this chapter which ~~that~~ has a valid preneed license issued pursuant to this chapter and who owns or operates a cinerator facility approved under chapter 403 and licensed under part VI of this chapter. Two members of the board must ~~shall~~ be persons whose primary occupation is associated with a cemetery company licensed pursuant to this chapter. Two ~~Three~~ members of the board must ~~shall~~ be consumers who are residents of this ~~the~~ state, have never been licensed as funeral directors or embalmers, are not connected with a cemetery or cemetery

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company licensed pursuant to this chapter, and are not connected with the death care industry or the practice of embalming, funeral directing, or direct disposition. One of the two consumer members must ~~shall~~ be at least 60 years of age~~, and one shall be licensed as a certified public accountant under chapter 473~~. One member of the board must be a consumer who is a resident of this state; is licensed as a certified public accountant under chapter 473; has never been licensed as a funeral director or an embalmer; is not a principal or an employee of any licensee licensed under this chapter; and does not otherwise have control, as defined in s. 497.005, over any licensee licensed under this chapter. One member of the board must ~~shall~~ be a principal of a monument establishment licensed under this chapter as a monument builder. One member must ~~shall~~ be the State Health Officer or her or his designee. There may ~~shall~~ not be two or more board members who are principals or employees of the same company or partnership or group of companies or partnerships under common control.

(3) Board members shall be appointed for terms of 4 years, and the State Health Officer shall serve as long as that person holds that office. The designee of the State Health Officer shall serve at the pleasure of the Governor. ~~When the terms of the initial board members expire, the Chief Financial Officer shall stagger the terms of the successor members as follows: one funeral director, one cemetery representative, the monument builder, and one consumer member shall be appointed for terms of 2 years, and the remaining members shall be appointed for terms of 4 years. All subsequent terms shall be for 4 years.~~

(6) The board shall maintain its headquarters and records

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~~of the board shall be~~ in the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The board may be contacted through the Division of Funeral, Cemetery, and Consumer Services of the Department of Financial Services in the City of Tallahassee. The Chief Financial Officer shall annually appoint from among the board members a chair and vice chair of the board. The board shall meet at least every 6 months, and more often as necessary. Special meetings of the board shall be convened upon the direction of the Chief Financial Officer. A quorum is necessary for the conduct of business by the board. The participation by a board member in a meeting conducted through communications media technology constitutes that individual's presence at such meeting. Board members appearing at a board meeting in person as well as board members appearing through the use of communications media technology shall be counted for the determination of a quorum. As used in this subsection, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available. Unless otherwise provided by law, a majority of the board members eligible to vote constitutes a quorum for the purpose of conducting its business ~~six board members shall constitute a quorum for the conduct of the board's business~~.

~~(8) The department shall adopt rules establishing forms by which persons may apply for membership on the board and procedures for applying for such membership. Such forms shall require disclosure of the existence and nature of all current and past employments by or contracts with, and direct or~~

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~~indirect affiliations or interests in, any entity or business that at any time was licensed by the board or by the former Board of Funeral and Cemetery Services or the former Board of Funeral Directors and Embalmers or that is or was otherwise involved in the death care industry, as specified by department rule.~~

Section 7. Section 497.1411, Florida Statutes, is created to read:

497.1411 Disqualification of applicants and licensees; penalties against licensees; rulemaking.—

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

(a) "Applicant" means an individual applying for licensure or relicensure under this chapter, or an officer, a director, a majority owner, a partner, a manager, or another person who manages or controls an entity applying for licensure or relicensure under this chapter.

(b) "Felony of the first degree" or "capital felony" includes all felonies designated as such in this state at the time of the commission of the offense, as well as any offense in another jurisdiction which is substantially similar to an offense so designated in this state.

(c) "Financial services business" means any financial activity regulated by the department, the Office of Insurance Regulation, or the Office of Financial Regulation.

(2) An applicant who has been found guilty of, or has pleaded guilty or nolo contendere to any of the following crimes, regardless of adjudication, is permanently barred from licensure under this chapter:

(a) A felony of the first degree.

(b) A capital felony.

(c) A felony money laundering offense.

(d) A felony embezzlement.

(3) An applicant who has been found guilty of, or has pleaded guilty or nolo contendere to a crime not included in subsection (2), regardless of adjudication, is subject to:

(a) A 10-year disqualifying period for all felonies involving moral turpitude which are not specifically included in the permanent bar from licensure contained in subsection (2).

(b) A 5-year disqualifying period for all felonies to which neither the permanent bar from licensure in subsection (2) nor the 10-year disqualifying period in paragraph (a) applies.

(c) A 5-year disqualifying period for all misdemeanors directly related to the financial services business.

(4) The board shall adopt rules to administer this section. The rules must provide for additional disqualifying periods due to the commitment of multiple crimes and may include other factors reasonably related to the applicant's criminal history. The rules must provide for mitigating and aggravating factors. However, mitigation may not result in a period of disqualification of less than 5 years and may not mitigate the disqualifying periods in paragraphs (3)(b) and (c).

(5) For purposes of this section, a disqualifying period begins upon the applicant's final release from supervision or upon completion of the applicant's criminal sentence. The department may not issue a license to an applicant unless all related fines, court costs and fees, and court-ordered restitution have been paid.

(6) After the disqualifying period has expired, the burden

is on the applicant to demonstrate that he or she has been rehabilitated, does not pose a risk to the public, is fit and trustworthy to engage in business regulated by this chapter, and is otherwise qualified for licensure.

(7) Notwithstanding subsections (2) and (3), an applicant who has been found guilty of, or has pleaded guilty or nolo contendere to, a crime in subsection (2) or subsection (3) and who has subsequently been granted a pardon or the restoration of civil rights pursuant to chapter 940 and s. 8, Art. IV of the State Constitution, or a pardon or the restoration of civil rights under the laws of another jurisdiction with respect to a conviction in that jurisdiction, is not barred or disqualified from licensure under this chapter. However, such a pardon or restoration of civil rights does not require the department to award such license.

(8)(a) The board may grant an exemption from disqualification to any person disqualified from licensure under subsection (3) if:

1. The applicant has paid in full any fee, fine, fund, lien, civil judgment, restitution, or cost of prosecution imposed by the court as part of the judgment and sentence for any disqualifying offense; and

2. At least 5 years have elapsed since the applicant completed or has been lawfully released from confinement, supervision, or a nonmonetary condition imposed by the court for a disqualifying offense.

(b) For the board to grant an exemption under this subsection, the applicant must clearly and convincingly demonstrate that he or she would not pose a risk to persons or

property if licensed under this chapter, evidence of which must include, but need not be limited to, facts and circumstances surrounding the disqualifying offense, the time that has elapsed since the offense, the nature of the offense and harm caused to the victim, the applicant's history before and after the offense, and any other evidence or circumstances indicating that the applicant will not present a danger if licensed or certified.

(c) The board has discretion whether to grant or deny an exemption under this subsection. The board's decision is subject to chapter 120.

(9) The disqualification periods provided in this section do not apply to the renewal of a license or to a new application for licensure if the applicant has an active license as of July 1, 2021, and the applicable criminal history was considered by the board on the prior approval of any active license held by the applicant. This subsection does not affect any criminal history disclosure requirements of this chapter.

Section 8. Subsection (9) and paragraph (c) of subsection (10) of section 497.142, Florida Statutes, are amended to read:

497.142 Licensing; fingerprinting and criminal background checks.—

(9) If any applicant under this chapter has been~~, within the 10 years preceding the application under this chapter,~~ convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, any crime in any jurisdiction, the application shall not be deemed complete until such time as the applicant provides such certified true copies of the court records evidencing the conviction, finding, or plea

as required by this section or~~,~~ as the licensing authority may by rule require.

(10)(c) Crimes to be disclosed are:

1. Any felony ~~or misdemeanor~~, no matter when committed~~,~~ ~~that was directly or indirectly related to or involving any aspect of the practice or business of funeral directing, embalming, direct disposition, cremation, funeral or cemetery preneed sales, funeral establishment operations, cemetery operations, or cemetery monument or marker sales or installation~~.

2. Any misdemeanor, no matter when committed, which was directly or indirectly related to the financial services business as defined in s. 497.1411 ~~Any other felony not already disclosed under subparagraph 1. that was committed within the 20 years immediately preceding the application under this chapter~~.

3. Any other misdemeanor not already disclosed under subparagraph 2. which ~~subparagraph 1. that~~ was committed within the 5 years immediately preceding the application under this chapter.

Section 9. Present subsections (2) through (5) of section 497.157, Florida Statutes, are redesignated as subsections (4) through (7), respectively, new subsections (2) and (3) and subsection (8) are added to that section, and present subsection (3) of that section is amended, to read:

497.157 Unlicensed practice; remedies concerning violations by unlicensed persons.—

(2) A person may not be, act as, or advertise or hold himself or herself out to be a funeral director, an embalmer, or a direct disposer unless he or she is currently licensed by the

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department.

(3) A person may not be, act as, or advertise or hold himself or herself out to be a preneed sales agent unless he or she is currently licensed by the department and appointed by a preneed main licensee for which he or she is executing preneed contracts.

(5)~~(3)~~ Where the department determines that an emergency exists regarding any violation of this chapter by any unlicensed person or entity, the department may issue and serve an immediate final order upon such unlicensed person or entity, in accordance with s. 120.569(2)(n). Such an immediate final order may impose such prohibitions and requirements as are reasonably necessary to protect the public health, safety, and welfare, and is ~~shall be~~ effective when served.

(a) For the purpose of enforcing such an immediate final order, the department may file an emergency or other proceeding in the circuit courts of the state seeking enforcement of the immediate final order by injunctive or other order of the court. The court shall issue its injunction or other order enforcing the immediate final order pending administrative resolution of the matter under subsection (4) ~~(2)~~, unless the court determines that such action would work a manifest injustice under the circumstances. Venue for judicial actions under this paragraph must ~~shall~~ be, at the election of the department, in the courts of Leon County~~,~~ or in a county where the respondent resides or has a place of business.

(b) After serving an immediate final order to cease and desist upon any person or entity, the department shall within 10 days issue and serve upon the same person or entity an

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administrative complaint as set forth in subsection (4) ~~(2)~~, except that, absent order of a court to the contrary, the immediate final order will ~~shall~~ be effective throughout the pendency of proceedings under subsection (4) ~~(2)~~.

(8) Any person who is not licensed under this chapter and who engages in activity requiring licensure under this chapter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 10. Subsection (6) of section 497.159, Florida Statutes, is amended to read:

497.159 Crimes.—

~~(6) Any person who is not licensed under this chapter who engages in activity requiring licensure under this chapter, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 11. Subsection (13) of section 552.081, Florida Statutes, is amended to read:

552.081 Definitions.—As used in this chapter:

(13) "Two-component explosives" means any two inert components that ~~which~~, when mixed, become capable of detonation by a detonator ~~a No. 6 blasting cap~~, and shall be classified as a Class "A" explosive when so mixed.

Section 12. Present subsection (2) of section 553.7921, Florida Statutes, is redesignated as subsection (3), a new subsection (2) is added to that section, and subsection (1) of that section is amended, to read:

553.7921 Fire alarm permit application to local enforcement agency.—

(1) A contractor must file a Uniform Fire Alarm Permit

Application as provided in subsection (3) ~~(2)~~ with the local enforcement agency and must receive the fire alarm permit before~~:~~

~~(a)~~ installing or replacing a fire alarm, if the local enforcement agency requires a plan review for the installation or replacement~~; or~~

~~(b) Repairing an existing alarm system that was previously permitted by the local enforcement agency if the local enforcement agency requires a fire alarm permit for the repair~~.

(2) If the local enforcement agency requires a fire alarm permit to repair an existing alarm system that was previously permitted by the local enforcement agency, a contractor may begin work after filing a Uniform Fire Alarm Permit Application as provided in subsection (3). A fire alarm repaired pursuant to this subsection may not be considered compliant until the required permit is issued and the local enforcement agency approves the repair.

Section 13. Effective January 1, 2022, subsection (3) of section 626.2815, Florida Statutes, is amended to read:

626.2815 Continuing education requirements.—

(3) Each licensee except a title insurance agent must complete a 4-hour ~~5-hour~~ update course every 2 years which is specific to the license held by the licensee. The course must be developed and offered by providers and approved by the department. The content of the course must address all lines of insurance for which examination and licensure are required and include the following subject areas: insurance law updates, ethics for insurance professionals, disciplinary trends and case studies, industry trends, premium discounts, determining

suitability of products and services, and other similar insurance-related topics the department determines are relevant to legally and ethically carrying out the responsibilities of the license granted. A licensee who holds multiple insurance licenses must complete an update course that is specific to at least one of the licenses held. Except as otherwise specified, any remaining required hours of continuing education are elective and may consist of any continuing education course approved by the department under this section.

(a) Except as provided in paragraphs (b), (c), (d), (e), (i), and (j), each licensee must also complete 20 ~~19~~ hours of elective continuing education courses every 2 years.

(b) A licensee who has been licensed for 6 or more years must also complete a minimum of 16 ~~15~~ hours of elective continuing education every 2 years.

(c) A licensee who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses must also complete a minimum of 6 ~~5~~ hours of elective continuing education courses every 2 years.

(d) An individual who holds a license as a customer representative and who is not a licensed life or health agent must also complete a minimum of 6 ~~5~~ hours of continuing education courses every 2 years.

(e) An individual subject to chapter 648 must complete the 4-hour ~~5-hour~~ update course and a minimum of 10 ~~9~~ hours of elective continuing education courses every 2 years.

(f) Elective continuing education courses for public

adjusters must be specifically designed for public adjusters and approved by the department. Notwithstanding this subsection, public adjusters for workers' compensation insurance or health insurance are not required to take continuing education courses pursuant to this section.

(g) Excess hours accumulated during any 2-year compliance period may be carried forward to the next compliance period.

(h) An individual teaching an approved course of instruction or lecturing at any approved seminar and attending the entire course or seminar qualifies for the same number of classroom hours as would be granted to a person taking and successfully completing such course or seminar. Credit is limited to the number of hours actually taught unless a person attends the entire course or seminar. An individual who is an official of or employed by a governmental entity in this state and serves as a professor, instructor, or in another position or office, the duties and responsibilities of which are determined by the department to require monitoring and review of insurance laws or insurance regulations and practices, is exempt from this section.

(i) For compliance periods beginning on or after October 1, 2014, any person who holds a license as a title insurance agent must complete a minimum of 10 hours of continuing education credit every 2 years in title insurance and escrow management specific to this state and approved by the department, which must ~~shall~~ include at least 3 hours of continuing education on the subject matter of ethics, rules, or compliance with state and federal regulations relating specifically to title insurance and closing services.

(j) For a licensee who is an active participant in an association, 2 hours of elective continuing education credit per calendar year may be approved by the department, if properly reported by the association.

Section 14. Subsections (1) and (2) of section 626.371, Florida Statutes, are amended to read:

626.371 Payment of fees, taxes for appointment period without appointment.—

(1) All initial and renewal appointments shall be submitted to the department on a monthly basis no later than 45 days after the date of appointment and become effective on the date requested on the appointment form.

(2)(a) If, upon application and qualification for an initial or renewal appointment and such investigation as the department may make, ~~it appears to~~ the department determines that an individual has not been properly appointed to represent an insurer or employer, that such individual ~~who~~ was formerly licensed or is currently licensed~~, but not properly appointed to represent an insurer or employer~~ and that such individual ~~who~~ has been actively engaged or is currently actively engaged as such an appointee, ~~but without being appointed as required,~~ the department shall ~~may~~, if it finds that such failure to be appointed was an inadvertent error on the part of the insurer or employer so represented, notify the insurer or employer of its finding and of the requirement to pay all fees and taxes due pursuant to paragraph (b) within 21 days.

(b) The department may ~~nevertheless~~ issue or authorize the issuance of the appointment upon the insurer's or employer's timely payment to the department of ~~as applied for but subject~~

~~to the condition that, before the appointment is issued,~~ all fees and taxes that ~~which~~ would have been due had the applicant been properly ~~so~~ appointed during such current and prior periods, including ~~with applicable~~ fees and taxes that would have been due pursuant to s. 624.501 for such current and prior periods of appointment~~, shall be paid to the department~~.

(c) Upon proper appointment of the individual and payment of all fees and taxes due pursuant to paragraph (b), paragraph (3)(a), and s. 624.501 by the insurer or employer, the department may no longer consider the inadvertent failure to appoint to be a violation of this code.

(d) If the insurer or employer does not pay the fees and taxes due pursuant to paragraph (b) within 21 days after notice by the department, the department shall suspend the insurer's or employer's authority to appoint licensees until all outstanding fees and taxes have been paid.

Section 15. Subsection (1) of section 626.8443, Florida Statutes, is amended to read:

626.8443 Duration of suspension or revocation.—

(1) The department shall, in its order suspending a title insurance agent's or agency's license or appointment or in its order suspending the eligibility of a person to hold or apply for such license or appointment, specify the period during which the suspension is to be in effect, but such period may ~~shall~~ not exceed 2 years ~~1 year~~. The license, ~~or~~ appointment, or eligibility will ~~shall~~ remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, prior to expiration of the suspension

period. A license, appointment, or eligibility that ~~which~~ has been suspended may not be reinstated except upon request for such reinstatement, but the department may ~~shall~~ not grant such reinstatement if it finds that the circumstance or circumstances for which the license, appointment, and eligibility was suspended still exist or are likely to recur.

Section 16. Paragraph (e) of subsection (1) of section 626.916, Florida Statutes, is amended to read:

626.916 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

~~(e) For personal residential property risks, the retail or producing agent must advise the insured in writing that coverage may be available and may be less expensive from Citizens Property Insurance Corporation. The notice must include other information that states that assessments by Citizens Property Insurance Corporation are higher and the coverage provided by Citizens Property Insurance Corporation may be less than the property's existing coverage. If the notice is signed by the insured, it is presumed that the insured has been informed and knows that policies from Citizens Property Insurance Corporation may be less expensive, may provide less coverage, and will be accompanied by higher assessments.~~

Section 17. Paragraph (e) is added to subsection (1) of section 626.9551, Florida Statutes, to read:

626.9551 Favored agent or insurer; coercion of debtors.—

(1) No person may:

(e) Require an insurance agent or agency to directly or indirectly provide the replacement cost estimator or other

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underwriting information of an insurer underwriting an insurance policy covering real property as a condition precedent or condition subsequent to the lending of money or extension of credit to be secured by real property when such information is the proprietary business information of an insurer as defined in s. 624.4212(1). An insurance agent or agency may not provide such information to any person without authorization from the insurer.

Section 18. Present subsections (4) through (10) of section 627.715, Florida Statutes, are redesignated as subsections (5) through (11), respectively, and a new subsection (4) is added to that section, to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(4) An agent may export a contract or an endorsement providing flood coverage to an eligible surplus lines insurer without making a diligent effort to seek such coverage from three or more authorized insurers under s. 626.916(1)(a).

Section 19. Section 633.136, Florida Statutes, is amended to read:

633.136 Fire and Emergency Incident Information Reporting

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Program; duties; fire reports.—

(1)(a) The Fire and Emergency Incident Information Reporting Program is created within the division. The program shall:

1. Establish and maintain an electronic communication system capable of transmitting fire and emergency incident information to and between fire service providers ~~protection agencies~~.

2. Initiate a Fire and Emergency Incident Information Reporting System that is ~~shall be~~ responsible for:

a. Receiving fire and emergency incident information from fire service providers ~~protection agencies~~.

b. Preparing and disseminating annual reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, fire service providers ~~protection agencies~~, and, upon request, the public. Each report must ~~shall~~ include, but not be limited to, the information listed in the National Fire Incident Reporting System.

c. Upon request, providing other states and federal agencies with fire and emergency incident data of this state.

3. Adopt rules to effectively and efficiently implement, administer, manage, maintain, and use the Fire and Emergency Incident Information Reporting Program. The rules shall be considered minimum requirements and may ~~shall~~ not preclude a fire service provider ~~protection agency~~ from implementing its own requirements that ~~which~~ may not conflict with the rules of the division.

4. By rule, establish procedures and a format for each fire service provider ~~protection agency~~ to voluntarily monitor its

records and submit reports to the program.

5. Maintain ~~Establish~~ an electronic information database that is accessible and searchable by fire service providers ~~protection agencies~~.

(b) The division shall consult with the Florida Forest Service of the Department of Agriculture and Consumer Services and the State Surgeon General of the Department of Health to coordinate data, ensure accuracy of the data, and limit duplication of efforts in data collection, analysis, and reporting.

(2) The Fire and Emergency Incident Information System Technical Advisory Panel is created within the division. The panel shall advise, review, and recommend to the State Fire Marshal with respect to the requirements of this section. The membership of the panel consists ~~shall consist~~ of the ~~following~~ 15 members~~:~~

~~(a) The current 13 members~~ of the Firefighters Employment, Standards, and Training Council as established in s. 633.402.

~~(b) One member from the Florida Forest Service of the Department of Agriculture and Consumer Services, appointed by the director of the Florida Forest Service.~~

~~(c) One member from the Department of Health, appointed by the State Surgeon General.~~

(3) As used in ~~For the purpose of~~ this section, the term "fire service provider" has the same meaning as in s. 633.102 ~~"fire protection agency" shall be defined by rule by the division~~.

Section 20. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings. Existing buildings are not required to comply with minimum radio strength for fire department communications and two-way radio system enhancement communications as required by the Florida Fire Prevention Code until January 1, 2023 ~~2022~~. However, by January 1, 2022 ~~December 31, 2019~~, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must have completed a minimum radio strength assessment ~~apply for an appropriate permit~~ for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2023 ~~2022~~. Existing apartment buildings are not required to comply until January 1, 2025. However, existing apartment buildings must have completed a minimum radio strength assessment ~~are required to apply for the appropriate permit~~ for the required communications installation by December 31, 2022.

Section 21. Section 633.217, Florida Statutes, is created to read:

633.217 Influencing a firesafety inspector; prohibited acts.—

(1) A person may not influence a firesafety inspector by:

(a) Threatening, coercing, tricking, or attempting to threaten, coerce, or trick the firesafety inspector into violating any provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this

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chapter.

(b) Offering any compensation to the firesafety inspector to induce a violation of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of this chapter.

(2) A firesafety inspector may not knowingly and intentionally request, solicit, accept, or agree to accept compensation offered as described in paragraph (1)(b).

Section 22. Subsection (1) of section 633.402, Florida Statutes, is amended to read:

633.402 Firefighters Employment, Standards, and Training Council; organization; meetings; quorum; compensation; seal; special powers; firefighter training.—

(1) There is created within the department a Firefighters Employment, Standards, and Training Council of 15 ~~14~~ members.

(a) The members shall be appointed as follows:

1. Two fire chiefs appointed by the Florida Fire Chiefs Association.

2. Two firefighters, who are not officers, appointed by the Florida Professional Firefighters Association.

3. Two firefighter officers, who are not fire chiefs, appointed by the State Fire Marshal.

4. One individual appointed by the Florida League of Cities.

5. One individual appointed by the Florida Association of Counties.

6. One individual appointed by the Florida Association of Special Districts.

7. One individual appointed by the Florida Fire Marshals'

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and Inspectors' Association.

8. One employee of the Florida Forest Service of the Department of Agriculture and Consumer Services appointed by the director of the Florida Forest Service.

9. One individual appointed by the State Fire Marshal.

10. One director or instructor of a state-certified firefighting training facility appointed by the State Fire Marshal.

11. One individual ~~The remaining member~~, ~~who shall be~~ appointed by the State Fire Marshal, who may not be a member or representative of the firefighting profession or of any local government.

12. One individual from the Department of Health, appointed by the Surgeon General.

(b) To be eligible for appointment as a member under subparagraph (a)1., subparagraph (a)2., subparagraph (a)3., subparagraph (a)8., or subparagraph (a)10., a person must have had at least 4 years' experience in the firefighting profession. Members shall serve only as long as they continue to meet the criteria under which they were appointed, or unless a member has failed to appear at three consecutive and properly noticed meetings unless excused by the chair.

Section 23. Subsection (1) of section 633.416, Florida Statutes, is amended to read:

633.416 Firefighter employment and volunteer firefighter service; saving clause.—

(1) A fire service provider may not employ an individual to:

(a) Extinguish fires for the protection of life or property

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or to supervise individuals who perform such services unless the individual holds a current and valid Firefighter Certificate of Compliance. However, a person who is currently serving as a volunteer firefighter and holds a volunteer firefighter certificate of completion with a fire service provider, who is then employed as a regular or permanent firefighter by such fire service provider, may function, for a period of 1 year under the direct supervision of an individual holding a valid Firefighter Certificate of Compliance, in the same capacity in which he or she acted as a volunteer firefighter, provided that he or she has completed all training required by the volunteer organization. Under no circumstance can this period extend beyond 1 year either collectively or consecutively from the start of employment to obtain a Firefighter Certificate of Compliance; or

(b) Serve as the administrative and command head of a fire service provider for a period in excess of 1 year unless the individual holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance.

Section 24. Section 648.30, Florida Statutes, is amended to read:

648.30 Licensure and appointment required; prohibited acts; penalties.—

(1) A person may not act in the capacity of a bail bond agent or temporary bail bond agent or perform any of the functions, duties, or powers prescribed for bail bond agents or temporary bail bond agents under this chapter unless that person is qualified, licensed, and appointed as provided in this chapter.

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(2) A person may not represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title in this state.

(3) A person, other than a certified law enforcement officer, may not apprehend, detain, or arrest a principal on a bond, wherever issued, unless that person is qualified, licensed, and appointed as provided in this chapter or licensed as a bail bond agent or bail bond enforcement agent, or holds an equivalent license by the state where the bond was written.

(4) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any licensee under this chapter who knowingly aids or abets an unlicensed person in violating this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 25. Section 843.08, Florida Statutes, is amended to read:

843.08 False personation.—A person who falsely assumes or pretends to be a firefighter, a sheriff, an officer of the Florida Highway Patrol, an officer of the Fish and Wildlife Conservation Commission, an officer of the Department of Environmental Protection, ~~a fire or arson investigator of the Department of Financial Services,~~ an officer of the Department of Financial Services, any personnel or representative of the Division of Investigative and Forensic Services, an officer of the Department of Corrections, a correctional probation officer, a deputy sheriff, a state attorney or an assistant state attorney, a statewide prosecutor or an assistant statewide

prosecutor, a state attorney investigator, a coroner, a police officer, a lottery special agent or lottery investigator, a beverage enforcement agent, a school guardian as described in s. 30.15(1)(k), a security officer licensed under chapter 493, any member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission, any personnel or representative of the Department of Law Enforcement, or a federal law enforcement officer as defined in s. 901.1505, and takes upon himself or herself to act as such, or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 26. Paragraph (f) is added to subsection (11) of section 943.045, Florida Statutes, to read:

943.045 Definitions; ss. 943.045-943.08.—The following words and phrases as used in ss. 943.045-943.08 shall have the following meanings:

(11) "Criminal justice agency" means:

(f) The investigations component of the Department of Financial Services which investigates the crimes of fraud and official misconduct in all public assistance given to residents

of this state or provided to others by the state.

Section 27. For the purpose of incorporating the amendment made by this act to section 497.142, Florida Statutes, in a reference thereto, paragraph (a) of subsection (5) of section 497.141, Florida Statutes, is reenacted to read:

497.141 Licensing; general application procedures.—

(5)(a) The licensing authority may not issue, and effective July 1, 2011, may not renew, a license under this chapter to an applicant that has a criminal record required to be disclosed under s. 497.142(10) unless the applicant demonstrates that issuance of the license, according to rules adopted by the licensing authority, does not create a danger to the public. A licensee who previously disclosed her or his criminal record upon initial application or renewal of her or his license must disclose only a criminal offense for which the licensee was convicted or entered a plea of guilty or nolo contendere since the most recent renewal of her or his license or, if the license has not been renewed, since the licensee's initial application.

Section 28. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2021.

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THE FLORIDA SENATE

APPEARANCE RECORD

4/20/21
Meeting Date

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

1408
Bill Number (if applicable)

369026
Amendment Barcode (if applicable)

Topic Department of Financial Services

Name Meredith Stanfield

Job Title Legislative & Cabinet Affairs Director

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Email meredith.stanfield@myfloridacfo.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)

4/20/21
Meeting Date

1408
Bill Number (if applicable)

369026
Amendment Barcode (if applicable)

Topic Department of Financial Services

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Insurance Agents

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

April 20, 2021
Meeting Date

SB 1408
Bill Number (if applicable)

Topic Banking and Insurance
Amendment Barcode (if applicable)

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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)

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THE FLORIDA SENATE

APPEARANCE RECORD

4/20/2021
Meeting Date

SB 1408
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Department of Financial Services

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing NAIFA-FL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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)

4/20/21
Meeting Date

1408
Bill Number (if applicable)

Topic Department of Financial Services

Amendment Barcode (if applicable)

Name B.G. Murphy

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City *State* *Zip*

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Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Assoc. of Insurance Agents

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)

4/20/21
Meeting Date

1408
Bill Number (if applicable)

Topic Department of Financial Services

Amendment Barcode (if applicable)

Name Meredith Stanfield

Job Title Legislative and Cabinet Affairs Director

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Email Meredith.Stanfield@MyFloridaCFO.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

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 1488
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Stargel
SUBJECT:	Public Records/Members of the Legislature
DATE:	April 19, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Biehl	Roberts	EE	**Favorable**
2.	Candelaria	McVaney	GO	**Fav/CS**
3.	Biehl	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1488 exempts from public inspection and copying requirements certain identifying and location information held by an agency of current legislators, along with their spouses and children.

The bill defines the term "identification and location information" to mean the:

- Home address and telephone numbers of a current member of the Senate or House of Representatives;
- Name, home address, telephone number, and place of employment of the spouse or child of a current legislator; and
- Names and locations of schools and day care facilities attended by the child of a current legislator.

The identification and location information held by an agency is exempt from public inspection and copying requirements if such legislator submits to an agency a written request to exempt such information, and a written statement that such legislator has made a reasonable effort to protect the identification and location information from being accessible through other means.

The bill provides a public necessity statement for the new public records exemption. Passage of the bill requires a two-thirds vote of members present and voting in each house of 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 records" 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* (2020-2022), and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1 (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 records" 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]

Exemptions to Public Disclosure Requirements

The Legislature may exempt public records from public disclosure 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 public disclosure 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 Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended[17] 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]

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[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). Such law shall contain only exemptions from public records or open meetings requirements and provisions governing the enforcement of those requirements, and shall relate to one subject.
[11] FLA. CONST. art. I, s. 24(c). *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 to meet the purpose.[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 may exempted;[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]

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]

Public Records Exemptions for Certain Public Officers/Employees in Sensitive Roles

There is currently no general public records exemption for personal identifying and location information of Cabinet officers, legislators, and/or their spouses and children.

Such protection does exist for a wide range of other public officers and employees who in the course of their official duties make decisions that could subject them to threats or harassment, such as justices and judges, state attorneys and statewide prosecutors, public defenders, and

[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.

certain agency investigative personnel.[27] For example, with respect to justices and judges, Florida law exempts the following public records from inspection and copying:[28]

> (e) The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices or judges; and the name and locations of schools and day care facilities attended by the children of current or former justices and judges.

Penalties for Violations of Public Records Laws

Current law provides general penalties for violations of the Public Records Act. Any public officer who:

- Violates any provision of the Act commits a noncriminal infraction, punishable by fine not exceeding $500; and
- Knowingly violates the provisions of s. 119.07(1), F.S., is subject to suspension and removal or impeachment and, in addition, commits a first degree misdemeanor.[29]

Any person who willfully and knowingly violates:

- Any of the provisions of the Act commits a first degree misdemeanor; and
- Section 119.105, F.S.,[30] commits a third degree felony.[31]

In addition to the general penalties, a number of individual public records exemptions provide penalties for disclosing the protected information. For example, the exemption for personal identifying information of an enrollee or participant in the Florida Health Choice Program makes it a second degree misdemeanor to knowingly and willfully violate the exemption's confidentiality provisions.[32]

III. Effect of Proposed Changes:

Section 1 amends s. 119. 071, F.S., to exempt certain identifying and location information held by an agency of current legislators, along with their spouses and children.

This section defines the term "identification and location information" to mean the:

- Home address and telephone numbers of a current member of the Senate or House of Representatives;

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[27] *See* s. 119.071(4), F.S. (detailing public records protections for a list of public officers and employees and their immediate families).
[28] Section 119.071(4)(d)2.e., F.S.
[29] Section 119.10(1), F.S.
[30] Section 119.105, F.S., provides that a person who comes into possession of exempt or confidential information contained in police reports may not use that information for any commercial solicitation of the victims or relatives of the victims of the reported crimes or accidents and may not knowingly disclose such information to any third party for the purpose of such solicitation during the period of time that information remains exempt or confidential.
[31] Section 119.10(2), F.S.
[32] Section 408.910(14), F.S.

- Name, home address, telephone number, and place of employment of the spouse or child of a current legislator; and
- Names and locations of schools and day care facilities attended by the child of a current legislator.

Identification and location information held by an agency is exempt from public inspection and copying requirements if such legislator submits to an agency that has custody of the identification and location information:

- A written request to exempt such information from public disclosure; and
- A written statement that he or she has made a reasonable effort to protect the identification and location information from being accessible through other means available to the public.

Section 2 provides the requisite public necessity statement that identifies potential retribution against legislators (and their families) for making necessary and impactful policy decisions as one justification for the bill. It also cites such threats, harassment, and intimidation as potentially discouraging residents from seeking elective office.

Section 3 provides that the bill takes effect 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 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 in each house of the Legislature for final passage of a bill creating or expanding an exemption to public records disclosure requirements. This bill creates a new exemption for certain identifying and location information of legislators, their spouses, and their children. Therefore, the bill requires a two-thirds vote of members present and voting to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to public records disclosure requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill provides a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to public records disclosure requirements to be no broader than necessary to accomplish the stated purpose

of the law. The stated purpose of the law is to protect legislators and their spouses and children from threats, harassment, and intimidation that may result from their necessary and impactful policy decisions. To a large degree, it mirrors (and is even more limited than some) existing exemptions for other public officers and employees. Thus, the exemption does not appear to be broader than necessary to accomplish the stated 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, to the extent imposed, associated with the state making redactions in response to public records requests.

C. Government Sector Impact:

The state may incur costs, and additional workload, related to 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 119.071 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:

- Defines the term "identification and location information" to mean:
  - The home address and telephone number of a current member of the Senate or House of Representatives;
  - The name, home address, telephone number, and place of employment of the spouse or child of a current legislator; and
  - The name and location of a school or day care facility attended by the child of a current legislator.
- Establishes that identification and location information held by an agency is exempt if such legislator submits to an agency a written request to exempt such information, and a written statement that such legislator has made a reasonable effort to protect the identification and location information from being accessible through other means.
- Removes penalties for any person who knowingly, and with intent to intimidate, disseminates the information protected from disclosure without express authorization of such legislators.

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 Stargel

585-03619-21 20211488c1

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for certain identifying and location information of current members of the Legislature and the spouses and children of such legislators; providing for future legislative review and repeal of the exemption 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. Paragraph (l) is added to subsection (5) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(5) OTHER PERSONAL INFORMATION.—

(l)1. For purposes of this paragraph, "identification and location information" means:

a. The home address and telephone number of a current member of the Senate or House of Representatives;

b. The name, home address, telephone number, and place of employment of the spouse or child of a current legislator;

c. The name and location of a school or day care facility attended by the child of a current legislator.

2. Identification and location information held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if such legislator submits to an agency that

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

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has custody of the identification and location information:

a. A written request to exempt such information from public disclosure; and

b. A written statement that he or she has made a reasonable effort to protect the identification and location information from being accessible through other means available to the public.

3. 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 the home addresses and telephone numbers of current members of the Senate and the House of Representatives; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such legislators; and the names and location of schools and day care facilities attended by the children of such legislators be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Members of the Legislature often have to make difficult and impactful policy decisions. As a result, legislators and their family members may receive threats, including, but not limited to, verbal threats, harassment, and intimidation, as a result of carrying out their official duties. Vulnerability to such threats may discourage residents of this state from seeking elected office in order to protect themselves and their families. The Legislature further finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may

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be derived from the disclosure of the information.

Section 3. This act shall take effect July 1, 2021.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Banking and Insurance
Governmental Oversight and Accountability
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission, Alternating Chair

SENATOR KELLI STARGEL
22nd District

April 8, 2021

The Honorable Kathleen Passidomo
Senate Committee on Rules, Chair
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Passidomo:

I respectfully request that SB 1488, related to *Public Records/Members of the Legislature*, be placed on the Rules meeting agenda at your earliest convenience.

The purpose of SB 1488 is to protect current members of the Legislature and their families from having their personal identifying information publicized. In light of recent events around our state and country, elected leaders and their families are vulnerable to riots and protests at their homes. SB 1488 will protect addresses and other personal information from being included in public records at the request of a legislator.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
State Senator, District 22

Cc: John Phelps/Staff Director
Cynthia Futch/AA

REPLY TO:
❒ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
❒ 420 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

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 1512
INTRODUCER:	Senator Wright
SUBJECT:	Space Florida Board of Directors
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Caldwell	MS	**Favorable**
2.	McVaney	McVaney	GO	**Favorable**
3.	Stallard	Phelps	RC	**Favorable**

I. Summary:

SB 1512 increases the number of members of the board of directors of Space Florida from 13 to 15. The President of the Senate is authorized to appoint one member of the Florida Senate, and Speaker of the House of Representatives is authorized to appoint a member of the House of Representatives. These legislative appointees serve ex officio and as nonvoting members of the board.

Under current law, the Space Florida board of directors is comprised of the Governor or his or her designee, and 12 members from the board of directors of Enterprise Florida. Six of these twelve people are appointed by the Governor, and the President of the Senate and the Speaker of the House each appoint three members. The appointing officials must select members from various industries and areas of expertise as specified in statute. Moreover, they must consider candidates who reflect this state's racial, ethnic, and gender diversity.

By law, the board of directors of Space Florida performs various functions, including establishing rules and orders to conduct the business of Space Florida, and appointing a president of Space Florida. Additionally, Space Florida is granted various powers, including the authority to enter into contracts necessary to carry out Space Florida's mission and to provide financial services to support aerospace-related business development in this state.

Members of the board of directors serve 4-year terms.

The bill takes effect July 1, 2021.

II. Present Situation:

Space Florida – Creation and Purpose

Space Florida was created as an independent special district,[1] a body politic and corporate, and a subdivision of the state, to foster the growth and development of a sustainable and world-leading aerospace industry in this state. The purpose of Space Florida is to promote aerospace business development by facilitating business financing, spaceport operations, research and development, workforce development, and innovative education programs. To accomplish its purpose, Space Florida advises, coordinates, cooperates, and, when necessary, enters into memoranda of agreement with municipalities, counties, regional authorities, state agencies and organizations, appropriate federal agencies and organizations, and other interested persons and groups.[2] Space Florida may purchase or construct facilities; set rates, fees, and charges for the use of facilities; and undertake joint financing with municipalities or private sector entities for any project.[3]

Space Florida's Board of Directors

Composition and Appointment

Space Florida is governed by a 13-member independent board of directors. The board must be comprised of the 12 private-sector members of the Enterprise Florida Board, plus the Governor or designee. The Governor serves ex officio, as the chair, and as a voting member.[4]

The 12 private–sector members of the Enterprise Florida board, and thus of the Space Florida Board, are appointed to 4-year terms by the Governor (six), the President of the Senate (three), and the Speaker of the House of Representatives (three).[5] In appointing board members, the Governor and the presiding officers of the Legislature must "ensure that the composition of the board of directors reflects the diversity of Florida's business community and is representative of" the following economic development goals:

- Increase private investment in Florida.
- Advance international and domestic trade opportunities.
- Market the state both as a probusiness location for new investment and as an unparalleled tourist destination.
- Revitalize Florida's space and aerospace industries, and promote emerging complementary industries.
- Promote opportunities for minority-owned businesses.

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[1] Chapter 189, F.S.

[2] Space Florida is not an agency as defined in ss. 216.011 and 287.012, F.S. Space Florida is subject to applicable provisions of the Uniform Special District Accountability Act.

[3] Section 331.305, F.S.

[4] According to the Space Florida website, the following are members of the board: Governor Ron DeSantis; Lieutenant Governor Jeanette Nunez, Chairman of the Board; Jay Beyrouti, President, Monicarla, Ltd.; Jesse Biter, President/CEO, Biter Enterprises, LLC.; Dean Cannon, President and CEO, Gray Robinson; Gregory Celestan, Chairman and Chief Executive Officer, Celestar Corporation; Daniel Davis, President and CEO, Jax Chamber; Sonya Deen, Vice President of Government Relations, JM Family Enterprises, Inc.; Barbara Essenwine, Owner, Above & Beyond Group; Mori Hosseini, Chairman & CEO, ICI Homes; Kenneth Kahn, President, LRP Media Group; Belinda Keiser, Vice Chancellor of Community Relations & Student Advancement, Keiser University; Katherine San Pedro, Partner, Ballard Partners, Inc. Available at https://www.spaceflorida.gov/about/board-of-directors/ (Last visited on March 4, 2021).

[5] Section 331.3081., F.S.

- Assist and market professional and amateur sport teams and sporting events in Florida.
- Assist, promote, and enhance economic opportunities in this state's rural and urban communities. [6]

Additionally, the board must include at least one director for each of the following areas of expertise:

- International business
- Tourism marketing
- The space or aerospace industry
- Managing or financing a minority-owned business
- Manufacturing
- Finance and accounting
- Sports marketing[7]

Finally, when appointing members from the private sector to serve on the Enterprise Florida Board (and therefore on the Space Florida board), the Governor, Senate President, and Speaker of the House must consider "appointees who reflect Florida's racial, ethnic, and gender diversity. Efforts shall be taken to ensure participation from all geographic areas of the state, including representation from urban and rural communities."[8]

Duties of the Board of Directors

The board of directors' duties include:

- Adopting rules and orders to conduct the business of Space Florida, the maintenance of records, and the form of all documents and records of Space Florida.
- Maintaining an executive office and Space Florida offices in close proximity to the John F. Kennedy Space Center.
- Appointing a president of Space Florida and determining his or her title, functions, duties, powers, and salary.
- Preparing an annual report of operations as a supplement to its annual report, which is also required by law.[9]

Powers of the Board of Directors

The board of directors is authorized to exercise the following powers:

- Enter, and authorize any agent or employee of Space Florida to enter, upon any lands, waters, and premises, upon giving reasonable notice and due process to the land owner, for the purposes of making surveys, soundings, drillings, appraisals, and examinations necessary to perform its duties and functions.
- Execute all contracts and other documents, adopt all proceedings, and perform all acts determined by the board to be necessary or desirable to carry out the purposes given it in statute.

[6] Section 288.901(5)(b), F.S. The goals are provided in s. 288.901(2), F.S.
[7] Section 288.901(5)(b), F.S.
[8] Section 288.901(5)(c), F.S.
[9] Section 331.310(2), F.S.

- Establish and create such departments, committees, or other entities as from time to time the board deems necessary or desirable in the performance of any acts or other things necessary to the exercise of the powers provided in statute.
- Provide financial services to support aerospace-related business development within the state. Financial services may include, but are not limited to:
  - Insuring, coinsuring, or originating for sale direct aerospace-related loans.
  - Direct lending.
  - Guaranteeing and collateralizing loans.
  - Creating accounts.
  - Capitalizing, underwriting, leasing, selling, or securing funding for aerospace-related infrastructure.
  - Investing in permissible securities.
  - Organizing financial institutions and international bank syndicates.
  - Acquiring, accepting, or administering grants, contracts, and fees from other organizations to perform activities that are consistent with the purposes of Space Florida's business plan. If the board deems a financial services entity is necessary, the board may create, form, or contract with one or more such entities.
- Examine, and authorize any officer or agent of Space Florida to examine, the county tax rolls with respect to the assessed valuation of the real and personal property within any spaceport territory.
- Engage in the planning and implementation of space-related economic and educational development within the state.
- Provide the strategic direction for the aerospace-related research priorities of the state and its aerospace-related businesses.
- Execute intergovernmental agreements and development agreements consistent with prevailing statutory provisions, including, but not limited to, special benefits or tax increment financing initiatives.
- Establish reserve funds for future board operations.
- Adopt rules pursuant to chapter 120, F.S., to carry out the purposes of ch. 331, F.S, which governs Space Florida.[10]

III. Effect of Proposed Changes:

The bill increases the number of members of the board of directors of Space Florida from 13 to 15. The President of the Senate is authorized to appoint one member of the Florida Senate, and Speaker of the House of Representatives is authorized to appoint a member of the House of Representatives. These legislative appointees serve ex officio and as nonvoting members of the board.

Under current law, the Space Florida board of directors is comprised of the Governor or his or her appointee and 12 members from the board of directors of Enterprise Florida. Six of these twelve people must be appointed by the Governor, and the President of the Senate and the Speaker of the House each must appoint three members. The appointing officials must select members from various industries and areas of expertise as specified in statute. Moreover, they must consider candidates who reflect this state's racial, ethnic, and gender diversity.

[10] Section 331.310(1), F.S.

By law, the board of directors of Space Florida performs various functions, including establishing rules and orders to conduct the business of Space Florida and appointing a president of Space Florida. Additionally, Space Florida is granted various powers, including the authority to enter into contracts necessary to carry out Space Florida's mission and provide financial services to support aerospace-related business development in this state.

Members of the board of directors serve 4-year terms.

The bill takes effect 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.

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 331.081 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Wright

14-01642-21 20211512__

A bill to be entitled

An act relating to Space Florida board of directors; amending s. 331.3081, F.S.; revising the membership of the board of directors of Space Florida to include two ex officio, nonvoting members appointed by the Legislature; providing an effective date.

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

Section 1. Section 331.3081, Florida Statutes, is amended to read:

331.3081 Board of directors.—Space Florida shall be governed by a 15-member ~~13-member~~ independent board of directors that consists of:

(1) The 12 members appointed to the board of directors of Enterprise Florida, Inc., by the Governor, the President of the Senate, and the Speaker of the House of Representatives pursuant to s. 288.901(5)(a)7.

(2) One ex officio, nonvoting member appointed by the President of the Senate from the members of the Senate, and one ex officio, nonvoting member appointed by the Speaker of the House of Representatives from the members of the House of Representatives. ~~and~~

(3) The Governor, who shall serve ex officio, or who may appoint a designee to serve, as the chair and a voting member of the board.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Commerce and Tourism, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Children, Families, and Elder Affairs
Finance and Tax
Transportation

SENATOR TOM A. WRIGHT
14th District

April 2, 2021

The Honorable Kathleen Passidomo
400, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 1512 – Space Florida Board of Directors

Dear Chair Passidomo:

Senate Bill 1512, relating to the Space Florida Board of Directors has been referred to the Committee on Rules. I am requesting your consideration on placing SB 1512 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Tom A. Wright, District 14

cc: John Phelps, Staff Director of the Committee on Rules
Tom Yeatman, Deputy Staff Director of the Committee on Rules
Cynthia Futch, Administrative Assistant of the Committee on Rules

REPLY TO:
❒ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
❒ 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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 1520
INTRODUCER:	Judiciary Committee and Senator Boyd
SUBJECT:	Ancillary Property Rights
DATE:	April 19, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Paglialonga	Ryon	CA	**Favorable**
3.	Bond	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1520 amends real property law to specify that a utility easement is an interest in real property that must be recorded and may be transferred or assigned, and amends the Marketable Recordable Title Act (MRTA) to provide that it may extinguish certain covenants or restrictions related to zoning requirements or a building or development permit.

In general, an easement allows the holder of the easement the right to enter into a servient estate, which is land owned by another. A utility easement allows entry for the purpose of constructing or maintaining utilities serving the public. The holder of an easement has the right to do what is reasonably necessary to utilize the easement for its original purpose, but no more. The bill requires a utility easement to be recorded in the public records, allows the holder of the easement full property rights in the easement unless expressly provided otherwise in the easement, and provides that assignment of an easement is not an undue burden upon the servient estate.

MRTA simplifies property transactions and modernizes land use by eliminating property rights that are more than 30 years old and predate the root of the title of the property in question. There are, however, numerous exceptions to MRTA whereby a property right is not extinguished by MRTA. The bill amends MRTA to:

- Modify an exception to extinguishment to require that a general reference to a prior right must include an affirmative statement of intent to preserve such property right.
- Specify that MRTA may extinguish a covenant or restriction related to a zoning requirement, building permit, or development permit. However, this will not extinguish the underlying

zoning or building codes or ordinances; nor will it extinguish a covenant or restriction that says on its first page that it was required by local codes.
- Allow revitalization of a covenant or restriction that had been required by a government agency as a condition of a development permit.

The bill includes a statement that the changes to MRTA apply to all real property interests. A person who wishes to protect a property interest potentially extinguished by the bill has until July 1, 2022 to file a Statement of Marketable Title Action in the public records in order to preserve the property interest.

The bill is effective upon becoming law.

II. Present Situation:

Utility Easements

Ownership of real property includes many rights. Maybe one of the most important is the right to exclude others from entering onto the land. Like the other real property rights, the right to exclude others can be transferred in part to another individual or entity. Giving someone else the right to enter a specified portion of one's property for a specific use is known as granting an easement, and the real property subject to the easement is referred to as the servient estate.

A utility easement is a form of easement held by a utility company for the specific purpose of furnishing utilities, generally for benefit of society at large.

The law governing easements generally provides that an easement holder has the right to do what is reasonably necessary for the full enjoyment of the easement, but that the right must not be increased to any greater extent than reasonably necessary and contemplated at the time the easement was created.[1] The "holder of an electric transmission line easement may avail itself of modern inventions and improvements so long as such action is within the scope of the easement."[2] An easement, like any other contract, is construed according to its plain terms. "The scope of an easement is defined by what is granted, not by what is excluded, and all rights not granted are retained by the grantor. Likewise, the scope of an express easement for a stated purpose cannot be expanded to include any use merely because such use does not impose an added burden on the servient estate."[3]

The Marketable Record Title Act

The Marketable Record Title Act (MRTA) was enacted in 1963 "to simplify conveyances of real property, stabilize titles, and give certainty to land ownership."[4,5] Specifically, MRTA extinguishes most rights in real property that are more than 30 years old based on the date of the

[1] *Crutchfield v. F.A. Sebring Realty Co.*, 69 So. 2d 328 (Fla. 1954).
[2] *Florida Power Corp. v. Silver Lake Homeowners Ass'n*, 727 So. 2d 1149, 1150 (Fla. 5th DCA 1999) (allowing electric utility to change from wood poles to stronger and larger steel poles).
[3] *City of Orlando v. MSD-MATTIEK, L.L.C.*, 895 So. 2d 1127 (Fla. 5th DCA 2005)(it was an undue burden on the servient estate to allow installation of fiber optic lines along an electric easement)(internal citations omitted).
[4] *Save Calusa Trust v. St. Andrews Holdings, Ltd.*, 193 So. 3d 910, 914 (Fla. 3d DCA 2016).
[5] The Marketable Record Title Act is ch. 712, F.S.

root of the title. The root of title "means any title transaction purporting to create or transfer the estate claimed by any person which is the last title transaction to have been recorded at least 30 years before the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded."[6] Any person who has been vested with any estate in land of record for 30 years or more has a marketable record title, free and clear of most claims or encumbrances against the land that occurred prior to that record title. This allows a prospective buyer, for example, to rely on the first title transaction that occurred more than 30 years ago, together with all title transactions to date, as opposed to searching through decades of possible title transactions. Specifically, MRTA extinguishes the following rights, subject to exceptions:

> [A]ll estates, interests, claims, or charges, the existence of which depends upon any act, title transaction, event, or omission that occurred before the effective date of the root of title.[7]

MRTA includes a number of exceptions—real property rights that MRTA expressly does not extinguish even if the rights were created in a pre-root instrument. One exception provides that MRTA does not extinguish any property right or title defect disclosed in an instrument recorded in the chain of title from the root forward. However, a general reference to the right or defect is insufficient notice to the title examiner, the reference must be made to the book and page, or to the name of the recorded plat.[8]

Section 712.04, F.S., lists the real property interests that are extinguished where MRTA applies. Unless one of the exceptions of s. 712.03, F.S., applies, a marketable record title is free and clear of all estates, interests, claims, or charges, the existence of which depends upon any act, title transaction, event, or omission that occurred before the effective date of the root of title.

Property owners, particularly those with recorded covenants and restrictions designed to preserve the character of the neighborhood, were often dismayed in the past when they discovered that their neighborhood covenants and restrictions had been invalidated by the operation of MRTA. In response, MRTA was amended to allow for covenant revitalization. Different procedures apply, depending upon whether the covenants created a homeowners' association. Section 712.12, F.S., governs covenant or restriction revitalization by parcel owners not subject to a homeowners' association. It does not apply to a covenant or restriction required by a governmental agency as a condition of a development permit.

Save Calusa Trust

In *Save Calusa Trust v. St. Andrews Holdings, Ltd.,* 193 So. 3d 910 (Fla. 3d DCA 2016), the court addressed the issue of "whether a restrictive covenant, recorded in compliance with a government-imposed condition of a land use approval, is a title interest subject to extinguishment by MRTA."[9] The court held that the 99-year restrictive covenant was not a title interest under MRTA, and thus was not subject to extinguishment by MRTA. The court reasoned that the

[6] Section 712.01(6), F.S.
[7] Section 712.04, F.S. The exceptions are set forth at s. 712.03, F.S.
[8] Section 712.03(1), F.S.
[9] *Id*. at 914. The restrictive covenant at issue required the owner of a golf course, as a prerequisite to redeveloping the property, to have the consent of 75 percent of the homeowners whose homes were in a ring around the course.

restrictive covenant in question was an inseparable part of a governmental action to rezone the property at issue. The court concluded that, based on MRTA's language and case law, MRTA did not extinguish zoning regulations, including the one at issue in the case.[10]

III. Effect of Proposed Changes:

Utility Easements

Section 1 of the bill creates s. 704.09, F.S., regarding utility easements. A utility easement is an easement, created by a written grant of easement, for the purpose of providing utility services such as water, wastewater, reclaimed water, natural gas, electricity, drainage, and other utility services.

The bill requires a utility easement to be recorded under the general recording statute, s. 95.01, F.S.

The bill provides that a utility easement may be alienated, assigned, partially assigned, divided, transferred, or apportioned as a divided or undivided interest by its grantee and its successors and assigns, unless otherwise expressly provided in the instrument by which it is created. The bill further provides that an assignment is not an undue burden upon the servient estate if the assignment is consistent with the terms set forth in the instrument creating the utility easement.

The Marketable Record Title Act

Section 2 of the bill amends the exception to MRTA at s. 712.03(1), F.S., for real property rights or title defects referenced in an instrument recorded after the root of title, to require that such instrument is not extinguished by MRTA if it either:

- Specifically references the official records book and page, instrument number, or plat name, of the pre-root instrument; or
- Generally references the estate, interest, easement or use restriction, together with an affirmative statement of intent that the property is subject to such estate, interest, easement or use restriction.

Section 3 of the bill amends the scope of real property rights that may be extinguished by MRTA, at s. 712.04, F.S., to specifically include covenants and restrictions, including any covenant or restriction that depends upon a zoning requirement, building permit, or development permit.

Section 3 also creates two exceptions to the otherwise broad scope of s. 712.04, F.S., to provide that MRTA does not alter or invalidate:

- A comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval, to the extent such law, regulation, or regulatory approval operates independently of matters recorded in the official records; or

[10] *Id*. at 915-16.

- Any recorded covenant or restriction that on the face of the first page of the document states that it was accepted by a governmental entity as part of, or as a condition of, any such comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval.

Section 4 amends s. 712.12, F.S., to allow covenant or restriction revitalization by parcel owners not subject to a homeowners' association where such covenant or restriction was required by a governmental agency as a condition of a development permit.

Section 5 provides an affirmative statement to declare that the amendments made to ss. 712.03, 712.04, and 712.12, F.S., pursuant to this bill are to provide clarification to already existing law. This clarification applies to all estates, interests, claims, covenants, restrictions, and charges, whether imposed or accepted after the effective date of the bill.

Section 6 requires that an individual who seeks to avoid losing a property interest because of the changes to MRTA in this bill file a notice in the public records no later than the earlier of the expiration of the interest or July 1, 2021. The form of notice is governed by s. 712.06, F.S.[11]

Section 7 directs the Division of Law Revision to replace any language in the bill regarding "the effective date of this act" to the date that the bill becomes law.

Section 8 provides that the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

[11] The notice must contain name and address of the claimant, name and address of the owner, legal description of the affected land, a statement of the legal claim, and the recording information for the document supporting the claim. The notice must be executed and recorded the same as a deed.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Professionals working in the real estate and title industry may need to revise certain documents to clarify what property interests are part of the marketability in the MRTA.

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: 712.03, 712.04, and 712.12.

This bill creates section 704.09, 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 Judiciary on March 9, 2020:
The committee substitute removed telephone service from the description of a utility easement.

B. Amendments:

None.

856906

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Boyd) recommended the following:

Senate Amendment (with title amendment)

Delete lines 22 - 38.

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

And the title is amended as follows:

Delete lines 2 - 8

and insert:

An act relating to ancillary property rights; amending s. 712.03, F.S.; revising rights that

By the Committee on Judiciary; and Senator Boyd

590-02627-21 20211520c1

A bill to be entitled

An act relating to ancillary property rights; creating s. 704.09, F.S.; defining the term "utility easement"; providing that a utility easement is an interest in real property and subject to certain actions unless otherwise provided in the instrument creating the easement; providing that the easement is not an undue burden; amending s. 712.03, F.S.; revising rights that are not affected or extinguished by marketable record titles; amending s. 712.04, F.S.; revising what types of interests are extinguished by a marketable record title; providing construction; amending s. 712.12, F.S.; revising the definition of the term "covenant or restriction"; providing applicability; requiring persons with certain interests in land which may be extinguished by this act to file a specified notice to preserve such interests; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Section 704.09, Florida Statutes, is created to read:

704.09 Utility easements.—

(1) For purposes of this section, the term "utility easement" means an easement, created by a written grant of easement, for the purpose of providing utility services such as water, wastewater, reclaimed water, natural gas, electricity, drainage, and other utility services.

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

590-02627-21 20211520c1

(2) A utility easement is an interest in real property subject to s. 695.01. Unless otherwise expressly provided in the instrument by which it is created, a utility easement may be alienated, assigned, partially assigned, divided, transferred, or apportioned as a divided or undivided interest by its grantee and its successors and assigns. Provided the assignment is consistent with the terms set forth in the instrument creating the utility easement, the assignment is not an undue burden upon the servient estate.

Section 2. Subsection (1) of section 712.03, Florida Statutes, is amended to read:

712.03 Exceptions to marketability.—Such marketable record title shall not affect or extinguish the following rights:

(1) Estates or interests, easements and use restrictions disclosed by and defects inherent in the muniments of title on which said estate is based beginning with the root of title, ~~;~~ provided~~, however,~~ that in the muniments of title those estates, interests, easements, or use restrictions created before the root of title are preserved by identification in the legal description of the property by specific reference to the official records book and page number, instrument number, or plat name or there is otherwise an affirmative statement in a muniment of title to preserve such estates, interests, easements, or use restrictions created before the root of title as identified by the official records book and page or instrument number ~~a general reference in any of such muniments to easements, use restrictions or other interests created prior to the root of title shall not be sufficient to preserve them unless specific identification by reference to book and page of~~

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

~~record or by name of recorded plat be made therein to a recorded title transaction which imposed, transferred or continued such easement, use restrictions or other interests~~; subject, however, to ~~the provisions of~~ subsection (5).

Section 3. Section 712.04, Florida Statutes, is amended to read:

712.04 Interests extinguished by marketable record title.—Subject to s. 712.03, a marketable record title is free and clear of all estates, interests, claims, covenants, restrictions, or charges, the existence of which depends upon any act, title transaction, event, zoning requirement, building or development permit, or omission that occurred before the effective date of the root of title. Except as provided in s. 712.03, all such estates, interests, claims, covenants, restrictions, or charges, however denominated, whether they are or appear to be held or asserted by a person sui juris or under a disability, whether such person is within or without the state, natural or corporate, or private or governmental, are declared to be null and void. However, this chapter does not affect any right, title, or interest of the United States, Florida, or any of its officers, boards, commissions, or other agencies reserved in the patent or deed by which the United States, Florida, or any of its agencies parted with title. This section may not be construed to alter or invalidate:

(1) A comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval, to the extent such law, regulation, or regulatory approval operates independently of matters recorded

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

in the official records; or

(2) Any recorded covenant or restriction that on the face of the first page of the document states that it was accepted by a governmental entity as part of, or as a condition of, any such comprehensive plan or plan amendment; zoning ordinance; land development regulation; building code; development permit; development order; or other law, regulation, or regulatory approval.

Section 4. Paragraph (b) of subsection (1) of section 712.12, Florida Statutes, is amended to read:

712.12 Covenant or restriction revitalization by parcel owners not subject to a homeowners' association.—

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

(b) "Covenant or restriction" means any agreement or limitation ~~imposed by a private party and not required by a governmental agency as a condition of a development permit, as defined in s. 163.3164, which is~~ contained in a document recorded in the public records of the county in which a parcel is located and which subjects the parcel to any use restriction that may be enforced by a parcel owner.

Section 5. The amendments to ss. 712.03, 712.04, and 712.12, Florida Statutes, in this act are intended to clarify existing law, are remedial in nature, and apply to all estates, interests, claims, covenants, restrictions, and charges, whether imposed or accepted before, on, or after the effective date of this act.

Section 6. A person with an interest in land which may potentially be extinguished by this act, and whose interest has not been extinguished before July 1, 2021, must file a notice

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

pursuant to s. 712.06, Florida Statutes, by July 1, 2022, to preserve such interest.

Section 7. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes a law.

Section 8. This act shall take effect upon becoming a law.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1620
INTRODUCER:	Rules Committee; Transportation Committee; and Senator Brandes
SUBJECT:	Autonomous Vehicles
DATE:	April 20, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Fav/CS**
2.	Hackett	Ryon	CA	**Favorable**
3.	Price	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1620 revises the definition of the term, "autocycle." Additionally, the bill defines the term "low-speed autonomous delivery vehicle" as a fully autonomous vehicle that meets the current federal definition. The bill authorizes such vehicles to operate only on streets or roads where the posted speed limit is 35 miles per hour or less but are not prohibited from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour. A low-speed autonomous delivery vehicle may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, under certain conditions.

The bill sets out equipment requirements for such vehicles and provides that the new provisions are superseded by any conflicting federal regulations. The bill also establishes insurance coverage requirements for such vehicles. The provisions of any motor vehicle equipment laws or regulations of this state, relating to or supporting motor vehicle operation by a human driver but not relevant for an automated driving system, are rendered inapplicable to fully autonomous vehicles designed to be operated *exclusively* by the automated driving system for *all* trips.

The bill also makes conforming revisions made necessary by the above provisions.

The fiscal impact to state and local revenues is indeterminate. See the "Fiscal Impact Statement" below for details.

The bill takes effect July 1, 2021.

II. Present Situation:

Autocycles

According to the National Conference of State Legislatures, the National Highway Traffic Safety Administration (NHTSA) does not currently have a vehicle classification for autocycles. At the federal level, autocycles fall under the definition of "motorcycle" and must generally comply with applicable motorcycle manufacturing and safety standards. States are making efforts to define "autocycles," address safety requirements and passenger restrictions, and regulate operator licensing and operation of autocycles on roadways.[1]

Current Florida law defines the term "autocycle" to mean "a three-wheeled motorcycle[2] that has two wheels in the front and one wheel in the back; is equipped with a roll cage or roll hoops, a seat belt for each occupant, antilock brakes, a steering wheel, and seating that does not require the operator to straddle or sit astride it; and is manufactured in accordance with the applicable federal motor vehicle safety standards in 49 C.F.R. part 571 by a manufacturer registered with the [NHTSA]."[3]

Low-Speed Autonomous Delivery Vehicles

Convenient delivery of goods to households is increasingly popular, particularly so in the current pandemic. New types of vehicles designed specifically for such purposes are emerging. One such vehicle is produced by Nuro, Inc., based in California,[4] which produces a vehicle called the R2X. Nuro indicates the vehicle is about half the width and weight of a typical car.[5]

As described by the National Highway Traffic Safety Administration (NHTSA),[6] the R2X is a highly automated low-speed, electrically-powered delivery vehicle designed to carry cargo exclusively (everything "from dinner to dry cleaning"[7]) and operate without a human driver. The vehicle has no occupant compartments, designated seating positions, or manual controls for driving the vehicle. The R2X is equipped with a system that allows a remote operator to take over the driving functions of the vehicle.[8]

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[1] *See* National Conference of State Legislatures, *Transportation Review: Autocycles,* Lambert, S. and Shinkle, D., April 2017, available at https://www.ncsl.org/research/transportation/transportation-review-autocycles.aspx (last visited March 16, 2021).
[2] "Motorcycle" is defined in s. 316.003(45), F.S., as "any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground. The term includes an autocycle, but does not include a tractor, a moped, an electric bicycle, or any vehicle in which the operator is enclosed by a cabin unless it meets the requirements set forth by the National Highway Traffic Safety Administration for a motorcycle."
[3] Section 316.003(2), F.S.
[4] *See* Nuro, *About,* available at Nuro — About (last visited March 8, 2021).
[5] *See* Nuro, *Delivery Safety: Nuro's Approach,* at p. 9, available at delivering_safety_nuros_approach.pdf (squarespace.com) (last visited March 8, 2021).
[6] *See* Federal Register, Volume 85, No. 28, Tuesday, February 11, 2020, available at Federal Register :: Nuro, Inc.; Grant of Temporary Exemption for a Low-Speed Vehicle With an Automated Driving System (last visited March 8, 2021).
[7] Nuro, available at Nuro — Product (last visited March 8, 2021).
[8] NHTSA notes its understanding that the remote operator system is a "fallback" safety feature and is not a primary means of controlling the system. *Id.* at p. 1.

Federal law defines "low-speed vehicle" to mean a motor vehicle:

- That is 4-wheeled,
- Whose speed attainable in 1 mile is more than 20 miles per hour and not more than 25 miles per hour on a paved level surface, and
- Whose gross vehicle weight rating is less than 3,000 pounds.[9]

Federal regulations in 49 C.F.R. s. 571.500 require each low-speed vehicle to be equipped with:

- Headlamps,
- Front and rear turn signal lamps,
- Taillamps,
- Stop lamps,
- Reflex reflectors: one red on each side as far to the rear as practicable, and one red on the rear,
- An exterior mirror mounted on the driver's side of the vehicle and either an exterior mirror mounted on the passenger's side of the vehicle or an interior mirror,
- A parking brake,
- A windshield that conforms to a specified Federal Motor Vehicle Safety Standard (FMVSS) relating to glazing.
- A vehicle identification number.
- Seat belt assemblies that comply with a specified FMVSS.
- Specified rear visibility requirements relating to back-up cameras.
- An alert sound necessary for pedestrians to detect and recognize the vehicle.

Temporary Exemption from Federal Motor Vehicle Safety Standards

The National Traffic and Motor Vehicle Safety Act[10] grants the U.S. Department of Transportation (USDOT) broad authority to exempt motor vehicles from an FMVSS or bumper standard on a temporary basis under specified terms and conditions.[11] The USDOT Secretary has delegated this authority to NHTSA.[12]

Pursuant to that authority, NHTSA has granted at least one company, Nuro, *temporary* exemptions from three of the low-speed vehicle equipment requirements in 49 C.F.R. s. 571.500.[13] The exemptions are from the following equipment requirements listed above:

- The exterior and interior mirror requirement.
- The windshield glazing requirements.
- The rear visibility requirements (relating to backup camera "linger time").

The exemption was granted under a number of terms and conditions and authorizes Nuro to produce 2,500 of the exempted R2X vehicles during any 12-month period of the exemption, or a

[9] 49 C.F.R. 571.3.
[10] 49 U.S.C. 310 *et seq.*
[11] 49 U.S.C. 30113.
[12] 49 C.F.R. 1.95.
[13] *See* Federal Register, Volume 85, No. 28, Tuesday, February 11, 2020, available at Federal Register :: Nuro, Inc.; Grant of Temporary Exemption for a Low-Speed Vehicle With an Automated Driving System (last visited March 8, 2021).

maximum of 5,000 exempted vehicles over the full two-year period of the exemption. The exemption expires on February 10, 2022.

Autonomous Vehicles

Federal Policy and Guidance

In October of 2018, the USDOT began releasing federal guidance for automated driving systems, building on previous policy and adopting an industry standard to ensure consistency in taxonomy usage. The standard sets out levels of vehicle automation, ranging from Level 0 (no automation) to Level 6 (full automation). The USDOT has since issued additional guidance, involving the work of multiple stakeholders, in periodic publications intended to lay the groundwork for deployment of automated vehicles and technology.[14] The latest guidance comes in the form of an *Automated Vehicles Comprehensive Plan,*[15] the goals of which are summarized by the USDOT as follows:

- Promote Collaboration and Transparency – USDOT will promote access to clear and reliable information to its partners and stakeholders, including the public, regarding the capabilities and limitations of ADS.[16]
- Modernize the Regulatory Environment – USDOT will modernize regulations to remove unintended and unnecessary barriers to innovative vehicle designs, features, and operational models, and will develop safety focused frameworks and tools to assess the safe performance of ADS technologies.
- Prepare the Transportation System – USDOT will conduct, in partnership with stakeholders, the foundational research and demonstration activities needed to safely evaluate and integrate ADS, while working to improve the safety, efficiency, and accessibility of the transportation system.[17]

The USDOT is seeking public comments on the plan, with the comment period ending on March 22, 2021. Thus far, only guidance has been issued. No federal statutes or rules specifically applicable to automated vehicles are currently in place.

Current Florida Autonomous Vehicle Law

Definitions

Current law defines the following relevant terms:

- "Automated driving system" means the hardware and software that are collectively capable of performing the entire dynamic driving task of an autonomous vehicle on a sustained basis, regardless of whether it is limited to a specific operational design domain.
- "Autonomous vehicle" means any vehicle equipped with an automated driving system.
- "Dynamic driving task" means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic within its specific operational design domain, if any,

[14] USDOT, *USDOT Automated Vehicles Activities*, "ADS 2.0 Activities," "AV 3.0 Activities," and "AV 4.0 Activities" tabs available at https://www.transportation.gov/AV (last visited March 7, 2021).
[15] Available at Automated Vehicles Comprehensive Plan | US Department of Transportation (last visited March 7, 2021).
[16] "Automated driving systems." *See* discussion of current Florida definitions on p. 2 of this analysis.
[17] *Id.*

excluding strategic functions such as trip scheduling and selection of destinations and waypoints.

- "Fully autonomous vehicle" means a vehicle equipped with an automated driving system designed to function without a human operator.
- "Operational design domain" means a description of the specific operating domain in which an automated driving system is designed to properly operate, including, but not limited to, roadway types, speed ranges, environmental conditions such as weather and time of day, and other domain constraints.[18]
- "Teleoperation system" means the hardware and software installed in a motor vehicle which allow a remote human operator to supervise or perform aspects of, or the entirety of, the dynamic driving task.
- "Remote human operator" means a natural person who is not physically present in a vehicle equipped with an automated driving system who engages or monitors the vehicle from a remote location. A remote human operator may have the ability to perform aspects of, or the entirety of, the dynamic driving task for the vehicle or cause the vehicle to achieve a minimal risk condition. A remote human operator must be physically present in the United States and be licensed to operate a motor vehicle by a United States jurisdiction.[19]
- "Minimal risk condition" means a reasonably safe state, such as bringing the vehicle to a complete stop and activating the vehicle's hazard lamps.[20]

A remote human operator must be physically present in the United States and be licensed to operate a motor vehicle by a United States jurisdiction.

Operation and Compliance with Traffic and Motor Vehicle Laws

A licensed operator is not required to operate a fully autonomous vehicle, and such vehicle may operate in this state regardless of whether a human operator, or any human at all, is physically present in the vehicle. For purposes of state uniform traffic control, the automated driving system, when engaged, is deemed the operator of an autonomous vehicle, regardless of whether a person is physically present in the vehicle while the vehicle is operating with the automated driving system engaged.[21] If the autonomous vehicle is fully autonomous, it must be able to achieve a minimal risk condition if a failure of the automated driving system occurs which renders that system unable to perform the entire dynamic driving task relevant to its intended operational design domain.[22]

The existing requirement for a driver's license does not apply when a fully autonomous vehicle is operated with the automated driving system engaged and without a human operator.[23] No registration statute specific to autonomous vehicles exists in current law; autonomous vehicle owners pay the same license tax as for any other vehicle, generally based on vehicle type and

[18] Section 316.003(3), F.S.
[19] Section 316.003(90), F.S.
[20] Section 319.145(2), F.S.
[21] Section 316.85, F.S.
[22] Section 319.145, F.S.
[23] Section 322.015, F.S.

weight.[24] The owner or registrant of a fully autonomous vehicle (which is not a transportation network company) must have automobile insurance:

- In the amount of $1 million because of bodily injury to, or death of, one person in any one crash.
- Subject to such limits for one person, in the amount of $1 million because of bodily injury to, or death of, two or more persons in any one crash.
- In the amount of $1 million because of injury to, or destruction of, property of others in any one crash.[25]

An autonomous vehicle or a fully autonomous vehicle equipped with a teleoperation system may operate without a human operator physically present in the vehicle when the teleoperation system is engaged and, if so equipped, is exempt from certain duties and a prohibition relating to vehicle operation on a *driver* in ch. 316, F.S., such as the duty to provide information and render reasonable assistance in a crash, the duty to give notice of the crash to appropriate law enforcement, and the prohibition against leaving an unattended motor vehicle without first setting the brake.[26]

An autonomous vehicle registered in this state must meet all of the following requirements:

- When required by federal law:
  - Have been certified in accordance with federal regulations in 49 C.F.R. part 567 as being in compliance with applicable federal motor vehicle safety standards.
  - Bear the required certification label or labels including reference to any exemption granted under applicable federal law.
- Be capable of being operated in compliance with the applicable traffic and motor vehicle laws of this state, regardless of whether the vehicle is operating with the automated driving system engaged.

Current Florida Low-Speed Vehicle Law

Definitions

Current Florida law defines "low-speed vehicle," to mean any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles. Low-speed vehicles must comply with the safety standards in 49 C.F.R. s. 571.500 and s. 316.2122, F.S.[27]

Operation and Compliance with Traffic and Motor Vehicle Laws

The operation of a low-speed vehicle on any road in this state is authorized with the following restrictions:

- A low-speed vehicle or mini truck may be operated only on streets where the posted speed limit is 35 miles per hour or less but is not prohibited from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

[24] *See* s. 320.08, F.S.
[25] Section 627.749(3), F.S.
[26] The exemptions are contained in ss. 316.062(5), 316.063(4), 316.065(5), 316.1975(3), and 316.303(1). F.S.
[27] Section 320.01(41), F.S.

- A low-speed vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.
- A low-speed vehicle or mini truck must be registered and insured in accordance with s. 320.02, F.S.,[28] and titled pursuant to ch. 319, F.S.[29]
- Any person operating a low-speed vehicle or mini truck must have in his or her possession a valid driver license.
- The FDOT, counties, and municipalities, if necessary in the interest of safety, may prohibit the operation of low-speed vehicles on any road under their respective jurisdictions.[30]

For purposes of seasonal delivery personnel, a low-speed vehicle, under certain restrictions for package size and weight, annually from midnight October 15 until midnight January 31 may operate on any public road within a residential area with a posted speed limit of 35 miles per hour or less. The vehicle must be:

- Marked in a conspicuous manner with the name of the delivery service;
- Equipped with, at a minimum, the equipment required under s. 316.212(6), F.S.
- Equipped with head lamps and tail lamps, in addition to the safety requirements in s. 316.212(6), F.S., if operated after sunset.[31]

These low-speed vehicles are presumably operated by a human driver and not autonomous.

The license tax for an electric low-speed vehicle is the same as that prescribed for any other vehicle, generally based on vehicle type and weight.[32] Low-speed vehicles must have a license plate that complies with the requirements of s. 320.06, F.S., relating to plate symbols and numbers and renewal and replacement, etc.

III. Effect of Proposed Changes:

Section 1 amends s. 316.003, F.S., revising the definition of "autocycle" by clarifying that the required antilock brakes must meet the requirements of Federal Motor Vehicle Safety Standard No. 122 relating to such brakes, revising the requirement for a steering "wheel" to a steering "mechanism." Additionally, the bill adds a new definition of "low-speed autonomous delivery vehicle," meaning a fully autonomous vehicle that meets the definition of a low-speed vehicle in the Code of Federal Regulations.[33]

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[28] That section requires every owner or person in charge of a motor vehicle that is operated or driven on the roads of this state to register the vehicle in this state. Florida's Financial Responsibility Law requires minimum amounts of liability coverage of $10,000 in the event of bodily injury to, or death of, one person, $20,000 in the event of injury to, or death of, two or more persons, and $10,000 in the event of damage to property of others, or $30,000 combined policy. *See* s. 324.022, F.S. In addition, personal injury protection must provide a minimum benefit of $10,000 for bodily injury to any one person who sustains an emergency medical condition, which is reduced to a $2,500 limit for medical benefits if a treating medical provider does not determine an emergency medical condition existed. *See* s. 627.736(1), F.S.

[29] That section provides for applications for and issuance of certificates of title for every motor vehicle to be registered and licensed under the laws of this state.

[30] Section 316.2122, F.S.

[31] Section 316.2126(3), F.S.

[32] *Supra* note 24.

[33] *Supra* note 9.

Section 2 amends s. 316.2122, F.S., currently applicable to low-speed vehicles (and mini trucks) on specified roadways. The bill authorizes an LSADV to operate on any road with the following restrictions:

- An LSADV may operate only on streets or roads where the posted speed limit is 35 miles per hour or less but is not prohibited from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.
- An LSADV may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, if:
  - The vehicle travels no more than 1 continuous mile on such a street or road, but the vehicle may travel in excess of 1 continuous mile if authorized by the entity with jurisdiction over the street or road;
  - The vehicle operates exclusively in the right lane, other than for the purpose of completing a turn; and
  - On a two-lane street or road where overtaking and passing another vehicle is unsafe because of traffic moving in the opposite direction or because of other unsafe conditions, and five or more vehicles are formed in a line behind the LSADV, the autonomous delivery vehicle exits the roadway wherever a sufficient area for a safe turn-out exists, to permit the vehicles following to proceed.

An LSADV must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, and vehicle identification numbers. This provision conflicts with the federal equipment requirements[34] for low-speed vehicles discussed above. However, the bill provides that federal regulations adopted by NHTSA[35] supersede this provision. Because this provision is superseded by the equipment requirements of the federal regulations, only those vehicles that comply with the federal equipment requirements, or entities with vehicles that are granted an exemption from the requirements, are therefore authorized to operate under the restrictions set out above.

An LSADV must be covered by a policy of automobile insurance providing the following coverage:

- Primary liability coverage of at least $1 million for death, bodily injury, and property damage.
- Minimum personal injury protection benefits required under current law.[36]
- Uninsured and underinsured vehicle coverage.[37]

Under the bill, the coverage requirements may be satisfied by automobile insurance maintained by the owner of an LSADV, the owner of the teleoperation system, the remote human operator, or a combination thereof.

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[34] 49 C.F.R. s. 571.500.

[35] NHTSA, the National Highway Traffic Safety Administration, is a part of the USDOT. See USDOT, *U.S. Department of Transportation Administrations*, available at U.S. Department of Transportation Administrations | US Department of Transportation (last visited March 7, 2021).

[36] *Supra* note 25.

[37] Uninsured and underinsured motorist coverage generally provides the policyholder with benefits if the at-fault driver does not have sufficient bodily injury coverage. The limits of coverage must generally be not less than the limits of bodily injury liability insurance purchased by the named insured, or such lower limit complying with the rating plan of the company selected by the insured. *See* s. 627.727, F.S.

These insurance requirements are identical to those for fully autonomous vehicles used in the passenger-transportation arena. Should an LSADV be involved in an incident involving an uninsured or underinsured motorist, the LSADV policy would provide benefits to the at-fault party.

The bill preserves the existing authority of the FDOT, counties, and municipalities, if necessary in the interest of safety, to prohibit the operation of low-speed vehicles (and by definition, LSADVs) on any road under their respective jurisdictions.

Section 3 amends s. 316.215, F.S., rendering the provisions of any motor vehicle equipment laws or regulations of this state, relating to or supporting motor vehicle operation by a human driver but not relevant for an automated driving system, inapplicable to fully autonomous vehicles designed to be operated *exclusively* by the automated driving system for all trips. To the extent that any unidentified conflict with federal law exists or arises, this provision may result in unintended consequences.

Sections 1, 4, and 5 amend ss. 316.003(62), 316.306(3)(a), and 655.960(1), F.S., respectively, to conform cross-references made necessary by the bill's revisions.

Section 6 provides 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Persons required to title, register, and insure the subject vehicles will incur expenses doing so. However, the number of such vehicles deployed or planned for deployment in Florida is unknown.

C. Government Sector Impact:

Indeterminate. The number of such vehicles deployed or planned for deployment in Florida is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DHSMV notes the following issues: [38]

- The definition does not express that the vehicle is authorized solely for the delivery of goods and without passengers.
- The portion of the bill deeming motor vehicle equipment laws or regulations inapplicable to fully autonomous vehicles is vague and subject to a variety of interpretations.
- Safety concerns arise in the context of these vehicles crossing streets with speed limits greater than 35 miles per hour, given that their required maximum speed is 25 miles per hour.

Enforcement of the bill's provisions may prove difficult for law enforcement. Whether *any* vehicle currently complies with the provisions of the bill is presently unknown. However, with no human in the vehicle, law enforcement may have difficulty even investigating such compliance.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 316.003, 316.2122, 316.215, 316.306, and 655.960.

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 20, 2021:

[38] DHSMV analysis of SB 1620 (2020), and Email from DHSMV, March 8, 2021, on file with Senate Committee on Community Affairs.

The CS revises the definition of the term, "autocycle," by clarifying that the required antilock brakes must meet the requirements of a specified Federal Motor Vehicle Safety Standard relating to such brakes. It also revises the requirement for a steering "wheel" to a steering "mechanism."

CS by Transportation on March 20, 2021:
The CS establishes insurance coverage requirements for LSADVs.

B. Amendments:

None.

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

577314

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 23 - 28

and insert:

(38) is added to that section, and subsection (2) and present subsection (62) of that section are amended, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(2) AUTOCYCLE.—A three-wheeled motorcycle that has two

577314

wheels in the front and one wheel in the back; is equipped with a roll cage or roll hoops, a seat belt for each occupant, ~~antilock~~ brakes that meet the requirements of Federal Motor Vehicle Safety Standard No. 122, a steering mechanism ~~wheel~~, and seating that does not require the operator to straddle or sit astride it; and is manufactured in accordance with the applicable federal motorcycle safety standards in 49 C.F.R. part 571 by a manufacturer registered with the National Highway Traffic Safety Administration.

========== 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:

316.003, F.S.; revising the definition of the term "autocycle"; defining the term "low-speed autonomous

By the Committee on Transportation; and Senator Brandes

596-02645-21 20211620c1

A bill to be entitled

An act relating to autonomous vehicles; amending s. 316.003, F.S.; defining the term "low-speed autonomous delivery vehicle"; amending s. 316.2122, F.S.; authorizing the operation of a low-speed autonomous delivery vehicle on certain streets and roads; providing construction; authorizing the operation of a low-speed autonomous delivery vehicle on streets or roads with a posted speed limit of up to 45 miles per hour under specified conditions; providing requirements for low-speed autonomous delivery vehicles; amending s. 316.215, F.S.; providing that certain fully autonomous vehicles are not subject to certain provisions of law or regulations; amending ss. 316.306 and 655.960, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (38) through (105) of section 316.003, Florida Statutes, are redesignated as subsections (39) through (106), respectively, a new subsection (38) is added to that section, and present subsection (62) of that section is amended, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(38) LOW-SPEED AUTONOMOUS DELIVERY VEHICLE.—A fully autonomous vehicle that meets the definition of a low-speed vehicle in 49 C.F.R. s. 571.3.

(63) ~~(62)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (85)(b) ~~(84)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Section 2. Section 316.2122, Florida Statutes, is amended to read:

316.2122 Operation of a low-speed vehicle, ~~or~~ mini truck, or low-speed autonomous delivery vehicle on certain roadways.—

(1) The operation of a low-speed vehicle as defined in s. 320.01 or a mini truck as defined in s. 320.01 on any road is authorized with the following restrictions:

(a) ~~(1)~~ A low-speed vehicle or mini truck may be operated only on streets where the posted speed limit is 35 miles per hour or less. This does not prohibit a low-speed vehicle or mini truck from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) ~~(2)~~ A low-speed vehicle must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.

(c) ~~(3)~~ A low-speed vehicle or mini truck must be registered and insured in accordance with s. 320.02 and titled pursuant to chapter 319.

(d) ~~(4)~~ Any person operating a low-speed vehicle or mini truck must have in his or her possession a valid driver license.

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

(2) The operation of a low-speed autonomous delivery vehicle on any road is authorized with the following restrictions:

(a) A low-speed autonomous delivery vehicle may operate only on streets or roads where the posted speed limit is 35 miles per hour or less. This paragraph does not prohibit a low-speed autonomous delivery vehicle from crossing a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

(b) A low-speed autonomous delivery vehicle may operate on a street or road with a posted speed limit of more than 35 miles per hour, but no more than 45 miles per hour, if:

1. The low-speed autonomous delivery vehicle travels no more than 1 continuous mile on such a street or road, except that the vehicle may travel in excess of 1 continuous mile if authorized by the entity with jurisdiction over the street or road;

2. The low-speed autonomous delivery vehicle operates exclusively in the right lane, other than for the purpose of completing a turn; and

3. On a two-lane street or road where overtaking and passing another vehicle is unsafe because of traffic moving in the opposite direction or because of other unsafe conditions, and five or more vehicles are formed in a line behind the autonomous delivery vehicle, the low-speed autonomous delivery vehicle exits the roadway wherever a sufficient area for a safe turn-out exists, to permit the vehicles following to proceed.

(c) A low-speed autonomous delivery vehicle must be equipped with headlamps, stop lamps, turn signal lamps,

taillamps, reflex reflectors, and vehicle identification numbers.

(d) Federal regulations adopted by the National Highway Traffic Safety Administration shall supersede this subsection when found to be in conflict with this subsection.

(e) A low-speed autonomous delivery vehicle must be covered by a policy of automobile insurance which provides the coverage required by s. 627.749(2)(a)1., 2., and 3. The coverage requirements of this paragraph may be satisfied by automobile insurance maintained by the owner of a low-speed autonomous delivery vehicle, the owner of the teleoperation system, the remote human operator, or a combination thereof.

(3) ~~(5)~~ A county or municipality may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if the governing body of the county or municipality determines that such prohibition is necessary in the interest of safety.

(4) ~~(6)~~ The Department of Transportation may prohibit the operation of low-speed vehicles or mini trucks on any road under its jurisdiction if it determines that such prohibition is necessary in the interest of safety.

Section 3. Present subsection (6) of section 316.215, Florida Statutes, is redesignated as subsection (7), a new subsection (6) is added to that section, and present subsection (6) is republished, to read:

316.215 Scope and effect of regulations.—

(6) The provisions of any motor vehicle equipment laws or regulations of this state which relate to or support motor vehicle operation by a human driver but are not relevant for an

automated driving system shall not apply to fully autonomous vehicles that are designed to be operated exclusively by the automated driving system for all trips.

(7)~~(6)~~ A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 4. Paragraph (a) of subsection (3) of section 316.306, Florida Statutes, is amended to read:

316.306 School and work zones; prohibition on the use of a wireless communications device in a handheld manner.—

(3)(a)1. A person may not operate a motor vehicle while using a wireless communications device in a handheld manner in a designated school crossing, school zone, or work zone area as defined in s. 316.003(106) ~~s. 316.003(105)~~. This subparagraph shall only be applicable to work zone areas if construction personnel are present or are operating equipment on the road or immediately adjacent to the work zone area. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

2.a. During the period from October 1, 2019, through December 31, 2019, a law enforcement officer may stop motor vehicles to issue verbal or written warnings to persons who are in violation of subparagraph 1. for the purposes of informing and educating such persons of this section. This sub-subparagraph shall stand repealed on October 1, 2020.

b. Effective January 1, 2020, a law enforcement officer may stop motor vehicles and issue citations to persons who are driving while using a wireless communications device in a

handheld manner in violation of subparagraph 1.

Section 5. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(85)(a) or (b) ~~s. 316.003(84)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

Section 6. 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 # 1620**, relating to Autonomous Vehicles be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

File signed original with committee office

S-020 (03/2004)

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/20/2021
Meeting Date

1620
Bill Number (if applicable)

Topic Autonomous Vehicles

Amendment Barcode (if applicable)

Name Christopher Emmanuel

Job Title Policy Director

Address 136 S Bronough St
Street

Phone

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida 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.

This information was not read 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:	CS/SB 1704
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Broxson
SUBJECT:	Public Records/County Supervisor of Elections
DATE:	April 19, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rey	Roberts	EE	**Favorable**
2.	Candelaria	McVaney	GO	**Fav/CS**
3.	Rey	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1704 makes confidential and exempt from public copying and inspection portions of records held by a supervisor of elections which contain network schematics, hardware and software configurations, or encryption, or which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, if the disclosure of such records would facilitate unauthorized access, modification, disclosure, or destruction of data, information, or IT resources.

The bill requires that portions of records made exempt must be available to the Auditor General and may be made available to another governmental entity for IT security purposes or in the furtherance of official duties.

The public records exemption shall stand repealed on October 2, 2026, unless reviewed and saved from repeal by the Legislature, and applies to records held by a supervisor before, on, or after the effective date of the exemption.

The bill provides a statement of public necessity as required by the Florida Constitution.

Because the bill creates a public records exemption, it requires a two-thirds vote of members present and voting in each house of the legislature for final passage.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect upon becoming law.

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 of any public body, officer or employees of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.[2]

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.[3] Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.[4] 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.[5]

According to the Public Records Act, 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 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."[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

The Legislature may create an exemption to public records requirements.[9] An exemption must pass a two-thirds vote of the House and Senate.[10] In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than

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[1] FLA. CONST., art. I, s. 24(a)
[2] *Id.*
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2) – (3), F.S.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.
[6] Section 119.011(12), F.S., defines "public records" 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 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST., art. I, s. 24(c).
[10] *Id.*

necessary to accomplish the stated purpose of the exemption.[11] A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.[12]

When creating a public records exemption, the Legislature may provide that a record is 'confidential and exempt' or 'exempt.'[13] Records designated as 'confidential and exempt' may be released by the records custodian only under the circumstances defined by the Legislature. Records designed as 'exempt' may be released at the discretion of the records custodian.[14]

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (Act).

The Act prescribes a legislative review process for newly created or substantially amended public records.[15] The Act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[16] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.[17] If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided by law.[18]

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[11] *Id*.

[12] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found 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. *Id*. In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

[13] If the Legislature designates a record as confidential, such record may not be released to anyone other than the person or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

[14] A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).

[15] Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So.3d 379 (Fla. 2013).

[16] Section 119.15(3), F.S.

[17] FLA CONST., art I, s. 24(c).

[18] Section 119.15(7), F.S.

Supervisor of Elections

A supervisor of elections (supervisor) shall be elected in each county at the general election in each year the number of which is a multiple of four for a four-year term commencing on the first Tuesday after the first Monday in January succeeding his or her election.[19] The duties of the supervisor include updating voter registration information, entering new voter registrations into the statewide system, and acting as the official custodian of documents received in relation to elections. The supervisor must preserve statements and other information required to be filed with the supervisor's office for a period of 10 years from date of receipt.

Each supervisor may select and appoint as many deputy supervisors as are necessary, whose compensation must be paid by the supervisor and who has the same powers and whose acts must have the same effect as the acts of a supervisor. Each supervisor must make training in the proper implementation of voter registration procedures available to any individual, group, center for independent living, or public library in the supervisor's county. Each supervisor must ensure that all voter registration and list maintenance procedures conducted by such supervisor are in compliance with any applicable requirements prescribed by rule through the statewide voter registration system.[20]

When ballots are produced for inspection or examination, no persons other than the supervisor of elections or the supervisor's employees shall touch the ballots. If the ballots are being examined before the of an electoral contest period, the supervisor must make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.[21]

III. Effect of Proposed Changes:

The bill makes confidential and exempt from public copying and inspection for portions of records held by a supervisor of elections which contain network schematics, hardware and software configurations, or encryption, or which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, if the disclosure of such records would facilitate unauthorized access, modification, disclosure, or destruction of data, information, or IT resources.

This exemption will be repealed on October 2, 2026,[22] unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill asserts that the unauthorized use of portions of records of a supervisor of elections which contain network schematics, hardware and software configurations, or encryption could be used as a tool to influence elections, frustrate the voting process, manipulate election results, or otherwise

[19] Section 98.015(1), F.S.
[20] *Id.*
[21] Section 119.01(5), F.S.
[22] Section 282.318, F.S.

interfere with the administration of elections. If such information is released, it could result in an increase in security breaches and fraud impacting the electoral process.

The bill takes effect upon becoming a law.

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 Florida Constitution requires a two-thirds vote of the members present and voting for passage of a newly created or expanded public record or public meeting exemption. Therefore, this bill requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill that creates or expands an exemption to public records disclosure 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, s. 24(c) of the Florida Constitution requires a newly created record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption to allow supervisors of elections to exempt records relating to IT security from public disclosures. If such information is released, it could result in security breaches and fraud impacting the electoral process. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

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, to the extent imposed, associated with the agency making redactions in response to public records requests.

C. Government Sector Impact:

The bill may have a fiscal impact on agencies relating to training or redaction of the newly confidential and exempt information. However, costs are likely minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 98.015 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 transfers the information amended in the underlying bill from s. 282.318, F.S., to s. 98.015, F.S.

B. Amendments:

None.

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

585-03620-21 20211704c1

A bill to be entitled

An act relating to public records; amending s. 98.015, F.S.; creating a public records exemption for portions of records containing network schematics, hardware and software configurations, or encryption or which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches held by a county supervisor of elections; providing that such confidential and exempt information must be available to the Auditor General and may be made available to governmental entities for specified purposes; providing for retroactive application; 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. Subsection (13) is added to section 98.015, Florida Statutes, to read:

98.015 Supervisor of elections; election, tenure of office, compensation, custody of registration-related documents, office hours, successor, seal; appointment of deputy supervisors; duties; public records exemption.—

(13)(a) Portions of records held by a supervisor of elections which contain network schematics, hardware and software configurations, or encryption or which identify detection, investigation, or response practices for suspected or

confirmed information technology security incidents, including suspected or confirmed breaches, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources as defined in s. 119.011 which include:

a. Information relating to the security of a supervisor of elections' technology, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to a supervisor of elections' existing or proposed information technology systems.

(b) The portions of records made confidential and exempt in paragraph (a) must be available to the Auditor General and may be made available to another governmental entity for information technology security purposes or in the furtherance of the governmental entity's official duties.

(c) The public records exemption created in paragraph (a) applies to records held by a supervisor of elections before, on, or after the effective date of the exemption.

(d) 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 portions of records of a supervisor of elections which contain network schematics, hardware and software configurations, or encryption or which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, and which could be used to facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of virtual or physical data or information or information technology resources be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Such information could be used as a tool to influence elections, frustrate the voting process, manipulate election results, or otherwise interfere with the administration of elections. The release of such information could result in an increase in security breaches and fraud impacting the electoral process. For these reasons, the Legislature finds that the public records exemption should be applied on a retroactive basis because the harm that may result from the release of such information outweighs the public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect upon becoming a law.

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: April 12, 2021

I respectfully request that **Committee Substitute for Senate Bill 1704**, relating to Public Records/County Supervisor of Elections, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

This good bill will help protect the sensitive date and procedures used to keep our elections secure across the state of Florida.

Senator Doug Broxson
Florida Senate, District 1

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1876
INTRODUCER:	Rules Committee; Judiciary Committee; and Senator Albritton
SUBJECT:	Relief from Burdens on Real Property Rights
DATE:	April 20, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Fav/CS**
2.	Paglialonga	Ryon	CA	**Favorable**
3.	Davis	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1876 amends the Bert J. Harris, Jr., Private Property Rights Protection Act and the Florida Land Use and Environmental Dispute Resolution Act. Both acts provide procedures and remedies to land owners whose property is inordinately burdened by a local government regulation. In the Bert Harris Act, the definitions of an "action of a governmental entity" is revised to include government actions that affect "real property including acting on an application or permit or adopting or enforcing any ordinance, resolution, regulation, rule, or policy." The term "real property" is amended to mean, in part, land and any surface, subsurface, or mineral estates and any appurtenances and improvements to the land, including other relevant interests.

The bill also revises the definition of "land" or "real property" in The Florida Land Use and Environmental Dispute Resolution Act to match, by cross-reference, the newly amended definition of real property in the Bert Harris Act.

Additionally, the bill revises the Bert Harris Act to:

- Reduce the timeframe under which a claimant must notify the government before filing an action;
- Specify that written settlement offers are presumed to protect the public interest;
- Allow the claimant to have the court, rather than a jury, determine damages;
- Extend the point from which a prevailing claimant may recover attorney fees and costs; and

- Authorize a property owner, under specified conditions, to notify the government that he or she deems a law or regulation's impact on his or her real property to be restrictive of allowable uses and the property owner is not required to formally pursue an application for a development order or permit before bringing a claim.

The bill also allows a property owner to challenge an unlawful government exaction without waiting for a written notice of exaction when a local government is poised to impose an exaction upon his or her property.

The bill takes effect October 1, 2021.

II. Present Situation:

Both the Federal Constitution and State Constitution guarantee that a person's private property may not be taken for public use without reimbursement. The Fifth Amendment to the United States Constitution states that no private property shall "be taken for public use without just compensation." Similarly, the Florida Constitution provides that no private property shall be taken except for a public purpose and that each owner must be fully compensated.[1]

The Bert J. Harris, Jr., Private Property Rights Protection Act

The Legislature enacted the "Bert J. Harris, Jr., Private Property Rights Protection Act" in 1995. The act provides relief to a property owner whose property is inordinately burdened by government regulation. The act is limited in scope and applies only to:

- Real, and not personal, property;
- A property owner and not a leaseholder;
- "As-applied" challenges for specific government actions; and
- Challenges that are not based on temporary impacts.[2]

The Legislature recognized that some laws, regulations, and ordinances of the state and its entities could inordinately burden, restrict, or limit private property rights without amounting to a taking[3] under either the State Constitution or the United States Constitution. The Legislature declared that there is "an important state interest in protecting the interests of private property owners from those inordinate burdens." Accordingly, the Legislature created a separate and distinct cause of action for governmental actions that might not rise to the level of taking under the State Constitution or United States Constitution. The Legislature provided a process for private landowners to seek relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity, as applied, unfairly affects real property.[4]

[1] FLA. CONST. art. X, s. 6.
[2] W. Thomas Hawkins, *Land Use Law in Florida*, 17-3 (Routledge, forthcoming June 2021).
[3] A "taking" is generally understood to mean a government action that deprives an owner of the use or enjoyment of his or her property. A regulatory taking occurs when a government regulation seriously restricts a property owner's rights. BLACK'S LAW DICTIONARY (10th ed. 2014).
[4] Section 70.001(1), F.S.

The phrases "inordinate burden" and "inordinately burdened" mean that an action by one or more governmental entities has directly restricted or limited the use of real property to the extent that:

- The property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole; or
- The property owner is left with existing or vested uses that are unreasonable such that the property owner bears a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.[5]

Presuit Notice

A property owner who seeks compensation under the Harris Act must present a written claim to the head of the government entity at least 150 days before filing an action. If the property in question is agricultural, the notice period is 90 days. In addition to the claim, the property owner must submit a bona fide, valid appraisal that supports the claim and demonstrates the loss in fair market value to the property.[6,7] If other parties are involved, the governmental entity must notify them, including all owners of real property that is contiguous to the owner's property.[8]

The Government Must Make a Written Settlement Offer

During the 150 or 90 day notice period, which may be extended by an agreement of the parties, the government is required to make a written settlement offer to the claimant. The settlement may contain an offer to:

- Adjust land development, permit standards, or similar provisions controlling the development or use of the land.
- Increase or modify density, intensity, or use of areas of development.
- Transfer development rights.
- Entertain land swaps or exchanges.
- Mitigate, including payments in lieu of onsite mitigation.
- Locate on the least sensitive portion of the property.
- Condition the amount of development or use permitted.
- Require that issues be addressed on a more comprehensive basis.
- Issue a development order, variance, special exception, or other extraordinary relief.
- Purchase the property or an interest in it.
- Make no changes to the proposed action.[9]

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[5] Section 70.001(3)(e)1., F.S. The definition further explains in s. 70.001(3)(e)2, F.S., what the terms do not include with regard to other impacts.
[6] Section 70.001(4)(a), F.S.
[7] The appraisal should contain valuations of the property both before and after the government's restriction was imposed. This will enable the government to adequately evaluate the property owner's potential claim for the purpose of developing a settlement offer during the pre-suit period. Margaret L. Cooper, Ronald L. Weaver, and Joanne M. Connor, *Statutory Private Property Rights Protection*, 6,The Florida Bar, 2018 Florida Real Property Litigation (2018), *available through Westlaw*, https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=0368929390&pubNum=0116933&originatingDoc=N090388C02AB211E5823BE24E38CB0B04&refType=SA&originationContext=contextAnalysis&contextData=%28sc.UserEnteredCitation%29&transitionType=ContextAnalysisItem.
[8] Section 70.001(4)(b), F.S.
[9] Section 70.001(4)(c), F.S.

If the Government Offer is Rejected; Timeframe for Filing a Lawsuit

If the property owner rejects the settlement offer with the allowable uses, the property owner may file a claim in circuit court and the county where the real property is located.[10] A cause of action may not be filed more than 1 year after a law or regulation is "first applied" by the government to the property at issue. The 1-year time frame begins when the law or regulation is clear and unequivocal in its terms and notice is provided by mail to the affected property owner or registered agent. Otherwise, the law or regulation is considered first applied to the property when there is a formal denial of a written request for development or variance.[11]

The court then conducts a bench trial to determine whether an existing use of the real property or a vested right to a specific use of the property existed and whether the government inordinately burdened the owner's property. If the court determines that an inordinate burden was imposed, the court must also determine the percentage of responsibility each governmental entity must bear.[12] The circuit court must impanel a jury to determine the amount of compensation.[13]

Recovery of Reasonable Costs and Attorney Fees

The court, and not the jury, will determine what constitutes reasonable costs and attorney fees.[14]

The property owner is entitled to recover reasonable costs and attorney fees from the government from the date the action was filed in circuit court if:

- The property owner prevails; and
- The court determines that the government's settlement offer did not constitute a bona fide offer which reasonably would have resolved the claim during the 90 or 150 day notice-period.[15]

Similarly, the government is entitled to recover reasonable costs and attorney fees incurred from the date the action was filed in circuit court if:

- The government prevails; and
- The court determines that the property owner did not accept a bona fide settlement offer which reasonably would have fairly resolved the claim if the offer had been accepted by the property owner during the 90 or 150 day notice-period.[16]

Governmental Exactions

Background of Prohibited Exactions

The United States Supreme Court issued a land-use decision in 2013, *Koontz v. St. Johns River Water Management District*,[17] a case that arose in Florida. Mr. Koontz, the land owner, sought to develop a portion of his property that consisted mainly of wetlands. He offered to mitigate the

[10] Section 70.001(5)(b), F.S.
[11] Section 70.001(11), F.S.
[12] Section 70.001(6)(a), F.S.
[13] Section 70.001(6)(b), F.S.
[14] Section 70.001(6)(c)3., F.S.
[15] Section 70.001(6)(c)1., F.S.
[16] Section 70.001(6)(c)2., F.S.
[17] *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595 (2013).

adverse environmental effects of his development proposal by deeding a conservation easement to the St. Johns River Water Management District on nearly three-quarters of his remaining property. The district rejected his proposal and told him that his construction permit would be approved *only if* he agreed to reduce the size of his development and, among other things, deed to the district a conservation easement on the resulting larger remainder of his property *or* he agreed to hire contractors to make improvements on district-owned wetlands located several miles away. Mr. Koontz sued the district under s. 373.617, F.S., which allows a property owner to recover money damages if a government action related to land-use permitting constitutes a taking without just compensation, which is an unreasonable exercise of the state's police power.

The Court held that a government cannot deny a land-use permit based upon a landowner's refusal to agree to the government's demands to either turn over property or pay money to the government *unless* there is an essential nexus and rough proportionality between the government's demand on the landowner and the effect of the proposed land use. The Court's decision was based upon a violation of the "unconstitutional condition" doctrine which precludes the government from burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them. In this particular case, the constitutional right burdened was the right to compensation when private property is taken for public use. The Court explained that "Extortionate demands for property in the land-use permitting context" violate the Fifth Amendment Takings Clause "not because they take property but because they impermissibly burden the right not to have property taken without just compensation."[18]

The Court held that, even though the district's conditions unconstitutionally burdened the landowner's Fifth Amendment rights, a constitutional taking did not occur. Instead, the Court left it up to the states to determine what remedies would be available to a landowner who was subject to an unconstitutional demand where no actual taking has occurred. The Court wrote:

> Where the permit is denied and the condition is never imposed, nothing has been taken. While the unconstitutional conditions doctrine recognizes that this *burdens* a constitutional right, the Fifth Amendment mandates a particular *remedy* – just compensation – only for takings. In cases where there is an excessive demand but no taking, whether money damages are available is not a question of federal constitutional law but of the cause of action – whether state or federal – on which the landowner relies.[19]

2015 Legislative Response

The Legislature enacted s. 70.45, F.S., in 2015, and created a cause of action for a property owner to recover damages caused by a "prohibited exaction."[20] Essential phrases from the *Koontz* decision are embedded in the statute. A prohibited exaction is defined as any condition imposed by a governmental entity on a property owner's proposed use of real property that does not have "an essential nexus to a legitimate public purpose and is not roughly proportionate to

[18] *Id*. at 607.
[19] *Id*. at 608-609.
[20] Chapter 2015-142, s. 2, Laws of Fla.

the impacts of the proposed use that the governmental entity" is seeking to avoid, minimize, or mitigate.[21]

Presuit Notice and Prohibition against Waivers

The action may not be brought until a prohibited exaction is actually imposed or required in writing as a final condition of approval for the requested use of real property. The right to bring the action may not be waived.[22]

The property owner must provide a written notice to the relevant governmental entity of his or her proposed action at least 90 days before filing an action but no later than 180 days after imposition of the prohibited exaction. The notice must identify the exaction that the property owner believes is prohibited and briefly explain why he or she believes the action is prohibited along with an estimate of the damages. The relevant governmental entity must review the notice of the claim, respond in writing and identify the basis for the exaction, and explain why it maintains that the exaction is proportionate to the harm created by the proposed use of real property, or propose to remove all or a proportion of the exaction.[23]

Burden of Proof

The government has the burden of proving that the exaction has an essential nexus to a legitimate public purpose and that it is roughly proportionate to the impact the government seeks to avoid. The burden of proving damages that result from the prohibited exaction rests upon the property owner.[24]

Attorney Fees and Costs

The court may award attorney fees and costs to the prevailing party. However, if the court finds that the exaction lacks an essential nexus to a legitimate public purpose, the court must award attorney fees and costs to the property owner.[25]

Florida Land Use and Environmental Dispute Resolution Act

When the Legislature adopted the Bert Harris Act in 1995, it also created the Florida Land Use and Environmental Dispute Resolution Act (FLUEDRA) in the same chapter. The FLEUDRA is codified in s. 70.51, F.S., and is designed to encourage dispute resolution between real property[26] owners and government entities using a special magistrate in an informal hearing.[27] The FLUEDRA provides an informal mechanism for a property owner to challenge a governmental action infringing on his or her property without filing a lawsuit.

[21] Section 70.45(1)(c), F.S.
[22] Section 70.45(2), F.S.
[23] Section 70.45(3), F.S.
[24] Section 70.45(4), F.S.
[25] Section 70.45(5), F.S.
[26] "Real property" or "land" means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the owner had a relevant interest. Section 70.51(2)(g), F.S.
[27] *See* s. 70.51, F.S.

The FLUEDRA does not create a private cause of action or require that a property owner do anything before exercising his or her right to file a lawsuit.[28] Under the FLUEDRA, a property owner who believes that a government notice or order unfairly or unreasonably burdens his or her real property may, within 30 days after receiving the notice or order, file a request for relief with the government that issued the notice or order.[29] The government must forward the request to a special magistrate,[30] who must hold a hearing within 45 days after receiving the request for relief.[31] The special magistrate's primary role is to facilitate a resolution of the conflict between the property owner and government without involving the courts. The hearing is open to the public and does not require the use of an attorney.[32] In this role, the special magistrate acts as a "facilitator or mediator."[33]

If the parties cannot reach an agreement, the special magistrate must determine whether the government action is unreasonable or unfairly burdens the property owner's real property, based on a list of statutory guidelines.[34] Within 14 days after the hearing's conclusion, the special magistrate must submit a written recommendation to the parties.[35] If the special magistrate finds that the government action does not unreasonably or unfairly burden the use of the property, the property owner may still file suit or pursue other remedies.[36] If the recommendation is that the government action unreasonably or unfairly burdens the property, the special magistrate may, with the property owner's consent, recommend one or more alternatives that allow for reduced government restraints on the property.[37]

The government must respond within 45 days after receiving the special magistrate's recommendation and indicate whether it accepts, accepts in part, or rejects the recommendation.[38] If the government accepts the recommendation in whole or in part, but the property owner rejects the acceptance or modification, the government must put into writing within 30 days the specific permissible uses of the property.[39]

The special magistrate's recommendation finding that the government acted unreasonably or unfairly may serve as a basis to demonstrate entitlement to relief in a subsequent lawsuit or in other legal proceedings.[40] The FLUEDRA process may not continue longer than 165 days, unless the parties agree otherwise.[41]

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[28] Section 70.51(24), F.S.
[29] Section 70.51(3) and (4), F.S.
[30] A "special magistrate" is a person selected by the parties to resolve the case. The special magistrate must be a Florida resident with experience and expertise in mediation and at least one of the following disciplines and a working familiarity with the others: land use and environmental permitting; land planning; land economics; local and state government organizations and powers; and the law governing the same. Section 70.51(2)(c) and (4), F.S.
[31] Section 70.51(15)(a), F.S.
[32] *See* s. 70.51(17)(a), F.S.
[33] *Id.*
[34] Section 70.51(17)(b) and (18), F.S.
[35] Section 70.51(19), F.S.
[36] Section 70.51(19)(a), F.S.
[37] Section 70.51(19)(b), F.S.
[38] Section 70.51(21), F.S.
[39] Section 70.51(22), F.S.
[40] Section 70.51(25), F.S.
[41] Section 70.51(23), F.S.

Subsurface Rights

In a 1969 Florida Supreme Court case, *Dickinson v. Davis*,[42] the Court stated that land can "be divided horizontally as well as vertically, so that one person may own the surface and another the minerals underground." Accordingly, the Court long ago recognized that separate legal rights to surface and subsurface holdings exist.

III. Effect of Proposed Changes:

The bill makes several changes to the Bert Harris Act, amends the governmental exactions statute, and revises one definition in the Florida Land Use and Environmental Dispute Resolution Act.

Bert Harris Act Changes (Section 1)

The Bert Harris Act is amended to:

- Revise the definition of an "action of a governmental entity" to include specific government actions that affect real property including acting on an application or permit or adopting or enforcing "any ordinance, resolution, regulation, rule, or policy."
- Revise the term "real property" to mean land and any surface, subsurface, or mineral estates and any appurtenances and improvements to the land, including any other relevant interests in the real property in which the property owner has a relevant interest. The term includes only parcels that are the subject of and directly impacted by the action of a governmental entity.[43]Reduce the pre-suit dispute resolution period for nonagricultural properties to 90 days from 150 days. This is accomplished by eliminating the distinction between agricultural properties and other properties. (s. 70.001(4), F.S.)
- Revise the description of what constitutes an appraisal. Before filing an action, a property owner must submit an appraisal, along with a claim, to the head of a governmental entity to demonstrate the loss in a property's fair market value. The "bona fide, valid" appraisal language in current law is replaced with a requirement for a "written appraisal report" that is described in s. 475.611(1)(e), F.S.[44]
- Specify that settlement offers are presumed to protect the public interest. This change appears to reverse a 2016 Fifth District Court of Appeal decision, *Rainbow River Conservation, Inc. v. Rainbow River Ranch, LLC,*[45] in which the court held that a trial court was required to

[42] *Dickinson v. Davis*, 224 So. 2d 262, 265 (Fla. 1969). The case dealt with separate tax assessments for mineral, oil, gas, and other subsurface rights.
[43] The broadening of the definition of real property might be perceived as an expansion of the Harris Act that would allow more successful causes of action than exist under current law. Under existing law damages are measured by the change in the market value of land. Under this proposal, a claimant might argue that the market value of his or her mineral estate has declined and he or she is therefore entitled to damages against a governmental entity. In contrast, some might argue that the revised definition in only a clarification, not an expansion, of current law, such that there is no change in the existing law.
[44] Section 475.611(1)(e), F.S., defines an "appraisal report" as any communication, written or oral, of an appraisal, appraisal review, appraisal consulting service, analysis, opinion, or conclusion relating to the nature, quality, value, or utility of a specified interest in, or aspect of identified real property, and includes any report communicating an appraisal analysis, opinion, or conclusion of value, regardless of title. However, in order to be recognized in a federally related transaction, an appraisal report must be written.
[45] *Rainbow River Conservation, Inc. v. Rainbow River Ranch*, 189 So. 3d 312 (Fla. 5th DCA 2016).

make findings regarding whether a settlement protected public interest and property before approving a settlement between a property owner and government entities.
- Allow a property owner the choice of having the court, rather than a jury, determine damages.
- Allow a property owner who prevails in an action to recover reasonable costs and attorney fees incurred in litigation from the date of the presentation of the claim to the head of the governmental entity, as opposed to the date the action is filed in court. The net effect of this change will be to permit a prevailing plaintiff to recover more in attorney fees from the government because the property owner will be recovering attorney fees from an earlier period in time and for additional work in preparing the cause of action for court. This revision also deletes the requirement that the court, in awarding reasonable costs and attorney fees, determine that the government's settlement offer did not constitute a bona fide offer to the property owner which would have resolved the claim during the notice period.

The bill also provides that if proper notice is not provided to a property owner after a law or regulation's enactment, the property owner may, *at any time after enactment*, notify the head of the government in writing by certified mail and e-mail, if available, that the property owner deems the law or regulation's impact on the property owner's real property to be clear and unequivocal in its terms and, as such, restrictive of allowable uses. The government then has 45 days from receipt of the notice to respond in writing by certified mail and e-mail, if available, to describe the limitations imposed on the property by the law or regulation. The property owner is not subsequently required to formally pursue an application for a development order, development permit, or building permit to bring a claim under the Bert Harris Act, but any claim must be filed within one year after the date the property owner receives the government's response.

Finally, the bill specifies that the changes to this section, except for the changes made to the definitions, apply only to Bert Harris Act claims brought in response to government actions taken on or after July 1, 2021, pursuant to language in section 3.

Governmental Exactions (Section 2)

This provision permits a property owner to sue for injunctive relief, and a court to declare, that a prohibited exaction is invalid. The property owner does not have to exhaust all administrative remedies before filing suit to declare a prohibited exaction invalid and recover damages.

The changes in the bill to the governmental exaction statute apply to claims that are made in response to actions taken by governmental entities on or after July 1, 2021, pursuant to language in section 3.

Florida Land Use and Environmental Dispute Resolution Act (Section 4)

The bill amends the definition of "land" or "real property" to match, by cross-reference, the newly amended definition of "real property" in the Bert Harris Act.

"WHEREAS" Clauses

The bill contains five "Whereas" clauses. The first three clauses recognize that the Bert J. Harris, Jr., Private Property Rights Protection Act was enacted in 1995, that the state has historically recognized subsurface estates, and that the bill clarifies the definition of property to preserve the original intent of the act. The final two clauses recognize that the state has an interest in the timely resolution of claims brought under the act, and that landowners and governmental entities benefit by knowing when a claim brought under the act may be asserted to avoid unnecessary future litigation.

The bill is effective October 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:

None.

B. Private Sector Impact:

Property owners will likely be able to have more freedom to develop and use their real property and generate income by doing so. Alternatively, property owners will have a better chance at receiving compensation for regulatory burdens imposed on their property.

C. Government Sector Impact:

CS/CS/SB 1876 might have a financial impact on local governments by making it easier for a property owner to challenge a local government regulation that burdens his or her property and increasing the amount of attorney fees and costs that a local government must pay to a property owner.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 70.001, 70.45, and 70.51.

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 20, 2021:
The committee substitute revises the description of an appraisal that a property owner must submit, along with a claim, to a governmental entity before filing an action for compensation.

The effective date of the bill is changed from July 1, 2021, to October 1, 2021.

CS by Judiciary on March 22, 2021:
The committee substitute adds the substance of SB 1380 to SB 1876, but then removes the previous revisions in SB 1876 pertaining to the Florida Land Use and Environmental Dispute Resolution Act, except for the definition of "land" or "real property." The committee substitute also adds five "Whereas" clauses that were not contained in either bill.

B. Amendments:

None.

902146

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/21/2021	.	
	.	
	.	
	.	

The Committee on Rules (Albritton) recommended the following:

Senate Amendment

Delete lines 64 - 65

and insert:

~~days~~. The property owner must submit, along with the claim, an ~~a~~ ~~bona fide, valid~~ appraisal as defined in s. 475.611(1)(a) that supports the claim and

579552

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
	.	
	.	
	.	

The Committee on Rules (Albritton) recommended the following:

Senate Substitute for Amendment (902146)

Delete lines 64 - 65

and insert:

~~days~~. The property owner must submit, along with the claim, a written ~~bona fide, valid~~ appraisal report, as that term is described in s. 475.611(1)(e), that supports the claim and

228802

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
	.	
	.	
	.	

The Committee on Rules (Albritton) recommended the following:

Senate Amendment

Delete line 347

and insert:

Section 5. This act shall take effect October 1, 2021.

By the Committee on Judiciary; and Senator Albritton

590-03184-21 20211876c1

A bill to be entitled

An act relating to relief from burdens on real property rights; amending s. 70.001, F.S.; revising the definitions of the terms "action of a governmental entity" and "real property"; revising notice of claim requirements for property owners; creating a presumption that certain settlement offers protect the public interest; specifying that property owners retain the option to have a court determine awards of compensation; authorizing property owners to bring claims against governmental entities in certain circumstances; providing that property owners are not required to submit formal development applications or proceed through formal application processes to bring claims in specified circumstances; amending s. 70.45, F.S.; defining the terms "imposed" or "imposition"; authorizing property owners to bring actions to declare prohibited exactions invalid; providing applicability; amending s. 70.51, F.S.; revising the definition of the terms "land" or "real property"; providing an effective date.

WHEREAS, the Legislature enacted the Bert J. Harris, Jr., Private Property Rights Protection Act in 1995 to create a new cause of action to protect private property rights, and

WHEREAS, this state has historically defined and recognized property rights to include subsurface estates consistent with *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), and

WHEREAS, this bill clarifies the definition of property in

the act so that the original intent of the act is preserved and the act protects the property rights of all landowners in this state, and

WHEREAS, this state has an additional interest in the timely resolution of claims which are brought under the act, and

WHEREAS, landowners and governmental entities benefit equally by knowing when a claim under the act may be asserted so as to avoid unnecessary future litigation, NOW, THEREFORE,

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

Section 1. Paragraphs (d) and (g) of subsection (3), subsections (4), (5), and (6), and paragraph (a) of subsection (11) of section 70.001, Florida Statutes, are amended to read:

70.001 Private property rights protection.—

(3) For purposes of this section:

(d) The term "action of a governmental entity" means a specific action of a governmental entity which affects real property, including acting ~~action~~ on an application or permit or adopting or enforcing any ordinance, resolution, regulation, rule, or policy.

(g) The term "real property" means land and includes any surface, subsurface, or mineral estates and any appurtenances and improvements to the land, including any other relevant interest in the real property in which the property owner has a relevant interest. The term includes only parcels that are the subject of and directly impacted by the action of a governmental entity.

(4)(a) Not fewer ~~less~~ than 90 ~~150~~ days before ~~prior to~~

filing an action under this section against a governmental entity, a property owner who seeks compensation under this section must present the claim in writing to the head of the governmental entity~~, except that if the property is classified as agricultural pursuant to s. 193.461, the notice period is 90 days~~. The property owner must submit, along with the claim, a bona fide, valid appraisal that supports the claim and demonstrates the loss in fair market value to the real property. If the action of government is the culmination of a process that involves more than one governmental entity, or if a complete resolution of all relevant issues, in the view of the property owner or in the view of a governmental entity to whom a claim is presented, requires the active participation of more than one governmental entity, the property owner shall present the claim as provided in this section to each of the governmental entities.

(b) The governmental entity shall provide written notice of the claim to all parties to any administrative action that gave rise to the claim, and to owners of real property contiguous to the owner's property at the addresses listed on the most recent county tax rolls. Within 15 days after the claim is presented, the governmental entity shall report the claim in writing to the Department of Legal Affairs, and shall provide the department with the name, address, and telephone number of the employee of the governmental entity from whom additional information may be obtained about the claim during the pendency of the claim and any subsequent judicial action.

(c) During the 90-day-notice period ~~or the 150-day notice period~~, unless extended by agreement of the parties, the

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

governmental entity shall make a written settlement offer to effectuate:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.

2. Increases or modifications in the density, intensity, or use of areas of development.

3. The transfer of developmental rights.

4. Land swaps or exchanges.

5. Mitigation, including payments in lieu of onsite mitigation.

6. Location on the least sensitive portion of the property.

7. Conditioning the amount of development or use permitted.

8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.

9. Issuance of the development order, a variance, a special exception, or any other extraordinary relief.

10. Purchase of the real property, or an interest therein, by an appropriate governmental entity or payment of compensation.

11. No changes to the action of the governmental entity.

If the property owner accepts a settlement offer, ~~either~~ before or after filing an action, the governmental entity may implement the settlement offer by appropriate development agreement; by issuing a variance, a special exception, or any other extraordinary relief; or by any other appropriate method, subject to paragraph (d).

(d)1. When a governmental entity enters into a settlement agreement under this section which would have the effect of a

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modification, variance, or a special exception to the application of a rule, regulation, or ordinance as it would otherwise apply to the subject real property, the relief granted shall protect the public interest served by the regulations at issue and be the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property. Settlement offers made pursuant to paragraph (c) shall be presumed to protect the public interest.

2. When a governmental entity enters into a settlement agreement under this section which would have the effect of contravening the application of a statute as it would otherwise apply to the subject real property, the governmental entity and the property owner shall jointly file an action in the circuit court where the real property is located for approval of the settlement agreement by the court to ensure that the relief granted protects the public interest served by the statute at issue and is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.

This paragraph applies to any settlement reached between a property owner and a governmental entity regardless of when the settlement agreement was entered so long as the agreement fully resolves all claims asserted under this section.

(5)(a) During the 90-day-notice period ~~or the 150-day-notice period~~, unless a settlement offer is accepted by the property owner, each of the governmental entities provided notice pursuant to subsection (4) ~~paragraph (4)(a)~~ shall issue a written statement of allowable uses identifying the allowable

uses to which the subject property may be put. The failure of the governmental entity to issue a statement of allowable uses during the ~~applicable~~ 90-day-notice period ~~or 150-day-notice period~~ shall be deemed a denial for purposes of allowing a property owner to file an action in the circuit court under this section. If a written statement of allowable uses is issued, it constitutes the last prerequisite to judicial review for the purposes of the judicial proceeding created by this section, notwithstanding the availability of other administrative remedies.

(b) If the property owner rejects the settlement offer and the statement of allowable uses of the governmental entity or entities, the property owner may file a claim for compensation in the circuit court, a copy of which shall be served contemporaneously on the head of each of the governmental entities that made a settlement offer and a statement of allowable uses that was rejected by the property owner. Actions under this section shall be brought only in the county where the real property is located.

(6)(a) The circuit court shall determine whether an existing use of the real property or a vested right to a specific use of the real property existed and, if so, whether, considering the settlement offer and statement of allowable uses, the governmental entity or entities have inordinately burdened the real property. If the actions of more than one governmental entity, considering any settlement offers and statement of allowable uses, are responsible for the action that imposed the inordinate burden on the real property of the property owner, the court shall determine the percentage of

responsibility each such governmental entity bears with respect to the inordinate burden. A governmental entity may take an interlocutory appeal of the court's determination that the action of the governmental entity has resulted in an inordinate burden. An interlocutory appeal does not automatically stay the proceedings; however, the court may stay the proceedings during the pendency of the interlocutory appeal. If the governmental entity does not prevail in the interlocutory appeal, the court shall award to the prevailing property owner the costs and a reasonable attorney fee incurred by the property owner in the interlocutory appeal.

(b) Following its determination of the percentage of responsibility of each governmental entity, and following the resolution of any interlocutory appeal, the court shall impanel a jury to determine the total amount of compensation to the property owner for the loss in value due to the inordinate burden to the real property. The property owner retains the option to forego a jury and elect to have the court determine the award of compensation. The award of compensation shall be determined by calculating the difference in the fair market value of the real property, as it existed at the time of the governmental action at issue, as though the owner had the ability to attain the reasonable investment-backed expectation or was not left with uses that are unreasonable, whichever the case may be, and the fair market value of the real property, as it existed at the time of the governmental action at issue, as inordinately burdened, considering the settlement offer together with the statement of allowable uses, of the governmental entity or entities. In determining the award of compensation,

consideration may not be given to business damages relative to any development, activity, or use that the action of the governmental entity or entities, considering the settlement offer together with the statement of allowable uses has restricted, limited, or prohibited. The award of compensation shall include a reasonable award of prejudgment interest from the date the claim was presented to the governmental entity or entities as provided in subsection (4).

(c)1. In any action filed pursuant to this section, the property owner is entitled to recover reasonable costs and attorney fees incurred by the property owner, from the governmental entity or entities, according to their proportionate share as determined by the court, from the date of the presentation of the claim to the head of the governmental entity pursuant to paragraph (4)(a) ~~the filing of the circuit court action~~, if the property owner prevails in the action ~~and the court determines that the settlement offer, including the statement of allowable uses, of the governmental entity or entities did not constitute a bona fide offer to the property owner which reasonably would have resolved the claim, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period or the 150-day-notice period~~.

2. In any action filed pursuant to this section, the governmental entity or entities are entitled to recover reasonable costs and attorney fees incurred by the governmental entity or entities from the date of the filing of the circuit court action, if the governmental entity or entities prevail in the action and the court determines that the property owner did

not accept a bona fide settlement offer, including the statement of allowable uses, which reasonably would have resolved the claim fairly to the property owner if the settlement offer had been accepted by the property owner, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period ~~or the 150-day-notice period~~.

3. The determination of total reasonable costs and attorney fees pursuant to this paragraph shall be made by the court and not by the jury. Any proposed settlement offer or any proposed decision, except for the final written settlement offer or the final written statement of allowable uses, and any negotiations or rejections in regard to the formulation either of the settlement offer or the statement of allowable uses, are inadmissible in the subsequent proceeding established by this section except for the purposes of the determination pursuant to this paragraph.

(d) Within 15 days after the execution of any settlement pursuant to this section, or the issuance of any judgment pursuant to this section, the governmental entity shall provide a copy of the settlement or judgment to the Department of Legal Affairs.

(11) A cause of action may not be commenced under this section if the claim is presented more than 1 year after a law or regulation is first applied by the governmental entity to the property at issue.

(a) For purposes of determining when this 1-year claim period accrues:

1.a. A law or regulation is first applied upon enactment

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and notice as provided for in this sub-subparagraph ~~subparagraph~~ if the impact of the law or regulation on the real property is clear and unequivocal in its terms and notice is provided by mail to the affected property owner or registered agent at the address referenced in the jurisdiction's most current ad valorem tax records. The fact that the law or regulation could be modified, varied, or altered under any other process or procedure does not preclude the impact of the law or regulation on a property from being clear or unequivocal pursuant to this sub-subparagraph ~~subparagraph~~. Any notice under this sub-subparagraph ~~subparagraph~~ shall be provided after the enactment of the law or regulation and shall inform the property owner or registered agent that the law or regulation may impact the property owner's existing property rights and that the property owner may have only 1 year after ~~from~~ receipt of the notice to pursue any rights established under this section.

b. If the notice required in sub-subparagraph a. is not provided to the property owner, the property owner may at any time after enactment notify the head of the governmental entity in writing via certified mail and, if available, e-mail that the property owner deems the impact of the law or regulation on the property owner's real property to be clear and unequivocal in its terms and, as such, restrictive of uses allowed on the property before the enactment. Within 45 days after receipt of a notice under this sub-subparagraph, the governmental entity in receipt of the notice must respond in writing via certified mail and, if available, e-mail to describe the limitations imposed on the property by the law or regulation. The property owner is not required to formally pursue an application for a development

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order, development permit, or building permit, as such will be deemed a waste of resources and shall not be a prerequisite to bringing a claim pursuant to paragraph (4)(a). However, any such claim must be filed within 1 year after the date of the property owner's receipt of the notice from the governmental entity of the limitations on use imposed on the real property.

2. Otherwise, the law or regulation is first applied to the property when there is a formal denial of a written request for development or variance.

Section 2. Present paragraphs (c), (d), and (e) of subsection (1) of section 70.45, Florida Statutes, are redesignated as paragraphs (d), (e), and (f), respectively, a new paragraph (c) is added to that subsection, and subsections (2), (4), and (5) of that section are amended, to read:

70.45 Governmental exactions.—

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

(c) "Imposed" or "imposition" as it relates to a prohibited exaction or condition of approval refers to the time at which the property owner must comply with the prohibited exaction or condition of approval.

(2) In addition to other remedies available in law or equity, a property owner may bring an action in a court of competent jurisdiction under this section to declare a prohibited exaction invalid and recover damages caused by a prohibited exaction. Such action may ~~not~~ be brought by a property owner at the property owner's discretion when ~~until~~ a prohibited exaction is actually imposed or when it is required in writing as a final condition of approval for the requested use of real property. The right to bring an action under this

section may not be waived. This section does not apply to impact fees adopted under s. 163.31801 or non-ad valorem assessments as defined in s. 197.3632.

(4) For each claim filed under this section, the governmental entity has the burden of proving that the challenged exaction has an essential nexus to a legitimate public purpose and is roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate. The property owner has the burden of proving damages that result from a prohibited exaction.

(5) The court may award attorney fees and costs to the prevailing party; however, if the court determines that the challenged exaction which is the subject of the claim lacks an essential nexus to a legitimate public purpose, the court shall award attorney fees and costs to the property owner.

Section 3. The amendments made by this act to ss. 70.001(4), (5), (6) and (11) and 70.45, Florida Statutes, apply only to claims made in response to actions taken by governmental entities on or after July 1, 2021.

Section 4. Paragraph (g) of subsection (2) of section 70.51, Florida Statutes, is amended to read:

70.51 Land use and environmental dispute resolution.—

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

(g) "Land" or "real property" has the same meaning as in s. 70.001(3)(g) ~~means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the owner had a relevant interest~~.

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: April 9, 2021

I respectfully request that **Senate Bill #1876**, relating to Relief from Burdens on Real Property Rights, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ben Albritton
Florida Senate, District 26

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

4/29/21
Meeting Date

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

1876
Bill Number (if applicable)

Topic Burdens of real Prop

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries

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)

Duplicate

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

THE FLORIDA SENATE

APPEARANCE RECORD

4/20/2021
Meeting Date

1876
Bill Number (if applicable)

Topic Relief from Burdens on Real Property Rights

Amendment Barcode (if applicable)

Name David Cruz

Job Title Legislative Counsel

Address PO Box 1757
Street

Phone (850)-701-3676

Tallahassee FL 32301
City *State* *Zip*

Email dcruz@flcities.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida League of Cities, Inc.

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)

Duplicate

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THE FLORIDA SENATE

APPEARANCE RECORD

4/20/21
Meeting Date

1876
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Relief from Burdens on Real Property Rights

Name David Cullen

Job Title

Address 1934 Shelby Court
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 941-323-2404

Email cullenasea@gmail.com

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

1876
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Kim Ross

Job Title Executive Director

Address 603 N MLK Jr Blvd
Street

Phone 850-888-2565

Tallahassee FL 32301
City *State* *Zip*

Email admin@rethinkenergyflorida.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Rethink Energy FL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/20/21 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1876

Meeting Date *Bill Number (if applicable)*

Topic Real Property Rights

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title

Address 126 N. Mills Ave Phone

Street

Orlando FL 32801 Email

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing 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.

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

S-001 (10/14/14)

The following Appearance Records were not read into the record by the Chair

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-20-21
Meeting Date

SB 1876
Bill Number (if applicable)

Topic Real property rights

Amendment Barcode (if applicable)

Name Amanda Weems

Job Title

Address 3404 Cedarwood Trail
Street

Tallahassee FL 32312
City *State* *Zip*

Phone 850-590-7154

Email amandaw1098@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tallahssee Community Action Committee

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)

4/20/21
Meeting Date

SB 1876
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Relief from Burdens on Real Property Rights

Name Adam Basford

Job Title legislative Affairs

Address _____ Phone _____
Street

_____ Email _____
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

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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)

4/20/21
Meeting Date

SB 1876
Bill Number (if applicable)

Topic Real Property Rights

Amendment Barcode (if applicable)

Name Michael McLaughlin

Job Title Graduate Assistant

Address 100 Carley Street
Street

Phone 605 759 6437

Tallahassee FL 32301
City *State* *Zip*

Email michael.mclaughlin243@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing TCAC

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

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 1884
INTRODUCER:	Senator Rodrigues
SUBJECT:	Preemption of Firearms and Ammunition Regulation
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Favorable**
2.	Ravelo	Cibula	JU	**Favorable**
3.	Paglialonga	Phelps	RC	**Favorable**

I. Summary:

SB 1884 revises the Legislature's preemption of the field of the regulation of firearms and ammunition. Current law provides a person or certain organizations with the right to seek declaratory or injunctive relief and actual damages due to a local ordinance, regulation, measure directive, rule enactment, order, or policy regulating firearms or ammunition. The bill provides that the right to maintain a legal action against a preempted local regulation applies even if the local regulation is unwritten.

Existing s. 790.33, F.S., preempts the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the state. Any person or organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated in violation of s. 790.33 F.S., may file suit against the governmental entity for a declaratory judgment and injunctive relief. If a court determines the plaintiff is the prevailing party, the plaintiff may recover actual damages of up to $100,000 in addition to any attorney fees.

The bill also provides a mechanism for a plaintiff to recover damages and attorney's fees when a government entity changes its regulation while the regulation is being challenged under s. 790.33, F.S. Specifically, when a government entity voluntarily changes the regulation that was challenged pursuant to a complaint, the plaintiff challenging that regulation is considered the prevailing party and may recover actual damages and attorney fees.

The bill takes effect July 1, 2021.

II. Present Situation:

Home Rule Powers and Preemption

The Florida Constitution

The Florida Constitution establishes and describes the duties, powers, structure, function, and limitations of government in this state. Article VIII, section 1 of the Florida Constitution, endows counties and municipalities the power of self-government or home rule power. Under the home rule power, local governments have broad authority to exercise the state's sovereign police powers and legislate on any matter that is not inconsistent with the federal and state constitution and laws.

Counties

A county without a charter has such power of self-government as provided by general or special law and may enact county ordinances not inconsistent with general law.[1] Counties operating under county charters have all the powers of local self-government not inconsistent with general law or with special law approved by a vote of the electors.[2] General law authorizes counties "the power to carry on county government"[3] and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."[4]

Municipalities

Municipalities may be established or abolished, and their charters amended by general or special law. Municipalities have governmental, corporate, and proprietary powers to conduct municipal government, perform municipal functions, and render municipal services. They may exercise any of these powers for municipal purposes except as otherwise provided by law.[5] Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,[6] acknowledges these constitutional grants of police powers and better defines municipal powers of self-government.[7] Chapter 166, F.S., provides municipalities with broad home rule powers to act in a manner not inconsistent with the Florida Constitution, general and special law, or the charter for the county in which the municipality is located.[8]

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[1] FLA. CONST. art. VIII, s. 1(f).
[2] *Id.* at (g).
[3] Section 125.01(1), F.S.
[4] *Id.* at (w).
[5] FLA. CONST. art. VIII, s. 2.
[6] Section 166.011, F.S.
[7] Florida House of Representatives, Publications, *The Local Government Formation Manual 2017-2018*, p. 16, *available at* http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf. (last visited Mar. 11, 2021).
[8] Section 166.021(4), F.S.

State Preemption

Although local governments have broad home rule powers, the Legislature may preempt this self-government power and preclude local governments from exercising legislative authority in particular areas of law.[9] Florida law recognizes two types of preemption: express and implied.

Express preemption requires a specific legislative statement; it cannot be implied or inferred.[10] In cases where the Legislature expressly preempts an area or forbids local governments from certain actions, the Legislature must use clear language stating its intent so that "there is no problem with ascertaining what the Legislature intended."[11] On the other hand, implied preemption is found where the local legislation would present the danger of conflicting with the state's pervasive regulatory scheme.[12] 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 to the state, and there are strong public policy reasons for doing so.[13] In cases determining the validity of ordinances enacted in the face of express and implied state preemption, the effect has been to find such ordinances null, void, and unenforceable.[14]

The Joe Carlucci Uniform Firearms Act

The Joe Carlucci Uniform Firearms Act (Act), codified in s. 790.33, F.S., became law in 1987.[15] The policy and intent of the Act is stated as follows:

> It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.[16]

The Act accomplished its stated purpose by "occupying the whole field of regulation of firearms and ammunition," as stated in subsection (1) of the Act:

> PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county,

[9] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).
[10] *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).
[11] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).
[12] *See GLA & Assocs., Inc. v. City of Boca Raton*, 855 So. 2d 278, 282 (Fla. 4th DCA 2003).
[13] *Id.*
[14] *Thomas v. State*, 614 So.2d 468, 470 (Fla.1993); *Hillsborough County v. Fla. Rest. Ass'n*, 603 So.2d 587, 591 (Fla. 2d DCA 1992) ("If [a county] has enacted such an inconsistent ordinance, the ordinance must be declared null and void.")
[15] Chapter 87-23, Laws of Fla.
[16] Section 790.33(3)(a), F.S.

> city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.[17]

Since 1990 there has been a statewide 3-day waiting period as outlined in Florida's Constitution.[18] In 2011, the Legislature substantially amended the Act to provide an updated statutory overlay to the constitutional provisions addressing firearms.[19] These revisions included various express prohibitions and exceptions.[20]

Despite the provisions of the 1987 Joe Carlucci Act and a Florida appellate court opinion upholding the Act,[21] local governments have enacted or considered enacting ordinances that required trigger locks, prohibited concealed carry permit holders from lawfully carrying their firearms on municipal or county property, required special use permits for certain sporting goods stores, and banned recreational shooting. Courts have continuously struck down these local regulations as violations of the Act's express state preemption in the field of firearms.[22]

Liability, Recovery, and Attorney Fees

The Act also includes provisions related to a party's liability that violates the Act's express state preemption. Any person, county, agency, municipality, district, or other entity that violates the state's express preemption in the field of firearms, the Act directs courts to declare the improper ordinance, regulation, or rule invalid and issue a permanent injunction enjoining its enforcement.[23] If a court determines that the violation was knowing and willful, the elected or appointed official having jurisdiction may be assessed a civil fine of up to $5,000 (that may not be paid with public funds) and may be terminated or removed from the position.[24]

Furthermore, any person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of the Act may sue the violator for a declaratory judgment, injunctive relief, and actual damages caused by the violation. If the plaintiff prevails in the suit, the Act directs a court to award reasonable attorney's fees and costs, including a contingency fee multiplier and actual damages up to $100,000.[25]

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[17] Section 790.33(1), F.S.
[18] There shall be a mandatory period of 3 days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph. … This restriction shall not apply to a trade in of another gun. FLA. CONST. art. I, s. 8(b), 8(d).
[19] Chapter 2011-109, Laws of Fla.
[20] Section 790.33(3),(4), F.S.
[21] *National Rifle Association v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).
[22] *See Jensen v. Pinellas County*, 198 So.3d 754 (Fla. 2nd DCA 2016); *see also Florida Carry, Inc. v. University of Florida*, 180 So.3d 137 (Fla. 1st DCA 2015).
[23] Section 790.33(3)(b), F.S.
[24] *Id.* at (c), (d), and (e).
[25] *Id.* at (f).

Not every preempted regulation will necessarily provide for an opportunity to infer liability or recover any attorney's fees based on a suit. The City of Tallahassee, for example, has several firearms related ordinances that a court recently found "null and void, even if they ostensibly remained on the books" due to preemption.[26] The court, however, refused to issue attorney's fees and costs on behalf of the petitioner, Florida Carry Inc., because the actual regulations were not enforced. The city merely republished the already void ordinances, which the court found was not an actionable offense under s. 790.33, F.S.[27]

III. Effect of Proposed Changes:

The bill amends s. 790.33, F.S., to provide that a person or organization whose membership is adversely affected by a local regulation of firearms or ammunition that violates s. 790.33, F.S., may file suit even if the regulation is *unwritten*. Under current law, a person may challenge a local regulation based on a specific ordinance, regulation, measure, directive, rule, enactment, order, or policy. Successfully prosecuting a case may prove difficult, however, if the government entity's regulation was not made in writing.

The bill also provides that if the governmental entity defendant to a complaint alleging a violation of s. 790.33, F.S., voluntarily changes the ordinance, regulation, measure, directive, rule, enactment, order, or policy, written or unwritten, allegedly in violation of s. 790.33, F.S., the plaintiff is considered a prevailing plaintiff, with or without court action. As the prevailing party, the plaintiff may recover actual damages and attorney fees. This provision appears to address the issue of *mootness*. If a government agency were to change a regulation that is being challenged as a violation of state preemption prior to the conclusion of the litigation, the potential violation may be dismissed as *moot* because it is no longer in place.[28] Once dismissed as moot, the plaintiff would not be eligible to recover damages or attorney's fees despite the government entity changing what was challenged. When this scenario occurs under the bill, however, the plaintiff is considered the prevailing party for the purpose of actual damages and attorney's fees.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[26] *Florida Carry, Inc. v. City of Tallahassee*, 212 So. 3d 452, (Fla. 1st DCA 2017).
[27] *Id*. at 464-5.
[28] In a case involving the University of Florida, for example, a court held there was no "justiciable controversy" when the University no longer enforced the regulation being challenged. *Florida Carry, Inc. v. Univ. of Florida*, 180 So. 3d 137, 153-4 (Fla. 1st DCA 2015). *See also Godwin v. State*, 593 So. 2d 211 (Fla. 1992) ("An issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect.")

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:

SB 1884 may have an indeterminate net positive fiscal impact for persons and organizations adversely affected by a local government's unwritten action regarding the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation of firearms and ammunition.

The bill also may have an indeterminate net positive fiscal impact on plaintiffs challenging actions as violating s. 790.33, F.S. Under the bill, these plaintiffs may more easily recover attorney fees and actual damages by being declared the prevailing party if a defendant voluntarily changes the policy allegedly violating s. 790.33, F.S., after a complaint is filed.

C. Government Sector Impact:

The bill may cause an indeterminate net negative fiscal impact on government entities that violate s. 790.33, F.S., by providing that a plaintiff may recover attorney fees and actual damages if the governmental entity voluntarily changes the alleged violation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is difficult to determine the nature of the unwritten policies covered by the bill. Unwritten policies may include oral instructions given within a law enforcement agency.[29]

[29] *See Dougan v. Bradshaw*, 198 So. 3d 878 (Fla. 4th DCA 2016)(The Sheriff argued that a cause of action under s. 790.33, F.S., could not be maintained because the "policy" alleged in Appellant's complaint—i.e. retaining firearms seized as a result of a safety call or safety check until ordered by the court to return them—was an oral instruction pursuant to an Administrative Order and not a "policy" within the meaning of s. 790.33 F.S.).

VIII. Statutes Affected:

This bill substantially amends section 790.33 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 Rodrigues

27-01664A-21 20211884__

A bill to be entitled

An act relating to the preemption of firearms and ammunition regulation; amending s. 790.33, F.S.; providing that written or unwritten policies are subject to provisions allowing for recovery of damages if such policies violate specified provisions; providing that a plaintiff challenging a local government regulation concerning firearms is considered a prevailing plaintiff for certain purposes in specified circumstances; providing an effective date.

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

Section 1. Paragraph (f) of subsection (3) of section 790.33, Florida Statutes, is amended to read:

790.33 Field of regulation of firearms and ammunition preempted.—

(3) PROHIBITIONS; PENALTIES.—

(f)1. A person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy, whether written or unwritten, promulgated or caused to be enforced in violation of this section may file suit against any county, agency, municipality, district, or other entity in any court of this state having jurisdiction over any defendant to the suit for declaratory and injunctive relief and for actual damages, as limited herein, caused by the violation. A court shall award the prevailing plaintiff in any such suit:

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

27-01664A-21 20211884__

a.~~1.~~ Reasonable attorney ~~attorney's~~ fees and costs in accordance with the laws of this state, including a contingency fee multiplier, as authorized by law; and

b.~~2.~~ The actual damages incurred, but not more than $100,000.

2. If after the filing of a complaint a defendant voluntarily changes the ordinance, regulation, measure, directive, rule, enactment, order, or policy, written or unwritten, promulgated or caused to be enforced in violation of this section, with or without court action, the plaintiff is considered a prevailing plaintiff for purposes of this section.

Interest on the sums awarded pursuant to this subsection shall accrue at the legal rate from the date on which suit was filed.

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

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

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 1884 – Preemption of Firearms and Ammunition Regulation

Dear Madame Chair:

Please allow this letter to serve as my respectful request to place SB 1884, relating to the Preemption of Firearms and Ammunition Regulation, on the next committee agenda.

SB 1884 clarifies what is implicit in the law, that the ordinance, regulation, measure, directive, rule, enactment, order or policy does not have to be in writing to violate the law. The bill also clarifies that a plaintiff is the prevailing party if, after the lawsuit id initiated, the government entity changes the policy that is the subject of the lawsuit. SB 1884 does not expand preemption, it merely clarifies the existing law and legislative intent for citizens, local government, law enforcement and the courts.

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

Sincerely,

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

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

4/20/2021
Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

1884
Bill Number (if applicable)

Topic Preemption of Firearms

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.
Street

Phone 850-321-9386

Tallahassee — *City* | Fl — *State* | 32301 — *Zip*

Email fcfep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fl Center for Fiscal and Economic Policy

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

4/20/2021
Meeting Date

SB 1884
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Preemption of Firearms and Ammunition

Name Lane Watkins

Job Title Retired

Address 6087 Bud Moulton Road
Street

Phone 904 673 0788

Crestview FL 32536
City *State* *Zip*

Email h25pfd@yahoo.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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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)

4/2021
Meeting Date

1884
Bill Number (if applicable)

Topic Preemption of Legislation of Firearms ...

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title

Address 625 E. Brevard St
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 251-4280

Email barbaradevane1@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

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S-001 (10/14/14)

The following Appearance Records were not read into the record by the Chair

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/24
Meeting Date

SB 1844
Bill Number (if applicable)

Topic Preemption of Firearms

Amendment Barcode (if applicable)

Name Jon Harris Mawyer

Job Title

Address 201 E. Park Ave., Ste. 200A
Street

Phone 850-681-0988

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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APPEARANCE RECORD

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4/20/21
Meeting Date

1884
Bill Number (if applicable)

Topic Preemption of Firearms

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title

Address 126 N. Mills Ave
Street

Orlando FL 32801
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 Rising

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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APPEARANCE RECORD

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4.20.21.
Meeting Date

SB 1884
Bill Number (if applicable)

Topic Preemption of Fire Arms

Amendment Barcode (if applicable)

Name Irish Brown

Job Title Community & State Organizer

Address 1316 Long Ave.
Street

Phone (850) 688-7153

Tallahassee FL 32310
City *State* *Zip*

Email BrownIrishFL4US@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tallahassee Community Action Committee

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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APPEARANCE RECORD

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4/20/2021
Meeting Date

SB 1884
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Preemption of Firearms

Name Isabel Ruano

Job Title Human Services

Address 2631 Yarmouth Lane
Street

Tallahassee FL 32309
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

SB 1884
Bill Number (if applicable)

Topic FIREARMS

Amendment Barcode (if applicable)

Name TRISH NEELY

Job Title DIRECTOR

Address 2024 SHANGRI LA
Street

Phone 850 322 3317

City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing LWV

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/21
Meeting Date

1854
Bill Number (if applicable)

Topic Preemption of Firearms and Ammo

Amendment Barcode (if applicable)

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

Representing TCAC

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 1922
INTRODUCER:	Judiciary Committee; Senators Gruters and Hooper
SUBJECT:	Dissolution of Marriage
DATE:	April 19, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Bond	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1922 amends family law issues related to alimony, timesharing between parents of a minor child, and bifurcation of a dissolution of marriage case.

Significant changes to alimony law include:

- Permanent (lifetime) alimony is eliminated, leaving bridge-the-gap, rehabilitative, and durational forms of alimony.
- The criteria for determining any form of alimony is expanded to include a presumption that both parties will have a lower standard of living post-dissolution.
- A court may not require an obligor to purchase life insurance to secure the award of alimony. However, an obligor must cooperate with an obligee's application for life insurance on the obligor.
- The characterization of a marriage as either short-term, moderate-term, or long-term is repealed. The related presumptions regarding alimony appropriate to the term of the marriage are also repealed.
- Rehabilitative alimony is limited to the lesser of 5 years or 50 percent of the term of the marriage.
- Durational alimony terminates upon a showing that the obligee is in a supportive relationship.
- Durational alimony is limited in time to 50 percent of the term of the marriage, may only be awarded where other forms of alimony are insufficient, and is limited in amount to no more than 25 percent of the difference between the parties' net incomes.

- No alimony may be awarded to a party who has a net income that is equal to or more than the other party's net income.
- For purposes of determining alimony, VA disability benefits, and state reemployment assistance or unemployment compensation, are not considered income.
- A divorcing spouse who has reasonably retired cannot be ordered to pay alimony unless the other spouse is too young for Social Security retirement benefits and qualifies for the medically needy program.
- An existing alimony award may be modified or terminated upon early retirement if such retirement is reasonable.
- An existing alimony award terminates when the obligor reaches the Social Security full retirement age, unless durational alimony has been paid for less than 50 percent of the term of the marriage, the obligee is too young for Social Security retirement benefits, and the obligee qualifies for the medically needy program.
- A petition for modification or termination in anticipation of retirement may be filed up to 12 months prior to the planned retirement date.
- The concept of a supportive relationship is expanded to allow proof of a recent supportive relationship and a corresponding right to seek reimbursement of alimony paid. The description of a supportive relationship is expanded by repeal of the requirement to show cohabitation and by adding engagement to be married to another as proof towards a finding of a supportive relationship.

Timesharing with minor children is changed by creation of a presumption in favor of equal time-sharing between parents.

Bifurcation refers to the process where the court dissolves the marriage, reserving other matters such as property distribution, alimony, timesharing, and child support for future court action. The bill gives either party to a dissolution of marriage the right to bifurcation if the case has been pending for longer than one year from the date the respondent received the summons.

The bill is effective July 1, 2021. Changes to alimony apply to existing cases on the effective date. Changes to timesharing and bifurcation apply to cases filed on or after the effective date.

II. Present Situation:

Dissolution of marriage may involve many different but related matters. Three matters related to dissolution addressed by this bill are alimony, timesharing with children, and bifurcation. Note that the timesharing changes also affect parents who never married.

Alimony

Alimony is a court-ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced.[1] Alimony may be agreed to by the parties or awarded by the court after an evidentiary hearing. While child support is determined primarily through a statutory formula, alimony is determined at the discretion of the trial court based on statutory and equitable factors.

[1] Alimony, BLACK'S LAW DICTIONARY (11th ed. 2019).

Calculation of the Amount of Alimony

There is no fixed formula for alimony. Alimony is based on both financial need and the ability to pay.[2] After making an initial determination to award alimony, the court must consider ten factors:

- The standard of living established during the marriage.
- The length of marriage.
- Ages and physical and emotional condition of the parties.
- Financial resources of the parties.
- Earning capacity, education level, vocational skill, and employability of the parties.
- Marital contributions, including homemaking, child care, and education and career building of the other party.
- Responsibilities of each party towards minor children.
- Tax treatment and consequences of alimony awards.
- All sources of income.
- Any other factor that advances equity and justice.[3]

The income tax factor has less relevance than in the past. Beginning January 1, 2019, alimony or separate maintenance payments are not deductible from the income of the obligor, or includable in the income of the obligee, if made under a divorce or separation agreement executed after December 31, 2018. This also applies to a divorce or separation agreement executed on or before December 31, 2018, and modified after December 31, 2018, as long as the modification changes the terms of the alimony or separate maintenance payments and states that the alimony or separate maintenance payments are not deductible by the obligor or includable in the income of the obligee. On the other hand, alimony or separate maintenance payments are generally deductible from the income of the obligor and includable in the income of the obligee, if made under a divorce or separation agreement executed on or before December 31, 2018, even if the agreement was modified after December 31, 2018, so long as the modification is not one described in the preceding sentence.[4]

The court may also consider adultery by either spouse in a decision to award alimony.[5] That consideration is dependent upon the circumstances of each particular case. Absent a showing of a related depletion of marital assets, a party's adulterous misconduct is not a valid reason to award a greater share of those marital assets to the innocent spouse or to deny the adulterous spouse alimony. Furthermore, despite evidence of adultery, need and ability to pay remain the primary considerations in awarding alimony.[6]

To protect an alimony award, the court may order an obligor to maintain a life insurance policy.[7] A court making the requirement must first make specific findings regarding the availability and

[2] Section 61.08(2), F.S.
[3] Section 61.08(2)(a)-(j), F.S.
[4] IRS, *CLARIFICATION: Changes to deduction for certain alimony payments effective in 2019* (March 3, 2021) *available at* https://www.irs.gov/forms-pubs/clarification-changes-to-deduction-for-certain-alimony-payments-effective-in-2019 (last viewed March 13, 2021).
[5] Section 61.08(1), F.S.
[6] *Williamson v. Williamson*, 367 So. 2d 1016, 1019 (Fla.1979); *Noah v. Noah*, 491 So. 2d 1124, 1127 (Fla. 1986); *Keyser v. Keyser*, 204 So. 3d 159, 161 (Fla. 1st DCA 2016).
[7] Section 61.08(3), F.S.

cost of insurance, the obligor's ability to pay, and the special circumstances that warrant the requirement for security of the obligation.[8] The special circumstances required to support an order mandating life insurance include "a spouse potentially left in dire financial straits after the death of the obligor spouse due to age, ill health and/or lack of employment skills, obligor spouse in poor health, minors living at home, supported spouse with limited earning capacity, obligor spouse in arrears on support obligations, and cases where the obligor spouse agreed on the record to secure an award with a life insurance policy."[9]

An award of alimony may not result in the obligor with significantly less net income than the net income of the obligee absent exceptional circumstances.[10] What qualifies as exceptional circumstances is undefined.

Types of Alimony

For purposes of determining the appropriate type of alimony to award, marriages are classified by term or length of marriage, based on the time from the date of marriage to the date the dissolution of marriage action was filed:

- Short term means less than 7 years.
- Moderate-term means greater than 7 years but less than 17 years.
- Long-term means greater than 17 years.[11]

Florida law recognizes various forms of alimony, including bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.[12]

Bridge-the-gap alimony:[13]

- Is designed to assist a party in his or her transition from being married to being single.
- May be awarded in a marriage of any term.
- Cannot exceed 2 years in duration.
- May not be modified.
- Terminates upon death or remarriage.

Rehabilitative alimony:[14]

- Is designed to assist a party in establishing the capacity for self-support through either the redevelopment of previous skills or credentials; or the acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.
- May be awarded in a marriage of any term.
- Can be of any duration.
- May be modified based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.
- Does not automatically terminate upon remarriage.

[8] *O'Neill v. O'Neill*, 305 So. 3d 551, 554 (Fla. 4th DCA 2020).
[9] *Kotlarz v. Kotlarz*, 21 So. 3d 892, 893 (Fla. 1st DCA 2009).
[10] Section 61.08(9), F.S.
[11] Section 61.08(4), F.S. This triad was first enacted in 2010. Ch. 2010-199, Laws of Fla.
[12] Section 61.08(1), F.S.
[13] Section 61.08(5), F.S.
[14] Section 61.08(6), F.S.

Durational alimony:[15]

- Is designed to provide a party with economic assistance for a set period of time.
- May be awarded following a marriage of short or moderate duration, or following a marriage of long duration if there is no ongoing need for support on a permanent basis.
- May not exceed the length of the marriage.
- May be modified as to amount, based upon a substantial change in circumstances; but the length may not be modified except under exceptional circumstances.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

Permanent alimony:[16]

- Is designed to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage.
- May be awarded only after a finding that no other form of alimony is fair and reasonable under the circumstances of the parties, following a marriage of:
  - Long duration, if such an award is appropriate upon consideration of the ten factors by a preponderance of the evidence;
  - Moderate duration, if such an award is appropriate based upon clear and convincing evidence after consideration of the 10 factors; or
  - Short duration, if there are written findings of exceptional circumstances.
- Is not for a fixed period of time.
- May be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

Substantial Change in Circumstances

Where allowed, either party may seek modification of an alimony award on the grounds of a substantial change in circumstances.[17] To obtain a modification of alimony, the party seeking modification must allege, and the trial court must find, that:

- There has been a substantial change in circumstances.
- The change was not contemplated at the time of the final judgment of dissolution.
- The change is sufficient, material, permanent, and involuntary.[18]

The court may modify support retroactively to the date of the filing of the motion.[19]

Supportive Relationship

To avoid losing alimony because of remarriage, it was once common to simply "live with" someone. Today, the existence of a supportive relationship between the obligee and a third party

[15] Section 61.08(7), F.S.
[16] Section 61.08(8), F.S.
[17] Section 61.14(1)(a), F.S.
[18] *Golson v. Golson*, 207 So. 3d 321, 325 (Fla. 5th DCA 2016).
[19] Section 61.14(1)(a), F.S.

may be a substantial change in circumstances that warrants a modification of alimony. To modify alimony on an assertion of cohabitation between the obligee and a third party, the court must find:

- The existence of a supportive relationship between the obligee and a third party; and
- That the obligee lives with the third party.

To determine whether a relationship is supportive, the court will examine:

- The extent to which the obligee and the third party hold themselves out as a married couple;
- The length of time that the third party has resided with the obligee;
- Whether the obligee and the third party have jointly purchased property;
- The extent to which the obligee and third party commingle financial assets; and
- The extent to which one of the parties supports the other party.[20]

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.[21]

Retirement

Voluntary retirement may qualify as a substantial change in circumstances that warrants a modification of alimony. It is an exception to the general rule that a substantial change in circumstances must result from an involuntary action. Retirement as a substantial change in circumstances is not addressed in statute. The leading case in this area ruled:

> In determining whether a voluntary retirement is reasonable, the court must consider the payor's age, health, and motivation for retirement, as well as the type of work the payor performs and the age at which others engaged in that line of work normally retire. . . . [A] payor spouse should not be permitted to unilaterally choose voluntary retirement if this choice places the receiving spouse in peril of poverty. Thus, the court should consider the needs of the receiving spouse and the impact a termination or reduction of alimony would have on him or her. In assessing those needs, the court should consider any assets which the receiving spouse has accumulated or received since the final judgment as well as any income generated by those assets.[22]

An obligor looking into voluntary retirement in the near future faces a difficult decision. The motion cannot be filed until the substantial change in circumstances has actually occurred, that is, the obligor must actually retire. If the court finds that the retirement was not reasonable some months later, the now unemployed obligor must continue to pay the alimony without the job that he or she left and is unlikely to be hired back to.

[20] Section 61.14(b), F.S.
[21] Section 61.14(1)(b)1., F.S.
[22] *Pimm v. Pimm*, 601 So. 2d 534, 537 (Fla. 1992).

Timesharing with Minor Children

The public policy of the state is for each minor child to have "frequent and continuing contact with both parents."[23] Additionally, a court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.[24] In determining timesharing with each parent, a court must consider the best interests of the child based on a specific list of statutory factors. These factors include:

- The demonstrated capacity of each parent to have a close and continuing parent-child relationship, honor the time-sharing schedule, and be reasonable when changes are required.
- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child, including developmental needs.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- The 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.
- The moral fitness and the mental and physical health of the parents.
- The reasonable preference of the child, if the child is of sufficient intelligence, understanding, and experience to express a preference.
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime, and to be involved in the child's school and extracurricular activities.
- The demonstrated capacity of each parent to keep the other parent informed about the minor child, and the willingness of each parent to adopt a unified front on major issues.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has knowingly provided false information about these issues. If the court accepts evidence of prior or pending actions on these issues, the court must acknowledge in writing that the evidence was considered in evaluating best interests.
- The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before and during litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.[25]

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.[26]

Bifurcation of a Dissolution Case

Normally, a dissolution of marriage case is resolved when the court issues an omnibus final judgment of dissolution, which judgment dissolves the marriage, splits the debts and property of the couple, and, where required, resolves timesharing with the children, child support, and

[23] Section 61.13(2)(c)1., F.S.
[24] Section 61.13 (2)(c)2., F.S.
[25] Section 61.13(3), F.S.
[26] Section 61.13(3)(t), F.S.

alimony. The term "bifurcation" refers to the process whereby the court grants the dissolution of marriage, but reserves jurisdiction to resolve the remaining issues between the parties at a later date.

Parties seek bifurcation mostly for purposes of remarriage. Bifurcation is allowed but its use is discouraged by the courts. The Florida Supreme Court explained why:

> [W]e believe the trial court should avoid this split procedure. The general law and our procedural rules at both the trial and appellate levels are designed for one final judgment and one appeal. Splitting the process can cause multiple legal and procedural problems which result in delay and additional expense to the litigants. This split procedure should be used only when it is clearly necessary for the best interests of the parties or their children.[27]

The Florida Supreme Court has established presumptive trial court time standards for the most common types of cases. The time standards are not deadlines, but represent the time within which most cases should be resolved. The time standard for a contested domestic relations case is 180 days from filing to final disposition.[28]

Presumptions

A presumption in a legal proceeding is an assumption of the existence of a fact which is in reality unproven by direct evidence. A presumption is derived from another fact or group of facts that has been proven in the action. If a presumption is recognized, the presumed fact must be found to be present if the trier of fact finds that the underlying facts which give rise to the presumption exist. Presumptions usually assist in managing circumstances in which direct proof is rendered difficult. Presumptions arising out of considerations of fairness, public policy, and probability, as well as judicial economy, are also useful devices for allocating the burden of proof.[29] There are two types of presumption applicable to civil actions -- a presumption affecting the burden of producing evidence and a presumption affecting the burden of proof.[30]

Presumptions which are recognized primarily to facilitate the determination of an action, rather than to implement public policy, are presumptions affecting the burden of producing evidence. These so-called bursting bubble presumptions are recognized when the underlying facts are proved to exist and they remain in effect until credible evidence is introduced to disprove the presumed fact. Once the evidence of the nonexistence of the presumed fact is offered, the presumption disappears.[31]

Any presumption not falling within the category of presumptions affecting the burden of producing evidence is a presumption affecting the burden of proof.[32] These presumptions are recognized because they express a policy that society deems desirable. When proof is introduced

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[27] *Claughton v. Claughton*, 393 So. 2d 1061, 1062 (Fla. 1980).
[28] Fla. R. Jud. Admin. 2.250(a)(1)(C).
[29] *Presumptions—Generally*, 1 Fla. Prac., Evidence s. 301.1 (2020 ed.).
[30] Section 90.302, F.S.
[31] *Types of presumptions which affect the burden of producing evidence*, 1 Fla. Prac., Evidence s. 303.1 (2020 ed.).
[32] Section 90.304, F.S.

of the basic facts giving rise to a presumption affecting the burden of proof, the presumption operates to shift the burden of persuasion regarding the presumed fact to the opposing party.[33]

III. Effect of Proposed Changes:

Alimony

Forms of Alimony

The bill changes alimony law to eliminate permanent alimony as a form of alimony that a court may order. However, an obligor may agree to permanent alimony.

The bill prioritizes the remaining forms of alimony in this order:
- Bridge-the-gap alimony.
- Rehabilitative alimony.
- Durational alimony.

If the court orders a combination of forms of alimony, it must make written findings regarding the basis for the award. A combination may only be awarded to provide greater economic assistance for the purpose of rehabilitation of the obligee.

Criteria for an Award of Alimony

The bill provides that adultery of a spouse may not be the sole basis for awarding or denying alimony unless the adultery contributed to a depletion of marital assets.

The bill amends the 10 factors for consideration in determining the amount of an award of alimony as follows:
- The standard of living established during the marriage factor is limited. In looking at the standard of living during the marriage, the court must take into account the needs and necessities of life for each party after dissolution. The bill also creates a rebuttable presumption that both parties will have a lower standard of living after the dissolution.
- The tax treatment factor is modified by repeal of the portion regarding the tax treatment of the alimony. This reflects a change in the federal tax code effective January 1, 2019.
- The "all sources of income" factor is amended by a change in the definition of "income" at s. 61.046(8), F.S., to exclude VA disability payments, reemployment assistance, and unemployment compensation as income.[34]
- A court using the "any other factor" language must specify the other factor and the findings of fact justifying the factor.

The bill prohibits a court from requiring that the obligor purchase life insurance or secure a bond or other security naming the obligee as beneficiary. The bill adds that the obligee may purchase life insurance on the obligor, and that the obligor must cooperate with the application and

[33] *Types of presumptions which affect the burden of proof*, 1 Fla. Prac., Evidence § 304.1 (2020 ed.).
[34] These exclusions will not apply to formulas in the bill based on the terms "gross income" or "net income" as those terms are separately defined terms.

underwriting process. The bill implies that an obligee has an insurable interest in the life of obligor.

The bill repeals the classification of marriages being either short-term, moderate-term, or long-term. The bill also repeals their related presumptions regarding which forms of alimony are appropriate to each.

The bill limits the length of an alimony award:
- Bridge-the-gap alimony remains limited to 2 years.
- Rehabilitative alimony is limited to the lesser of 50 percent of the length of the marriage or 5 years.
- Durational alimony is limited to 50 percent of the length of the marriage.

The bill changes durational alimony to:
- Add that durational alimony ends upon proof of a supportive relationship between the obligee and another person.
- Repeal the requirement to show "exceptional circumstances" in order to modify the duration of the alimony.
- Require a court awarding durational alimony to make written finding that bridge-the-gap, rehabilitative alimony, or a combination of the two, is not appropriate.
- Durational alimony is limited to the lesser of the obligee's reasonable need for alimony or 25 percent of the difference between the parties' net incomes.

The term "net income" is defined by the bill as gross income[35] minus allowable deductions, which are:
- Federal, state, or local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.
- Federal insurance contributions or self-employment tax.
- Mandatory union dues.
- Mandatory retirement payments.
- Health insurance payments, excluding payments for coverage of a minor child.
- Court-ordered support for other children which is actually paid.
- Spousal support paid pursuant to a court order from a previous marriage

The bill makes the following additional changes to, and limits on, an alimony award:
- Alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party's net income. The bill repeals the provision that allows an award of alimony that leaves an obligor with significantly less income upon a showing of exceptional circumstances.
- The court may not use potential Social Security benefits in calculating imputed income.
- For a spouse to claim disability as grounds for not imputing income, the spouse must either be actually qualified for federal Social Security benefits or must show that he or she would qualify as disabled under that program.

[35] The bill references the definition of "gross income" in the child support law at s. 61.30(2), F.S. That subsection broadly includes all forms of income, including imputed income, but excluding public support payments.

- The court must consider all alimony payments made prior to the final hearing, whether voluntary or court-ordered, when determining the amount and duration of alimony awarded in the final judgment of dissolution.

Retirement

The bill addresses retirement of an obligor at two stages -- a retired person in a current dissolution of marriage proceeding, and a current obligor seeking modification or termination of an existing alimony award to allow retirement.

As to a pending dissolution of marriage, if a spouse is reasonably retired, that spouse may not be ordered to pay alimony to the other spouse unless:

- The other spouse has not yet reached the minimum age to receive any Social Security retirement benefits;[36] and
- The other spouse would, based on the outcome of the dissolution, qualify for the Florida Medicaid medically needy program.[37]

When considering whether a spouse is reasonably retired in a pending dissolution of marriage case, the court must consider these factors when determining if the retirement is reasonable:

- The obligor's age and health.
- The obligor's motivation for retirement.
- The obligor's profession or line of work, and the typical age of retirement for that profession or line of work.
- The needs and necessities of life of both spouses.

As to modification or termination of an existing award of alimony based on retirement, the court must consider these factors when determining if the retirement is reasonable:

- The obligor's age and health.
- The obligor's motivation for retirement.
- The obligor's profession or line of work, and the typical age of retirement for that profession or line of work.
- The needs and necessities of life of both parties.
- The impact that a termination or reduction of alimony would have on the obligee, taking into consideration the present assets and income of the obligee.

The factors for determination of a reasonable retirement for purposes of a modification or termination of alimony are similar to those in current case law.[38] The case law requirement that alimony set by agreement is more difficult to modify than alimony set by the court is not listed as a consideration.

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[36] Currently, the minimum age for retirement benefits is 62. https://www.ssa.gov/benefits/retirement/planner/agereduction.html (last viewed March 17, 2021).

[37] The medically needy program grants eligible persons temporary access to Medicaid. A person otherwise eligible for Medicaid but whose gross income is too high qualifies as medically needy in any month where, deducting their medical expenses from gross income the remainder is less than the Medicaid income threshold. Where qualified, the medically needy person's medical bills for the remainder of that month are paid through Medicaid. Qualification is on a month-to-month basis.

[38] *Pimm v. Pimm*, 601 So. 2d 534 (Fla. 1992).

The modification statute is further amended to provide that an alimony award terminates when the obligor reaches the Social Security full retirement age,[39] except that the court may order durational alimony to extend beyond the Social Security full retirement age if:

- The durational alimony has been paid for a duration of less than 50 percent of the term of the marriage;
- The obligee has not reached the minimum age to qualify for Social Security retirement benefits; and
- The obligee would, as a result of termination of alimony, qualify for the Florida Medicaid medically needy program.

An extension of alimony beyond the age at which the obligor has reached the Social Security full retirement age may not extend the total duration of alimony beyond 50 percent of the term of the marriage.

The bill creates a procedural mechanism to file a petition for modification in anticipation of a future retirement. An obligor may file the petition up to 12 months prior to the anticipated retirement date.

The bill provides that receipt of any Social Security, disability, or retirement received by an obligee is considered a substantial change in circumstances that would allow the obligor to seek modification of alimony.

The bill provides that an agreement on alimony may limit modification of the agreement based on a threshold or a limited period of time.

Modification of Termination of Alimony Based on a Supportive Relationship

The bill expands the qualification for the filing of a petition to modify or terminate alimony based on a supportive relationship to include the right to file the petition regarding a past relationship, happening up to 180 days prior to filing the petition.

The bill broadens the description of a supportive relationship to:

- Repeal the requirement to show cohabitation.
- Add to the factors proof that the couple refer to each other as “my partner” or “my fiancé.”
- Add to the factors proof of a longstanding relationship.
- Add to the factors proof that the couple is engaged to be married.

Upon a finding that a supportive relationship exists, the bill adds an additional remedy -- the court may order reimbursement of past alimony paid in any equitable amount.

The bill provides that remarriage or cohabitation by the obligor is not grounds for either party to petition for modification of alimony. An obligee may not seek modification based on the income or assets of the obligor’s new spouse or another person living with the obligor, and the obligor

[39] For many years the full retirement age was 65. Currently, it is being slowly raised and will be 67 for persons born in 1960 or later. https://www.ssa.gov/benefits/retirement/planner/agereduction.html (last viewed March 17, 2021).

may not seek modification based on the obligor's reliance upon the income and assets of the subsequent spouse or another person living with him or her.

Effective Dates of Changes to Alimony

Changes to alimony law in general, and to the effect of retirement on the initial dissolution of marriage case, are effective July 1, 2021, and apply to any case pending on that date, including pending on appeal.

Changes to alimony law related to modification of an existing award on the grounds of retirement of the obligor, are effective July 1, 2021, and apply to any modification motion pending on that date, including one pending on appeal.

Timesharing with Minor Children

The bill creates a presumption that equal time-sharing is in the best interests of a minor child common to the parties. The parties may jointly waive this presumption.

The change to timesharing is effective for any action filed on or after July 1, 2021.

Bifurcation of Dissolution Case

The bill creates a statutory right to bifurcation of a dissolution of marriage case. Either party may request bifurcation if more than 365 days have elapsed since the respondent spouse was served with a summons. Unless the other party shows that irreparable harm will result from granting a final judgment of dissolution of marriage, the court must grant the motion. Once granted, the court will enter a final judgment of dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues.

Before granting the final dissolution reserving jurisdiction, if the court has not already done so, the court must enter temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court.

This part of the bill applies to all petitions for dissolution of marriage filed on or after July 1, 2021.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The 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, section 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:

Indeterminate.

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: 61.046, 61.08, 61.13, 61.14, and 61.19.

IX. Additional Information:

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

CS by Judiciary on March 29, 2021:
The bill repealed s. 61.14(1)(d), F.S., a paragraph that gives the Department of Revenue

the authority to adopt administrative rules to implement s. 61.14, F.S. The rulemaking authority is unrelated to alimony. The committee substitute removes this repeal, and thus retains current law.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (8) of section 61.046, Florida Statutes, is amended to read:

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

(8) "Income" means any form of payment to an individual, regardless of source, including, but not limited to: wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuity


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and retirement benefits, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal or state government, or any unit of local government. United States Department of Veterans Affairs disability benefits and combat-related disability benefits and reemployment assistance or unemployment compensation, as defined in chapter 443, are excluded from this definition of income except for purposes of establishing an amount of child support.

Section 2. Section 61.08, Florida Statutes, is amended to read:

61.08 Alimony.—

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

(a) "Alimony" means a court-ordered or voluntary payment of support by one spouse to the other spouse. The term includes any voluntary payment made after the date of filing of an order for maintenance, spousal support, temporary support, or separate support when the payment is not intended for the benefit of a child in common.

(b) "Gross income" means gross income as determined in accordance with s. 61.30.

(c) "Net income" means income that is determined by subtracting allowable deductions from gross income. For purposes of this section, allowable deductions include any of the following:

1. Federal, state, or local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.

2. Federal insurance contributions or self-employment tax.

3. Mandatory union dues.


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4. Mandatory retirement payments.

5. Health insurance payments, excluding payments for coverage of a minor child.

6. Court-ordered support for other children which is actually paid.

7. Spousal support paid pursuant to a court order from a previous marriage.

(2)(a) ~~(1)~~ In a proceeding for dissolution of marriage, the court may grant alimony to either party in the form of~~, which alimony may be~~ bridge-the-gap, rehabilitative, or durational alimony, or a ~~permanent in nature or any~~ combination of these forms of alimony, but shall prioritize an award of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form of alimony. The court may grant permanent alimony only if the parties enter into an agreement for permanent alimony. In an ~~any~~ award of alimony, the court may order periodic payments, ~~or~~ payments in lump sum, or both.

(b) The court shall make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and the length of time for which the alimony is awarded. The court may award a combination of forms of alimony only to provide greater economic assistance in order to allow the recipient to achieve rehabilitation.

(c) The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. However, the adultery of a spouse may not be the court's sole basis for denying a request for alimony or awarding alimony, unless the adultery contributed to a depletion of marital assets. In all dissolution actions,



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the court shall include written findings of fact relative to the factors provided ~~enumerated~~ in subsection (3) ~~(2)~~ supporting the ~~an~~ award or denial of alimony.

(3)~~(2)~~ In determining whether to award alimony or maintenance, the court shall first make a specific, written factual determination as to whether the other ~~either~~ party has an actual need for alimony or maintenance and whether the other ~~either~~ party has the ability to pay alimony or maintenance. If the court finds that the ~~a~~ party seeking alimony has a need for alimony or maintenance and that the other party has the ability to pay alimony or maintenance, then in determining the proper type and amount of alimony or maintenance under subsections (5), (6), and (7) ~~(5)-(8)~~, the court shall consider all relevant factors, including, but not limited to:

(a) The standard of living established during the marriage, including the needs and necessities of life for each party after the dissolution of marriage, taking into consideration the presumption that both parties will have a lower standard of living after the dissolution of marriage than the standard of living they enjoyed during the marriage. This presumption may be overcome by a preponderance of the evidence.

(b) The duration of the marriage.

(c) The age and the physical and emotional condition of each party.

(d) The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.

(e) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable,



the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

(f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of either ~~the other~~ party.

(g) The responsibilities each party will have with regard to any minor children whom the parties ~~they~~ have in common.

(h) The tax treatment and consequences to both parties of an ~~any~~ alimony award~~, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment~~.

(i) All sources of income available to either party, including income available to either party through investments of any asset held by that party.

(j) Any other factor necessary for ~~to do~~ equity and justice between the parties if such factor is specifically identified in the award with findings of fact justifying the application of such factor.

(4)~~(3)~~ To the extent necessary to protect an award of alimony, the obligee may ~~court may order any party who is ordered to pay alimony to~~ purchase or maintain a life insurance policy on the obligor's life in an amount adequate to ~~or a bond, or to otherwise~~ secure such alimony award ~~with any other assets which may be suitable for that purpose~~. If the obligee purchases a life insurance policy, the obligor shall cooperate in the process of procuring the issuance and underwriting of the life insurance policy.

~~(4) For purposes of determining alimony, there is a~~


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~~rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.~~

(5) Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award of bridge-the-gap alimony may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony is ~~shall~~ not ~~be~~ modifiable in amount or duration.

(6)(a) Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:

1. The redevelopment of previous skills or credentials; or

2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.

(b) In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony.

(c) The length of an award of rehabilitative alimony may not exceed 5 years or the limitations for durational alimony as provided in subsection (7), whichever period of time is shorter.


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(d) An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan if the plan is completed before the length of the award of rehabilitative alimony expires.

(7)(a) Durational alimony may be awarded ~~when permanent periodic alimony is inappropriate. The purpose of durational alimony is~~ to provide a party with economic assistance for a set period of time ~~following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis~~. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances or upon a finding that a supportive relationship exists or existed between the obligee and another person in accordance with s. 61.14. ~~However,~~ The length of an award of durational alimony may not ~~be modified except under exceptional circumstances and may not~~ exceed 50 percent of the length of a ~~the~~ marriage lasting less than 20 years or 75 percent of the length of a marriage lasting 20 years or more. For purposes of this section, the length of a marriage is the period of time beginning on the date of marriage and ending on the date an action for dissolution of marriage is filed. However, if the party seeking alimony is either medically needy under part III of chapter 409 and related rules or is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties, the


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court may extend durational alimony beyond 50 percent of the duration of the marriage until the death of the child or until the court determines that there is no longer a need for durational alimony.

(b) When awarding durational alimony, the court must make written findings that an award of another type of alimony, or a combination of the other forms of alimony, is not appropriate.

(c) The amount of durational alimony is the amount determined to be the obligee's reasonable need or 30 percent of the difference between the parties' net incomes, whichever amount is less.

(8) A party against whom alimony is sought who has met the requirements for retirement in accordance with s. 61.14(12) before the filing of the petition for dissolution of marriage may not be ordered to pay bridge-the-gap, rehabilitative, or durational alimony, unless the court determines that:

(a) The party seeking alimony has not reached the age to qualify for any social security retirement benefits; and

(b) As a result of the dissolution of marriage, the party seeking alimony would, based on the income and assets available after the dissolution is final, meet the primary qualifications for the Florida Medicaid medically needy program under part III of chapter 409 and the related rules in effect on March 1, 2020.

(9)(a) Notwithstanding any other provision of law, alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party's monthly net income.

(b) Social security retirement benefits may not be imputed to the obligor as demonstrated by a social security retirement benefits entitlement letter unless those benefits are actually



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being paid.

(c) If the obligee alleges that a physical disability has impaired his or her capability to earn the income imputed by the court, the obligee must have qualified for benefits under the Social Security Administration Disability Insurance Program or, in the event the obligee is not eligible for the program, must demonstrate that his or her disability meets the disability qualification standards of the Social Security Administration Disability Insurance Program.

~~(8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~


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~~(9) The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances~~.

(10)(a) With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance~~,~~ on or after that date~~,~~ of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order~~,~~ or upon the application of either party, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support must ~~shall~~ provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

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2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency has ~~shall have~~ the same rights as the obligee in requesting that payments be made through the depository.

(11) The court shall consider any alimony payments made to the obligee after the date of filing of a petition for dissolution of marriage, either voluntarily or pursuant to a court order, in determining the amount and length of an award of rehabilitative or durational alimony.

Section 3. Paragraph (b) of subsection (1) of section 61.14, Florida Statutes, is amended, and paragraph (c) is added to subsection (11) and subsections (12), (13), and (14) are added to that section, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)

(b)1. The court may reduce or terminate an award of alimony or order reimbursement to the obligor for any amount the court determines is equitable upon specific written findings by the court that since the granting of a divorce and the award of alimony, a supportive relationship exists or ~~has~~ existed between


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the obligee and another ~~a~~ person at any time during the 180 days before the filing of a petition for modification of alimony ~~with whom the obligee resides~~. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists or existed.

2. In determining whether an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides, the court shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband," ~~or~~ "my wife," "my partner," or "my fiance" or otherwise conducting themselves in a manner that evidences a permanent or longstanding committed and supportive relationship.

b. The period of time that the obligee has resided with the other person ~~in a permanent place of abode~~.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.


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e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

l. Whether the obligee and the other person are engaged to be married.

3. This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is


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not necessary for the application of ~~the provisions of~~ this paragraph.

(11)

(c) An obligor's subsequent remarriage or cohabitation does not constitute a basis for either party to seek a modification of an alimony award. An obligee may not seek modification to increase an award of alimony based on the income and assets of the obligor's subsequent spouse or person with whom the obligor resides, and the obligor may not seek modification to reduce an award of alimony based on the obligor's reliance upon the income and assets of the obligor's subsequent spouse or person with whom the obligor resides.

(12)(a) An alimony award terminates when the obligor reaches full retirement age as determined by the United States Social Security Administration. However, if an obligor reaches full retirement age as determined by the United States Social Security Administration but has not paid durational alimony for a period equal to 50 percent of the length of the marriage, the court may require the obligor to continue to pay durational alimony, not to exceed 50 percent of the length of the marriage, only if the court determines that:

1. The party seeking alimony has not reached the minimum age to qualify for social security retirement benefits; and

2. As a result of the dissolution of marriage or the termination of alimony payments under this paragraph, the party seeking alimony would, based on the income and assets available after the dissolution of marriage is final, meet the primary qualifications for the Florida Medicaid medically needy program under part III of chapter 409 and the related rules in effect on



March 1, 2020.

(b) If an obligor seeks to retire at an age that is reasonable for his or her profession or line of work, but before he or she reaches full retirement age as determined by the United States Social Security Administration, the court may terminate an alimony award if it determines that the obligor's retirement is reasonable. In determining whether the obligor's retirement is reasonable, the court shall consider all of the following:

1. The obligor's age and health.

2. The obligor's motivation for retirement.

3. The obligor's profession or line of work and the typical retirement age for that profession or line of work.

4. The obligee's needs and necessities of life and the obligor's needs and necessities of life.

5. The impact that a termination or reduction of alimony would have on the obligee. In determining the impact, the court must consider any assets accumulated or received by the obligee, including any income generated by such assets, since the final judgment of dissolution of marriage.

(c) For marriages of 40 years or more, and without regard to an obligor's or obligee's age, the court may order durational alimony for a term up to 10 years beyond the obligor's full social security retirement age.

(d) Up to 12 months before the obligor's anticipated retirement under paragraph (a) or paragraph (b), the obligor may file a petition to modify or terminate the alimony award, effective upon his or her actual retirement date. The court shall modify or terminate the alimony award after the obligor's


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retirement unless the court makes written findings of fact under paragraph (b) that the obligor's retirement is not reasonable.

(13) Any amount of social security or disability benefits or retirement payments received by an obligee subsequent to an initial award of alimony constitutes a change in circumstances for which an obligor may seek modification of an alimony award.

(14) Agreements on alimony payments, voluntary or pursuant to a court order, which allow for modification or termination of alimony by virtue of either party reaching a certain age, income, or other threshold, or agreements that establish a limited period of time after which alimony is modifiable, are considered agreements that are expressly modifiable or eligible for termination for purposes of this section once the specified condition is met.

Section 4. Section 61.19, Florida Statutes, is amended to read:

61.19 Entry of judgment of dissolution of marriage; ~~,~~ delay period; separate adjudication of issues.—

(1) A ~~No~~ final judgment of dissolution of marriage may not be entered until at least 20 days have elapsed from the date of filing the original petition for dissolution of marriage, ~~;~~ but the court, on a showing that injustice would result from this delay, may enter a final judgment of dissolution of marriage at an earlier date.

(2) If more than 365 days have elapsed after the date of service of the original petition for dissolution of marriage, absent a showing by either party that irreparable harm will result from granting a final judgment of dissolution of marriage, the court shall, upon request of either party, grant a


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final judgment of dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues. Before granting the judgment, the court shall enter temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court. This subsection applies to all petitions for dissolution of marriage filed on or after July 1, 2021.

Section 5. The court shall apply this act to any action pending on or after July 1, 2021.

Section 6. 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 dissolution of marriage; amending s. 61.046, F.S.; revising the definition of the term "income"; amending s. 61.08, F.S.; defining terms; requiring the court to prioritize certain forms of alimony; authorizing the court to grant permanent alimony under certain circumstances; requiring the court to make certain written findings in its awards of alimony; prohibiting the court from denying or granting an award of alimony solely on the basis of adultery, with an exception; revising factors that the court must consider in determining the proper type and amount of alimony; authorizing a party to whom the


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court has awarded alimony to purchase or maintain a life insurance policy on the obligor's life to protect an award of alimony; requiring the obligor to cooperate in the process of securing the life insurance; deleting certain rebuttable presumptions related to the duration of a marriage for purposes of determining alimony; prohibiting an award of rehabilitative alimony from exceeding specified timeframes; revising a provision authorizing the modification of rehabilitative alimony upon completion of the rehabilitative plan to include a certain timeframe; revising provisions related to durational alimony; prohibiting the length of an award of durational alimony from exceeding a specified timeframe; specifying what constitutes the length of a marriage for the purpose of determining durational alimony; requiring the court to make certain written findings when awarding durational alimony; providing a formula for the calculation of durational alimony; providing that a party who has reached retirement age in accordance with specified provisions may not be ordered to pay alimony; providing an exception; establishing that alimony may not be awarded to a party who has a certain monthly net income; prohibiting social security retirement benefits from being imputed to the obligor, with an exception; requiring an obligee to meet certain requirements if he or she alleges that a physical disability has impaired his or her ability to earn the imputed



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income; requiring the court to consider certain payments made to the obligee when determining the amount and length of rehabilitative or durational alimony; amending s. 61.14, F.S.; authorizing the court to order an obligee to reimburse alimony payments to the obligor under certain circumstances; specifying a timeframe for the court to consider a supportive relationship between the obligee and another person for purposes of reducing or terminating an award of alimony or ordering reimbursement of alimony payments; revising factors the court may consider when determining whether a supportive relationship exists or existed between the obligee and another person; providing that an obligor's subsequent remarriage or cohabitation is not a basis for modification of alimony; providing that the income and assets of the obligor's subsequent spouse are irrelevant to an action for modification of alimony; requiring an alimony obligation to terminate upon the obligor reaching full retirement age; providing an exception; authorizing the court to terminate an alimony obligation if the obligor retires at a reasonable age for his or her profession or line of work; requiring the court to consider certain factors in determining whether the obligor's retirement age is reasonable; authorizing the court to order durational alimony beyond the obligor's full social security retirement age under certain circumstances; authorizing an obligor to prospectively file a


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petition for modification or termination of alimony, effective upon his or her retirement; requiring a court to modify or terminate an alimony award upon retirement of the obligor, with an exception; providing that certain benefits of the obligee constitute a change in circumstance for which an obligor may seek modification of an alimony award; providing that certain agreements on alimony payments are considered expressly modifiable or eligible for termination under certain circumstances; amending s. 61.19, F.S.; requiring the court to grant a final judgment of dissolution of marriage and reserve jurisdiction to adjudicate other substantive issues, under certain circumstances; providing for temporary orders necessary to protect the parties and their children, if any; providing that such temporary orders are effective until all other issues are adjudicated by the court; providing applicability; providing an effective date.

334300

LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (508836)

Delete line 55
and insert:
the parties enter into an agreement for permanent alimony or the party seeking alimony is the full-time in-home caregiver to a mentally or physically disabled child who is common to the parties, regardless of the child's age. In an

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Gruters) recommended the following:

Senate Amendment to Amendment (508836)

Delete lines 373 - 374
and insert:
is retired or retires after reaching full retirement age as determined by the United States Social Security Administration. However, if the obligor continues to work beyond full retirement age as determined by the United States Social Security Administration and earns active income of more than 50 percent of the obligor's pre-retirement income, the court may extend alimony beyond the obligor's full retirement age up to the

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durational limitations specified in s. 61.08(7)(a). If an obligor reaches

By the Committee on Judiciary; and Senators Gruters and Hooper

590-03555-21 20211922c1

A bill to be entitled

An act relating to dissolution of marriage; amending s. 61.046, F.S.; revising the definition of the term "income"; amending s. 61.08, F.S.; defining terms; requiring the court to prioritize certain forms of alimony; authorizing the court to grant permanent alimony under certain circumstances; requiring the court to make certain written findings in its awards of alimony; prohibiting the court from denying or granting an award of alimony solely on the basis of adultery, with an exception; revising factors that the court must consider in determining the proper type and amount of alimony; authorizing a party to whom the court has awarded alimony to purchase or maintain a life insurance policy on the obligor's life to protect an award of alimony; requiring the obligor to cooperate in the process of securing the life insurance; deleting certain rebuttable presumptions related to the duration of a marriage for purposes of determining alimony; prohibiting an award of rehabilitative alimony from exceeding specified timeframes; revising a provision authorizing the modification of rehabilitative alimony upon completion of the rehabilitative plan to include a certain timeframe; revising provisions related to durational alimony; prohibiting the length of an award of durational alimony from exceeding a specified timeframe; specifying what constitutes the length of a marriage for the purpose of determining durational

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

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alimony; requiring the court to make certain written findings when awarding durational alimony; providing a formula for the calculation of durational alimony; providing that a party who has reached retirement age in accordance with specified provisions may not be ordered to pay alimony; providing an exception; establishing that alimony may not be awarded to a party who has a certain monthly net income; prohibiting social security retirement benefits from being imputed to the obligor, with an exception; requiring an obligee to meet certain requirements if he or she alleges that a physical disability has impaired his or her ability to earn the imputed income; requiring the court to consider certain payments made to the obligee when determining the amount and length of rehabilitative or durational alimony; providing applicability; amending s. 61.13, F.S.; creating a presumption that equal time-sharing is in the best interests of a child, with an exception; providing applicability; deleting a provision related to the development of a parenting plan; amending s. 61.14, F.S.; authorizing the court to order an obligee to reimburse alimony payments to the obligor under certain circumstances; specifying a timeframe for the court to consider a supportive relationship between the obligee and another person for purposes of reducing or terminating an award of alimony or ordering reimbursement of alimony payments; revising factors the court may consider when

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

determining whether a supportive relationship exists or existed between the obligee and another person; providing that an obligor's subsequent remarriage or cohabitation is not a basis for modification of alimony; providing that the income and assets of the obligor's subsequent spouse are irrelevant to an action for modification of alimony; requiring an alimony obligation to terminate upon the obligor reaching full retirement age; providing an exception; authorizing the court to terminate an alimony obligation if the obligor retires at a reasonable age for his or her profession or line of work; requiring the court to consider certain factors in determining whether the obligor's retirement age is reasonable; authorizing an obligor to prospectively file a petition for modification or termination of alimony, effective upon his or her retirement; requiring a court to modify or terminate an alimony award upon retirement of the obligor, with an exception; providing that certain benefits of the obligee constitute a change in circumstance for which an obligor may seek modification of an alimony award; providing that certain agreements on alimony payments are considered expressly modifiable or eligible for termination under certain circumstances; providing applicability; amending s. 61.19, F.S.; requiring the court to grant a final judgment of dissolution of marriage and reserve jurisdiction to adjudicate other substantive issues, under certain circumstances;

providing for temporary orders necessary to protect the parties and their children, if any; providing that such temporary orders are effective until all other issues are adjudicated by the court; providing applicability; providing an effective date.

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

Section 1. Subsection (8) of section 61.046, Florida Statutes, is amended to read:

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

(8) "Income" means any form of payment to an individual, regardless of source, including, but not limited to: wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuity and retirement benefits, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal or state government, or any unit of local government. United States Department of Veterans Affairs disability benefits and reemployment assistance or unemployment compensation, as defined in chapter 443, are excluded from this definition of income except for purposes of establishing an amount of child support.

Section 2. Section 61.08, Florida Statutes, is amended to read:

61.08 Alimony.—

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

(a) "Alimony" means a court-ordered or voluntary payment of support by one spouse to the other spouse. The term includes any

voluntary payment made after the date of filing of an order for maintenance, spousal support, temporary support, or separate support when the payment is not intended for the benefit of a child in common.

(b) "Gross income" means gross income as determined in accordance with s. 61.30.

(c) "Net income" means income that is determined by subtracting allowable deductions from gross income. For purposes of this section, allowable deductions include any of the following:

1. Federal, state, or local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities.

2. Federal insurance contributions or self-employment tax.

3. Mandatory union dues.

4. Mandatory retirement payments.

5. Health insurance payments, excluding payments for coverage of a minor child.

6. Court-ordered support for other children which is actually paid.

7. Spousal support paid pursuant to a court order from a previous marriage.

(2)(a) ~~(1)~~ In a proceeding for dissolution of marriage, the court may grant alimony to either party in the form of~~, which alimony may be~~ bridge-the-gap, rehabilitative, or durational alimony, or a ~~permanent in nature or any~~ combination of these forms of alimony, but shall prioritize an award of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form of alimony. The court may grant permanent alimony only if

the parties enter into an agreement for permanent alimony. In an ~~any~~ award of alimony, the court may order periodic payments, ~~or~~ payments in lump sum, or both.

(b) The court shall make written findings regarding the basis for awarding a combination of forms of alimony, including the type of alimony and the length of time for which the alimony is awarded. The court may award a combination of forms of alimony only to provide greater economic assistance in order to allow the recipient to achieve rehabilitation.

(c) The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. However, the adultery of a spouse may not be the court's sole basis for denying a request for alimony or awarding alimony, unless the adultery contributed to a depletion of marital assets. In all dissolution actions, the court shall include written findings of fact relative to the factors provided ~~enumerated~~ in subsection (3) ~~(2)~~ supporting the ~~an~~ award or denial of alimony.

(3) ~~(2)~~ In determining whether to award alimony or maintenance, the court shall first make a specific, written factual determination as to whether the other ~~either~~ party has an actual need for alimony or maintenance and whether the other ~~either~~ party has the ability to pay alimony or maintenance. If the court finds that the ~~a~~ party seeking alimony has a need for alimony or maintenance and that the other party has the ability to pay alimony or maintenance, then in determining the proper type and amount of alimony or maintenance under subsections (5), (6), and (7) ~~(5) (8)~~, the court shall consider all relevant factors, including, but not limited to:

(a) The standard of living established during the marriage, including the needs and necessities of life for each party after the dissolution of marriage, taking into consideration the presumption that both parties will have a lower standard of living after the dissolution of marriage than the standard of living they enjoyed during the marriage. This presumption may be overcome by a preponderance of the evidence.

(b) The duration of the marriage.

(c) The age and the physical and emotional condition of each party.

(d) The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.

(e) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

(f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of either ~~the other~~ party.

(g) The responsibilities each party will have with regard to any minor children whom the parties ~~they~~ have in common.

(h) The tax treatment and consequences to both parties of an ~~any~~ alimony award~~, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment~~.

(i) All sources of income available to either party, including income available to either party through investments

of any asset held by that party.

(j) Any other factor necessary for ~~to do~~ equity and justice between the parties if such factor is specifically identified in the award with findings of fact justifying the application of such factor.

(4)~~(3)~~ To the extent necessary to protect an award of alimony, the obligee may ~~court may order any party who is ordered to pay alimony to~~ purchase or maintain a life insurance policy on the obligor's life in an amount adequate to ~~or a bond, or to otherwise~~ secure such alimony award ~~with any other assets which may be suitable for that purpose~~. If the obligee purchases a life insurance policy, the obligor shall cooperate in the process of procuring the issuance and underwriting of the life insurance policy.

~~(4) For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.~~

(5) Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award of bridge-the-gap alimony may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage

of the party receiving alimony. An award of bridge-the-gap alimony is ~~shall~~ not ~~be~~ modifiable in amount or duration.

(6)(a) Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:

1. The redevelopment of previous skills or credentials; or

2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.

(b) In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony.

(c) The length of an award of rehabilitative alimony may not exceed 5 years or the limitations for durational alimony as provided in subsection (7), whichever period of time is shorter.

(d) An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan if the plan is completed before the length of the award of rehabilitative alimony expires.

(7)(a) Durational alimony may be awarded ~~when permanent periodic alimony is inappropriate. The purpose of durational alimony is~~ to provide a party with economic assistance for a set period of time ~~following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis~~. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount

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of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances or upon a finding that a supportive relationship exists or existed between the obligee and another person in accordance with s. 61.14. ~~However,~~ The length of an award of durational alimony may not ~~be modified except under exceptional circumstances and may not~~ exceed 50 percent of the length of the marriage. For purposes of this subsection, the length of a marriage is the period of time beginning on the date of marriage and ending on the date an action for dissolution of marriage is filed.

(b) When awarding durational alimony, the court must make written findings that an award of another type of alimony, or a combination of the other forms of alimony, is not appropriate.

(c) The amount of durational alimony is the amount determined to be the obligee's reasonable need or 25 percent of the difference between the parties' net incomes, whichever amount is less.

(8) A party against whom alimony is sought who has met the requirements for retirement in accordance with s. 61.14(12) before the filing of the petition for dissolution of marriage may not be ordered to pay bridge-the-gap, rehabilitative, or durational alimony, unless the court determines that:

(a) The party seeking alimony has not reached the age to qualify for any social security retirement benefits; and

(b) As a result of the dissolution of marriage, the party seeking alimony would, based on the income and assets available after the dissolution is final, meet the primary qualifications for the Florida Medicaid medically needy program under part III of chapter 409 and the related rules in effect on March 1, 2020.

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(9)(a) Notwithstanding any other provision of law, alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party's monthly net income.

(b) Social security retirement benefits may not be imputed to the obligor as demonstrated by a social security retirement benefits entitlement letter unless those benefits are actually being paid.

(c) If the obligee alleges that a physical disability has impaired his or her capability to earn the income imputed by the court, the obligee must have qualified for benefits under the Social Security Administration Disability Insurance Program or, in the event the obligee is not eligible for the program, must demonstrate that his or her disability meets the disability qualification standards of the Social Security Administration Disability Insurance Program.

~~(8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the~~

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~~circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

~~(9) The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances~~.

(10)(a) With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance~~,~~ on or after that date~~,~~ of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order~~,~~ or upon the application of either party, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both

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parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support must ~~shall~~ provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency has ~~shall have~~ the same rights as the obligee in requesting that payments be made through the depository.

(11) The court shall consider any alimony payments made to the obligee after the date of filing of a petition for dissolution of marriage, either voluntarily or pursuant to a court order, in determining the amount and length of an award of rehabilitative or durational alimony.

(12) The court shall apply this section to all petitions for dissolution of marriage which have not been adjudicated before July 1, 2021, cases pending on appeal, and to any petitions for dissolution of marriage filed on or after July 1, 2021.

Section 3. 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. Unless otherwise agreed to by the parties, there is a presumption that equal time-sharing is in the best interests of a minor child common to both parties. This subparagraph applies to all actions filed on or after July 1, 2021 ~~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 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. Regardless of 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. 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. 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.

Section 4. Paragraph (b) of subsection (1) of section 61.14, Florida Statutes, is amended, and paragraph (c) is added to subsection (11) and subsections (12), (13), and (14) are added to that section, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)

(b)1. The court may reduce or terminate an award of alimony or order reimbursement to the obligor for any amount the court determines is equitable upon specific written findings by the court that since the granting of a divorce and the award of alimony, a supportive relationship exists or ~~has~~ existed between the obligee and another ~~a~~ person at any time during the 180 days before the filing of a petition for modification of alimony ~~with whom the obligee resides~~. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists or existed.

2. In determining whether an existing award of alimony

should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity and with whom the obligee resides, the court shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband," ~~or~~ "my wife," "my partner," or "my fiance" or otherwise conducting themselves in a manner that evidences a permanent or longstanding committed and supportive relationship.

b. The period of time that the obligee has resided with the other person ~~in a permanent place of abode~~.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly

contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

l. Whether the obligee and the other person are engaged to be married.

3. This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of ~~the provisions of~~ this paragraph.

(11)

(c) An obligor's subsequent remarriage or cohabitation does not constitute a basis for either party to seek a modification of an alimony award. An obligee may not seek modification to increase an award of alimony based on the income and assets of

the obligor's subsequent spouse or person with whom the obligor resides, and the obligor may not seek modification to reduce an award of alimony based on the obligor's reliance upon the income and assets of the obligor's subsequent spouse or person with whom the obligor resides.

(12)(a) An alimony award terminates when the obligor reaches full retirement age as determined by the United States Social Security Administration. However, if an obligor reaches full retirement age as determined by the United States Social Security Administration but has not paid durational alimony for a period equal to 50 percent of the length of the marriage, the court may require the obligor to continue to pay durational alimony, not to exceed 50 percent of the length of the marriage, only if the court determines that:

1. The party seeking alimony has not reached the minimum age to qualify for social security retirement benefits; and

2. As a result of the dissolution of marriage or the termination of alimony payments under this paragraph, the party seeking alimony would, based on the income and assets available after the dissolution of marriage is final, meet the primary qualifications for the Florida Medicaid medically needy program under part III of chapter 409 and the related rules in effect on March 1, 2020.

(b) If an obligor seeks to retire at an age that is reasonable for his or her profession or line of work, but before he or she reaches full retirement age as determined by the United States Social Security Administration, the court may terminate an alimony award if it determines that the obligor's retirement is reasonable. In determining whether the obligor's

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retirement is reasonable, the court shall consider all of the following:

1. The obligor's age and health.

2. The obligor's motivation for retirement.

3. The obligor's profession or line of work and the typical retirement age for that profession or line of work.

4. The obligee's needs and necessities of life and the obligor's needs and necessities of life.

5. The impact that a termination or reduction of alimony would have on the obligee. In determining the impact, the court must consider any assets accumulated or received by the obligee, including any income generated by such assets, since the final judgment of dissolution of marriage.

(c) Up to 12 months before the obligor's anticipated retirement under paragraph (a) or paragraph (b), the obligor may file a petition to modify or terminate the alimony award, effective upon his or her actual retirement date. The court shall modify or terminate the alimony award after the obligor's retirement unless the court makes written findings of fact under paragraph (b) that the obligor's retirement is not reasonable.

(13) Any amount of social security or disability benefits or retirement payments received by an obligee subsequent to an initial award of alimony constitutes a change in circumstances for which an obligor may seek modification of an alimony award.

(14)(a) Agreements on alimony payments, voluntary or pursuant to a court order, which allow for modification or termination of alimony by virtue of either party reaching a certain age, income, or other threshold, or agreements that establish a limited period of time after which alimony is

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modifiable, are considered agreements that are expressly modifiable or eligible for termination for purposes of this section once the specified condition is met.

(b) The court shall apply this section to any action to modify or terminate an alimony award filed on or after July 1, 2021, or any action for which a final order has not been issued or an appeal to a district court of appeal has not been decided before July 1, 2021.

Section 5. Section 61.19, Florida Statutes, is amended to read:

61.19 Entry of judgment of dissolution of marriage;~~,~~ delay period; separate adjudication of issues.—

(1) A ~~No~~ final judgment of dissolution of marriage may not be entered until at least 20 days have elapsed from the date of filing the original petition for dissolution of marriage,~~,~~ but the court, on a showing that injustice would result from this delay, may enter a final judgment of dissolution of marriage at an earlier date.

(2) If more than 365 days have elapsed after the date of service of the original petition for dissolution of marriage, absent a showing by either party that irreparable harm will result from granting a final judgment of dissolution of marriage, the court shall, upon request of either party, grant a final judgment of dissolution of marriage with a reservation of jurisdiction to subsequently determine all other substantive issues. Before granting the judgment, the court shall enter temporary orders necessary to protect the parties and their children, which orders remain effective until all other issues can be adjudicated by the court. This subsection applies to all

petitions for dissolution of marriage filed on or after July 1, 2021.

Section 6. 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: April 12, 2021

I respectfully request that **Senate Bill #1922**, relating to Dissolution of Marriage, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Purpose of Bill: Senate Bill 1922 is a bill that will positively affect many Floridians, while updating the antiquated laws that govern dissolution cases. Florida's current alimony laws have many Floridians paying permanent alimony, with no ability to retire. Senate Bill 1922 provides for bridge-the-gap, rehabilitative, and durational alimony to transition people toward independence and self-sufficiency. It eliminates permanent alimony and allows hard-working citizens the right to retire, among other benefits. Family court judgments are currently erratic and unpredictable, determined primarily by the discretion and personal beliefs of the judge. Guidelines provide a framework for litigants to assess likely outcomes and efficiently resolve these cases. SB 1922 establishes quantifiable outcomes that will streamline litigation and help to efficiently resolve dissolution cases, saving families from financial ruin during an emotionally volatile and difficult time in their lives. This Bill will eliminate litigation abuse and gamesmanship existing now that harms families and depletes the marital assets that have been accumulated by years of hard work during the marriage.

Please let me know if you have any questions.

File signed original with committee office

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Rules
ITEM: CS/SB 1922
FINAL ACTION:
MEETING DATE: Tuesday, April 20, 2021
TIME: 8:30 a.m.—6:00 p.m.
PLACE: 412 Knott Building

FINAL VOTE			4/20/2021 1 Motion to Temporarily Postpone Gruters					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
		Albritton						
		Baxley						
		Bean						
		Book						
		Bracy						
		Brandes						
		Diaz						
		Farmer						
		Gibson						
		Gruters						
		Hutson						
		Mayfield						
		Powell						
		Stargel						
		Thurston						
		Garcia, VICE CHAIR						
		Passidomo, CHAIR						
		TOTALS	FAV	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

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

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 1948
INTRODUCER:	Appropriations Committee; Commerce and Tourism Committee; and Senator Bean and others
SUBJECT:	Department of Economic Opportunity
DATE:	April 19, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	**Fav/CS**
2.	Hrdlicka	Sadberry	AP	**Fav/CS**
3.	McMillan	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1948 modifies provisions related to the Department of Economic Opportunity (DEO), including:

- Changing the title for the head of the DEO from "Executive Director" to the "Secretary of Economic Opportunity;"
- Creating the Office of Economic Accountability and Transparency within the DEO;
- Adding the Secretary of Economic Opportunity or his or her designee to the Enterprise Florida Board of Directors and the CareerSource Board of Directors;
- Authorizing additional grant categories under the Community Development Block Grant (CDBG) program;
- Increasing the percentage of CDBG funding that the DEO may set aside annually for use in local government jurisdictions when an emergency or natural disaster has been declared by executive order;
- Repealing provisions that limit the number of grant applications a local government may submit during each CDBG application cycle;
- Requiring local governments to expedite the approval of building permits applied for by contractors on behalf of a property owner participating in the CDBG-Disaster Recovery program;
- Allowing regional workforce boards to conduct level 2 background screenings;

- Repealing a provision making a domestic violence claimant ineligible for reemployment assistance benefits if the claimant refuses an employer's reasonable accommodation;
- Revising the requirements for the reemployment assistance computer system and requiring the DEO, for Fiscal Year 2021-2022, to modernize the reemployment assistance system as provided in the General Appropriations Act;
- Requiring employers to respond to a notice of claim within 14 days, instead of 20 days;
- Clarifying when monetary determinations are final;
- Imposing a 5-year statute of limitations on RA appeals;
- Removing the requirement that reemployment assistance appeals referees be Florida attorneys;
- Expands the definition of "temporary layoff" to include an employer-initiated furlough; and
- Creates a process to allow employer-assisted claims.

The bill takes effect upon becoming a law.

II. Present Situation:

The Department of Economic Opportunity

The DEO was created in 2011 by combining the Agency for Workforce Innovation, the Department of Community Affairs, and the Governor's Office of Tourism, Trade, and Economic Development.[1] The head of the DEO is the executive director, who is appointed by the Governor and confirmed by the Senate.[2] The purpose of the DEO is to formulate and implement policies designed to promote economic opportunities for Floridians.[3] Formally in the statute, the DEO has five divisions: Strategic Business Development; Community Development; Workforce Services; Finance and Administration; and Information Technology.[4]

The Community Development Block Grant Program

The Community Development Block Grant (CDBG) Program was created by Title I of the federal Housing and Community Development Act of 1974. The CDBG program works to ensure the availability of decent affordable housing, to provide services to the most vulnerable in Florida communities, and to create jobs through the expansion and retention of businesses.[5]

Florida Small Cities Community Development Block Grant Program

The DEO administers the Small Cities CDBG program and distributes funds to eligible non-entitlement communities. To be eligible, a city must have a population under 50,000 or a county must have a population under 200,000. The program awards subgrants to communities in four funding categories: economic development, neighborhood revitalization, housing

[1] *See* ch. 2011-142, Laws of Fla.
[2] Section 20.60(2), F.S.
[3] *See* s. 20.60(4), F.S.
[4] Section 20.60(3), F.S.
[5] The Department of Economic Opportunity, *Community Development Block Grant Program, available at* https://floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/community-development-block-grant-program (last visited April 10, 2021).

rehabilitation, and commercial revitalization.[6] Currently, the DEO may annually set aside 5 percent of CDBG funds for use in local government jurisdictions for which an emergency or natural disaster has been declared by executive order.[7]

Except for applications for economic development, an eligible local government may only submit one application for a grant during each application cycle.[8] Additionally, if economic development funds remain available after the application cycle closes, the remaining funds must be awarded to eligible projects on a first-come, first served basis.[9]

Disaster Recovery

The Community Development Block Grant – Disaster Recovery (CDBG-DR) program is a federally funded program administered by the U.S. Department of Housing and Urban Development that is designed to address housing, infrastructure, economic development, and mitigation needs that remain after other assistance, such as federal assistance or private insurance, has been exhausted.[10]

The DEO administers the CDBG-DR program through its Division of Community Development's Office of Long-Term Resiliency. Currently, single-family residential housing repair and replacement projects are underway for Florida residents whose homes still have unrepaired damage from Hurricanes Hermine, Matthew, Irma, and Michael.[11] These projects must comply with the Florida Building Code Act by applying for and receiving Florida building permits. A building permit for a single-family residential home must be issued within 30 days of application.[12]

Enterprise Florida, Inc.

Enterprise Florida, Inc., (EFI) serves as the principle economic development organization for the state. Among its numerous duties, EFI markets the state for business creation, expansion, and retention.[13] EFI's is governed by a board of directors, of which the Governor is the chairperson, made up of 19 appointed members, a number of at-large members, and ex officio members of the Legislature. Appointed members include the agency heads from the Department of Education, Department of Financial Services, Department of Legal Affairs, Department of Agriculture,

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[6] The Department of Economic Opportunity, *Florida Small Cities Development Block Grant Program*, *available at* https://floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/florida-small-cities-community-development-block-grant-program (last visited April 10, 2021).
[7] Section 290.044(5), F.S.
[8] *See* s. 290.046(2)(a), F.S. An eligible local government may apply up to three times in any one annual funding cycle for an economic development grant but may not receive more than one such grant per annual funding cycle. A local government may have more than one open economic development grant.
[9] Section 290.046(3)(b), F.S.
[10] The Department of Economic Opportunity, *Office of Disaster Recovery*, *available at* https://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative (last visited April 10, 2021).
[11] *See id*.
[12] *See* s. 553.79(14), F.S.
[13] Section 288.901(2), F.S.

Department of State, and CareerSource and 12 members from the private sector appointed by the Governor and the Legislature.[14]

Space Florida

Space Florida is an independent special district, created to foster the growth and development of the aerospace industry in Florida. The entity promotes aerospace business development by facilitating financing, research and development, spaceport operations, workforce development, and other programs.[15] Space Florida's 13-member board of directors is the same 12 private sector members appointed by the Governor and the Legislature and the Governor, who serves ex officio as the chair and a voting member of the board.[16]

CareerSource Florida, Inc.

CareerSource is the state's principal organization to set the workforce policy for the state. The state board works to design and implement strategies to help Floridians enter the workforce, stay employed, and advance in their employment. Members of the board are appointed by the Governor pursuant to federal law; however, there are several members of state agencies appointed to the board by state law. These include the vice chair of EFI, the director of DEO, and the Commissioner of Education.[17]

Workforce Development Boards

Twenty-four local workforce development boards (local boards) deliver Florida's workforce development services through over 100 one-stop service providers.[18] The one-stop service providers give Floridians access to available workforce services, including job placement, career counseling, and skills training.[19] Each local board formulates a local budget and oversees the one-stop delivery system within its local area.[20]

Background Screening

An employer[21] may not hire, select, or otherwise allow an employee to have contact with a vulnerable person[22] that would place the employee in a role that requires a background screening until the screening process is completed and demonstrates the absence of any grounds for the

[14] Section 288.901(4), (5), (6), and (7), F.S.
[15] Section 331.302, F.S.
[16] Section 331.3081, F.S.
[17] Section 445.004, F.S.
[18] The Department of Economic Opportunity, *CareerSource Florida Network Directory*, *available at* http://lcd.floridajobs.org/ (last visited April 10, 2021).
[19] *See* s. 445.009, F.S.
[20] Section 445.007(12), F.S.
[21] Section 435.02(3), F.S., defines "employer" as any person or entity required by law to conduct screening of employees pursuant to ch. 435, F.S.
[22] A vulnerable person is a minor or a vulnerable adult. Section 435.02(6), F.S., Section 415.102(28), F.S., defines "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

denial or termination of employment.[23] If any grounds for the denial or termination of employment arise during the screening process, then the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for disqualification by the agency.[24, 25]

Sections 435.03 and 435.04, F.S., outline the screening requirements. There are two levels of background screening.

- Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website[26] and may include criminal records checks through local law enforcement agencies.[27]
- Level 2 screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation and may include local criminal records checks through local law enforcement agencies.[28]

Reemployment Assistance

Florida's unemployment insurance program was created by the Legislature in 1937.[29] The program was rebranded as the "reemployment assistance program" in 2012.[30] The DEO is responsible for administering the program, and the DEO contracts with the Florida Department of Revenue, as the tax collection service provider, for the collection of unemployment taxes.[31]

Work Search Requirement

To receive RA benefits, a claimant must meet certain monetary and non-monetary eligibility requirements. Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.[32]

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment. For example, each week an individual is required to contact at least five

[23] Section 435.06(2)(a), F.S.
[24] Section 435.02(1), F.S., defines "agency" as any state, county, or municipal agency that grants licenses or registration permitting the operation of an employer, or is itself an employer, or that otherwise facilitates the screening of employees pursuant to ch. 435, F.S. If there is no state agency or the municipal or county agency chooses not to conduct employment screening, "agency" means the Department of Children and Families.
[25] Section 435.06(2)(a), F.S. *See* s. 435.07, F.S., for the exemptions for disqualification.
[26] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. *Available at* https://www.nsopw.gov/ (last visited April 10, 2021**).**
[27] Section 435.03(1), F.S.
[28] Section 435.04(1)(a), F.S.
[29] Chapter 18402, Laws of Fla.
[30] Chapter 2012-30, Laws of Fla.
[31] Section 443.1316, F.S.
[32] *See* s. 443.091, F.S.

prospective employers (three prospective employers if the individual resides in a small county) or report to a one-stop career center for reemployment services.[33]

Domestic Violence[34] Victims

Sometimes victims of domestic violence must leave their jobs due to the impact that the violence has had on their lives. Employers are required to permit an employee to request and take up to 3 working days of leave from work in any 12-month period if the employee or a family or household member of an employee is the victim of domestic violence or sexual violence.[35]

Except in cases of imminent danger to the health or safety of the employee, or a family or household member, an employee seeking leave from work must provide his or her employer with appropriate advance notice of the leave as required by the employer's policy along with sufficient documentation of the act of domestic violence or sexual violence as required by the employer.[36] An employer must keep all information relating to an employee's leave confidential.[37] Additionally, an employer may not fire, demote, suspend, retaliate, or otherwise discriminate against an individual for taking leave.[38]

Employees who voluntarily leave their job are not typically qualified to receive reemployment assistance benefits.[39] However, an individual will not be disqualified for voluntarily leaving work due to circumstances directly related to domestic violence.[40]

An individual who voluntarily leaves work due to domestic violence must:

- Make reasonable efforts to preserve employment, unless the individual establishes that such efforts are likely to be futile or increase the risk of future incidents of domestic violence;[41]
- Provide evidence such as an injunction, a protective order, or other documentation authorized by state law, which reasonably proves that domestic violence has occurred; and
- Reasonably believe that he or she is likely to be the victim of a future act of domestic violence at, in transit to, or departing from his or her place of employment.

An individual who is otherwise eligible for benefits is ineligible for each week that he or she no longer meets the qualifying criteria or refuses a reasonable accommodation offered in good faith by his or her employing unit.

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[33] *Id*. A "small county" is defined in s. 120.52(19), F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census. The DEO has been waiving the requirement to contact employers since March 15, 2020, through DEO emergency orders. The most recent is Emergency Order 21-005 (March 2, 2021), which waives the requirement through April 24, 2021.

[34] "'Domestic violence' means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member." Section 741.28, F.S.

[35] Section 741.313, F.S.

[36] Section 741.313(4)(a), F.S.

[37] Section 741.313(4)(c), F.S.

[38] Section 741.313(5)(b), F.S.

[39] *See* s. 443.101(1)(a), F.S.

[40] *See* s. 443.101(1)(a)2.c., F.S.

[41] Efforts to preserve employment may include seeking a protective injunction, relocating to a secure place, or seeking reasonable accommodation from the employing unit, such as a transfer or change of assignment. *See id*.

Temporary Layoff

Individuals who have temporarily separated from their employment due to a lack of work are exempt from certain requirements of the reemployment assistance system. The job separation must be due to a lack of work and cannot last longer than 8 consecutive weeks, and the individual must have a fixed or approximate date to return to work.[42]

An individual on a temporary layoff is not required to:
- Complete the DEO's online work registration (Employ Florida Marketplace);
- Report to the local one-stop career center for reemployment services if directed by the local workforce development board; or
- Complete the work search requirements, such as contacting at least five prospective employers each week.[43]

The CONNECT System

Florida's unemployment system is administered by the DEO using the CONNECT system, which was deployed in 2013 to replace a mainframe system with a modernized, Internet-based system.[44] According to ISF, an information technology and strategy firm that completed an assessment of the CONNECT system between November 2020 and February 2021, the CONNECT system was not designed to process the volume of claims received during the COVID-19 pandemic. ISF analyzed ways to improve the delivery of benefits, including a phased approach to ensure the DEO can meet current and future demands. ISF's assessment provides an overview of the current state of the CONNECT system, and recommends the modernization of the current system, which includes cloud migration.[45]

On May 4, 2020, at the request of Governor DeSantis, the Office of the Chief Inspector General initiated a review of the CONNECT system. The scope of the inspector general's review considered available documentation and testimony about the CONNECT system from the period of 2007 to 2020.[46] The draft report offered recommendations for agencies considering information technology (IT) projects, which include:
- Documenting future IT system capacity requirements and expected utilization in system testing plans and test results;
- Assessing the proposed level of maturity of any state transfer or commercial off-the-shelf system relied upon for risk and properly documenting the risk;
- Monitoring what is being provided by the vendor and building in an escape plan and financial penalties for noncompliance;

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[42] Section 443.036(43), F.S.
[43] *See* s. 443.091(1)(b)2. and (d)5., F.S.
[44] The Florida Department of Economic Opportunity, *Improved Delivery of Reemployment Assistance Benefits – Final Report*, at 1 (Feb. 26, 2021), *available at* http://floridajobs.org/docs/default-source/communicationsfiles/2021-improved-delivery-of-reemployment-assistance-benefits-final-report-and-cost-benefit-analysis.pdf (last visited April 10, 2021). *See also* s. 443.1113, F.S.
[45] *Id*. at 2.
[46] Office of the Chief Inspector General, *Review of the Department of Economic Opportunity Florida CONNECT System*, at iii (March 4, 2021), *available at* https://www.flgov.com/wp-content/uploads/2021/03/202005040015-Draft-Report-3.4.21_2.05pm.pdf (last visited April 10, 2021).

- Ensuring that independent verification and validation services are truly independent from the project management team and rigorous;
- Requiring project management to be flat and agile, which may include considering more modular IT projects to accommodate future and rapid technological changes; and
- Strengthening administrative and physical infrastructure needs, which may include tracking, reviewing, and resolving audit related findings and moving the future CONNECT system to the cloud to allow for greater scalability.[47]

In 2020, the Florida Digital Service was established to better leverage technology and support a data-driven government with a customer focus. The service's objectives include cyber-security, cloud-ready architecture, data interoperability, and agile methodologies that would help ensure successful outcomes of large-scale IT projects.[48]

Appeals Process

The DEO issues determinations and redeterminations on the monetary and non-monetary eligibility requirements of reemployment assistance benefits.[49] Determinations and redeterminations are statements by the DEO regarding the application of law to an individual's eligibility for benefits or the effect of the benefits on an employer's tax account. A party who believes a determination is inaccurate may request reconsideration within 20 days of mailing or delivery of the notice and the DEO must review the information on which the request is based and issue a redetermination.[50]

If a party disagrees with either the determination or redetermination, the applicant or employer may request an administrative hearing before an appeals referee within 20 days of mailing or delivery of the notice. An appeals referee must be an attorney in good standing with the Florida Bar.[51] Appeals referees in the DEO's Office of Appeals hold hearings and issue decisions to resolve disputes related to eligibility for RA benefits and the payment and collection of RA taxes.[52]

A decision by an appeals referee can be appealed to the RA Appeals Commission if done within 20 days of mailing or delivery of the notice of the referee's decision. The commission may affirm, modify, remand with instructions, or reverse the determination made by the appeals referee based on evidence previously submitted in the case or additional evidence taken at the direction of the commission. However, the commission may also assume jurisdiction of a case prior to completion of proceedings by an appeals referee.[53]

A party to an appeal who disagrees with the commission's order may seek review of the decision in the Florida district courts of appeal. The notice of appeal should be filed either in the district

[47] *Id*. at vii.
[48] *Id*.
[49] Section 443.151(3), F.S. The Social Security Act requires states to offer "an opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied." 42 U.S.C. 503(a)(3).
[50] *See* s. 443.151, F.S.
[51] The DEO has been waiving this requirement since March 15, 2020, through DEO emergency orders. The most recent is Emergency Order 21-005 (March 2, 2021), which waives the requirement through April 24, 2021.
[52] *See* s. 443.151(4)(b), F.S.
[53] *See* s. 443.151(4)(c), F.S.

court of appeal in the appellate district in which a claimant resides or the job separation arose or in the appellate district where the order was issued. If the notice of appeal is filed with the commission, then the appeal will be filed in the district court of appeal in the appellate district where the order was issued.[54]

III. Effect of Proposed Changes:

The Department of Economic Opportunity

Section 1 amends s. 20.60, F.S., to change the title for the head of the DEO from "Executive Director" to the "Secretary of Economic Opportunity."

The bill authorizes the secretary to appoint deputy and assistant secretaries as necessary. The bill establishes the Office of the Secretary and authorizes the secretary to create offices within the Office of the Secretary and within the DEO's divisions to promote efficient and effective operation of the DEO. The secretary is required to appoint directors for each division.

The bill also creates the Office of Economic Accountability and Transparency and require assigns it the following duties:

- Oversee the DEO's critical objectives and make sure the DEO's key objectives are clearly communicated to the public;
- Organize the DEO's resources, expertise, data, and research to focus on and solve the complex economic challenges facing the state;
- Provide leadership for the DEO's priority issues that require integration of policy, management, and critical objectives from multiple programs and organizations internal and external to the DEO;
- Promote and facilitate key DEO initiatives to address priority economic issues and explore data and identify opportunities for innovative approaches to address such economic issues; and
- Promote strategic planning for the DEO.

Sections 17, 18, and 20 through 55 amend ss. 14.20195, 16.615, 213.053, 220.194, 288.005, 288.061, 288.0656, 288.106, 288.1089, 288.1251, 288.8014, 288.955, 288.9604, 288.987, 290.0065, 311.09, 311.105, 334.065, 373.4149, 380.045, 403.0752, 420.0005, 420.0006, 420.101, 420.503, 420.504, 420.506, 420.507, 420.511, 420.602, 420.609, 420.622, 427.012, 443.1116, 446.53, 450.261, 624.5105, and 1004.015, F.S., respectively, to make conforming changes to references to the executive director.

Section 19 amends s. 20.04, F.S., to exempt the DEO from the requirements for all departments under the executive branch related to internal structure and standard terms and to limit the creation of additional divisions or offices in the DEO to only as allowed by statute.

[54] *See* s. 443.151(4)(e), F.S.

Enterprise Florida

Section 2 amends s. 288.901, F.S., to add the secretary or his or her designee to the EFI board of directors.

Section 6 amends s. 331.3081, F.S., to update a cross reference.

Florida Small Cities Community Development Block Grant Program

Section 3 amends s. 290.042, F.S., to provide that the definition of "administrative costs" has the same meaning as defined in the Housing and Community Development Act of 1974 and applicable federal regulations.[55]

Section 4 amends s. 290.044, F.S., to broaden the grant categories that applicants may compete for funding under. Currently grants are limited to housing rehabilitation, economic development, neighborhood revitalization, and commercial revitalization. The bill allows categories for any other activity authorized by federal law.

The bill increases the percentage of CDBG funds that the DEO may set aside annually for use in local government jurisdictions for which an emergency or natural disaster has been declared by executive order from 5 percent to 15 percent.

Currently, in the last quarter of the state fiscal year, the DEO must distribute any funds not allocated under the emergency-related set-aside to unfunded applications from the most recent funding cycle. The bill removes this limitation, allowing distribution to any unfunded application regardless of when the application was made.

Section 5 amends s. 290.046, F.S., to repeal provisions that limit the number of grant applications a local government may submit during each CDBG application or funding cycle. The bill also repeals the requirement that unused economic development grant funds be awarded on a first come, first serve basis.

The bill authorizes the DEO to prohibit an applicant from receiving a grant or to penalize an applicant in the rating of a current application if the DEO determines that the applicant has failed to substantially accomplish the results it proposed in previously funded applications. Currently the prohibition or penalty is only allowed if the applicant failed to accomplish its proposed results from its last funded application.

Section 16 amends s. 553.79, F.S., to require local governments to issue a building permit for a single-family residential home within 15 working days after receipt of the application when the permit is applied for by a contractor licensed in Florida on behalf of a property owner who participates in a CDBG-DR program. However, if the permit application fails to meet the

[55] *See* 42 U.S.C. 5305(a)(13) and 24 C.F.R. 570.206 (2015). Rule 73C-23.0030, F.A.C., incorporates the Housing and Community Development Act of 1974 and the relevant chapters of the Code of Federal Regulations by reference. *See also* s. 290.047, F.S., which provides that the maximum percentage of block grant funds that can be spent on administrative costs by an eligible local government is 15 percent for the housing rehabilitation program, 8 percent for both the neighborhood and the commercial revitalization program categories, and 8 percent for the economic development program category.

requirements of the Florida Building Code or the enforcing agency's laws or ordinances, then this timeframe does not apply.

Workforce Development Boards and CareerSource

Section 7 amends s. 435.02, F.S., to change the definition of "specified agency" to include regional workforce boards providing services defined in s. 445.002(3), F.S.,[56] which will allow regional workforce development boards to conduct level 2 background screenings.

Section 15 amends s. 445.004, F.S., to specifically add the secretary of the DEO or his or her designee to the CareerSource Florida, Inc., board of directors.

Reemployment Assistance

Section 8 amends s. 443.036, F.S., to expand the definition of temporary layoff to include an individual's employer-initiated furlough that causes a mandatory complete stoppage of work. The furlough must be temporary, and the individual must still be considered to be "job attached" and be expected to return to work with the employer. There is no time limit on the length of the furlough like there is for a job separation due to lack of work as provided in current law.

Section 9 amends s. 443.091, F.S., to repeal the requirement that a claimant must provide the telephone number of each prospective employer contacted for each week of unemployment claimed. The bill also clarifies that "address" means a website address, a physical address, or an e-mail address for purposes of reporting the address of each prospective employer contacted.

Section 10 amends s. 443.101, F.S., to repeal the provision that provides that a domestic violence claimant is ineligible to receive benefits for each week that the claimant no longer meets the criteria under s.443.101(1)(a)2.c., F.S., discussed above in the Present Situation, or if the claimant refuses an employer's reasonable accommodation.

Section 11 amends s. 443.1113, F.S., to update the statutory requirements for the state's reemployment assistance computer system. The DEO is required to implement a system for the "efficient distribution of benefits and the effective operation and management of the reemployment assistance program." The system must be "an integrated, modular system hosted in a cloud computing service…that provides for rapid provisioning of additional data processing when necessary."[57]

[56] Section 445.002(3), F.S., defines "services and one-time payments" or "services," when used in reference to individuals who are not receiving temporary cash assistance, as meaning nonrecurrent, short-term benefits designed to deal with a specific crisis situation or episode of need and other services; work subsidies; supportive services such as child care information referral; transitional services, job retention, job advancement, and other employment-related services; nonmedical treatment for substance abuse or mental health problems; teen pregnancy prevention; two-parent family support, including noncustodial parent employment; court-ordered supervised visitation, and responsible fatherhood services; and any other services that are reasonably calculated to further the purposes of the welfare transition program.

[57] The National Institute of Standard and Technology's (NIST) Special Publication 800-145 sets forth the definition of cloud computing service. *See* NIST, *The NIST Definition of Cloud Computing*, SP 800-145 (September 2011), *available at* https://csrc.nist.gov/publications/detail/sp/800-145/final (last visited April 15, 2021). *See also* s. 282.0041(5), F.S.

The bill requires the system to:

- Be accessible through the Internet and on mobile devices and personal computers;
- Process reemployment assistance claims and benefit payments;
- Process and manage overpayments;
- Perform adjudication functions;
- Process appeals and manage appeal hearings; and
- Manage and process employer charging.

The bill retains current system objects, whenever cost effective and operational feasible, and requires the system to enable and *enhance* online, self-service *capabilities*. The system must also maintain interoperability with other DEO workforce systems and allow for employer-assisted claims (see **section 13**, discussed below). The bill also repeals obsolete language related to previous requirements for system development.

Annually, the DEO is required to review the system and identify enhancements or modernization efforts to improve the delivery of services to both claimants and employers and the reporting of information to state and federal entities. These improvements are required to include infrastructure upgrades through cloud services, software improvements, enhanced data analytics and reporting, and increased cybersecurity.[58] The DEO must seek input from the following entities:

- The Florida Digital Service with the Department of Management Services;
- The General Tax Administration Program Office with the Department of Revenue; and
- The Division of Accounting and Auditing within the Department of Financial Services.

The bill requires that by October 1, 2023, the DEO must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, which must include a summary of maintenance, enhancement, and modernization efforts over the last fiscal year and a 3-year outlook of recommended enhancements or modernization efforts that includes projected costs and timeframes for completion.

Section 12 requires the DEO, for Fiscal Year 2021-2022, to modernize the system as provided in the General Appropriations Act.

In April 2020, the DEO adopted Emergency Rule 73BER20-1, Florida Administrative Code, to create a process for employer assisted claims. The purpose of the rule was to "provide a process for employers to notify the DEO of a mass separation…and make a group filing on behalf of the employer's similarly situated employees." **Section 13** creates s. 443.1118, F.S., to allow for a process for employer-assisted claims. An employer-assisted claim is an initial claim filed by an employer on behalf of its employees who are part of a mass separation from the employer. A mass separation is a full, partial, permanent or temporary separation, including a temporary layoff, of full-time employees. For all employees affected, the separations must occur around the

[58] The Information Technology Security Act under s. 282.318, F.S., sets forth requirements for security of data and information technology. The Department of Management Services is required to establish standards and processes consistent with generally accepted best practices for information technology security, including cybersecurity, and adopt rules that safeguard an agency's data, information, and information technology resources. The act also state agencies to take certain actions to meet security standards and mitigate risks.

same time, be for the same reason, and must be due to no fault of the employees. At a minimum, a mass separation involves 1,000 employees.

To initiate an employer-assisted claim, the employer that commences a mass separation must submit employee information to the DEO within 10 days after the date of the separation and through a secure means approved by the DEO. The employer must give notice and instructions to each employee that the employer submits a claim on behalf of and direct the employee to complete further steps to complete the claim as required by the DEO. The employer must submit an affidavit to the DEO attesting to meeting the requirements of such process.

The effective date of the initial claims submitted by the employer is the Sunday immediately following the date that the employer-assisted claim was received by the DEO. Claimants must continue to meet other requirements to receive benefits, including biweekly reporting, and are subject to the same rights to request redeterminations and appeals.

The DEO is authorized to adopt rules, as necessary, to implement this claims process and must adopt rules setting forth:
- The claim initiation process;
- The form of submission;
- The form and format of the required attestation; and
- Additional procedures for filing of the employer-assisted claim.

The provisions of the statute created by the bill are similar to the provisions of the emergency rule adopted by the DEO in April 2020.

Section 14 amends s. 443.151, F.S., to require an employer[59] to respond to a notice of claim within 14 days after the mailing date of the notice, or in lieu of mailing, within 14 days after the delivery of the notice. Currently, employers are given 20 days to respond to a notice of claim.

The bill rewords the current provision related to the finality of monetary determination to provide clarification.

Under the bill, a claimant may file a request for the DEO to reconsider a monetary determination within 20 days after the DEO mails the notice to the claimant's last known address, or in lieu of mailing, within 20 days after delivery of the notice. A monetary determination is final for a claimant if the claimant does not file a timely request for redetermination. The bill provides that a monetary redetermination is final for a claimant unless within 20 days after the mailing of the notice of monetary redetermination to the claimant's last known address, or in lieu of mailing, within 20 days after delivery of the notice, the claimant files an appeal.

The monetary determination or monetary redetermination is final for an employer or other party entitled to notice unless within 20 days after the mailing or, in lieu of mailing, within 20 days after delivery of the notice, an appeal is filed by an employer or other party.

[59] "Employer" is referring to the claimant's most recent employing unit and all employers whose employment records are liable for benefits under the monetary determination.

The bill repeals the requirement that an appeals referee be an attorney in good standing with the Florida Bar.

The bill establishes a five-year statute of limitations on appeals from the date the mailing or the delivery of the notice of determination.[60]

Effective Date

Section 56 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the changes to the reemployment assistance requirements makes it more efficient to deal with claims, both claimants and employers will benefit.

[60] The bill provides that an appeal may not be filed more than 5 years after the date of the mailing of a determination or, if the determination is not mailed, more than 5 years after the date of the delivery of the determination.

C. Government Sector Impact:

The changes to the CDBG statutes will allow the DEO to implement recent federal grants for disaster recovery more efficiently and allow local governments to receive more grants from additional categories to mitigate and recover from the effects of past events.

Related to the reemployment assistance computer system, the bill authorizes the DEO to take action to modernize the system as provided in the Fiscal Year 2021-2022 General Appropriations Act.

The DEO may realign existing resources through a budget amendment or may, in its Fiscal Year 2022-2023 Legislative Budget Request, make a request for any necessary realignment of resources related to the Office of Economic Accountability and Transparency, the Office of the Secretary, or any other offices created within the Office of the Secretary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 20.60, 288.901, 290.042, 290.044, 290.046, 331.3081, 435.02, 443.036, 443.091, 443.101, 443.1113, 443.151, 445.004, 553.79, 14.20195, 16.615, 20.04, 213.053, 220.194, 288.005, 288.061, 288.0656, 288.106, 288.1089, 288.1251, 288.8014, 288.955, 288.9604, 288.987, 290.0065, 311.09, 311.105, 334.065, 373.4149, 380.045, 403.0752, 420.0005, 420.0006, 420.101, 420.503, 420.504, 420.506, 420.507, 420.511, 420.602, 420.609, 420.622, 427.012, 443.1116, 446.53, 450.261, 624.5105, and 1004.015.

The bill creates section 443.1118 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 15, 2021:
The committee substitute expands the definition of "temporary layoff" to include when an individual's employer mandates a furlough, if the furlough is temporary, the person is still "job attached," and the person expects to return to work with the employer.

The committee substitute creates a process for employers that commence a mass separation to initiate submittal of reemployment assistance claims on behalf of their employees.

The committee substitute requires the DEO to implement an integrated, modular system hosted in the cloud for reemployment assistance. The amendment requires the system to maintain interoperability with other department workforce system and allow for employer-assisted claims. The amendment also sets forth a non-exhaustive list of required annual review of improvements and makes other minor changes to this section of the bill.

CS by Commerce and Tourism on March 15, 2021:
The committee substitute requires the DEO, for Fiscal Year 2021-2022, to modernize the reemployment assistance (RA) system as provided in the General Appropriations Act. It clarifies that the RA system must efficiently distribute benefits and effectively manage and operate the RA program, which includes monitoring and managing the collection of overpayments.

The committee substitute clarifies that the DEO must perform an annual review of the RA system and identify ways to improve the delivery of services, and requires a summary of maintenance, enhancement, and modernization efforts over the last fiscal year and a 3-year outlook of recommended changes to be included in the RA Claims and Benefits Information System report. The committee substitute provides that the DEO must seek input and recommendations on RA system enhancements from specified entities.

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 Committees on Appropriations; and Commerce and Tourism; and Senators Bean, Bradley, Pizzo, and Bracy

576-04228-21 20211948c2

A bill to be entitled

An act relating to the Department of Economic Opportunity; amending s. 20.60, F.S.; renaming the executive director of the Department of Economic Opportunity as the Secretary of Economic Opportunity; authorizing the secretary to appoint deputy and assistant secretaries for a specified purpose; establishing the Office of the Secretary and the Office of Economic Accountability and Transparency; providing duties for the Office of Economic Accountability and Transparency; authorizing the secretary to create offices within the Office of the Secretary and within the divisions; requiring the secretary to appoint division directors; providing duties for the division directors; conforming provisions to changes made by the act; amending s. 288.901, F.S.; revising the membership of the board of directors of Enterprise Florida, Inc.; amending s. 290.042, F.S.; revising the definition of the term "administrative costs" relating to the Florida Small Cities Community Development Block Grant Program Act; amending s. 290.044, F.S.; revising the application process and funding for the Florida Small Cities Community Development Block Grant Program Fund; amending s. 290.046, F.S.; revising the application process and funding for development grants awarded by the department to local governments; amending s. 331.3081, F.S.; conforming a cross-reference; amending s. 435.02, F.S.; revising the definition of the term

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"specified agency" to include certain regional workforce boards for the purposes of labor laws; amending s. 443.036, F.S.; revising the definition of the term "temporary layoff"; amending s. 443.091, F.S.; revising the reporting requirements for reemployment assistance benefit eligibility; defining the term "address"; amending s. 443.101, F.S.; deleting a provision providing that individuals who voluntarily leave work as a direct result of circumstances relating to domestic violence are ineligible for benefits under certain circumstances; amending s. 443.1113, F.S.; requiring the department to implement an integrated, modular system hosted in a cloud service, rather than an integrated Internet-based system, for the reemployment assistance program; revising the functions and objectives of the Reemployment Assistance Claims and Benefits Information System; requiring the department to perform an annual review of the system; requiring the department to seek input from certain state entities when performing such review; requiring the department to submit an annual report to the Governor and the Legislature beginning on a specified date; providing requirements for such report; deleting obsolete language; requiring the department to take actions to modernize the system in the 2021-2022 fiscal year as directed in the General Appropriations Act; creating s. 443.1118, F.S.; defining terms; providing requirements for employer-assisted claims relating to

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mass separations; specifying the effective date of such claims; providing that benefits paid to a claimant pursuant to an employer-assisted claim count toward maximum benefits for which the claimant is eligible; requiring a claimant covered by an employer-assisted claim to file continued biweekly claims; providing construction; requiring and authorizing the department to adopt specified rules; amending s. 443.151, F.S.; revising the timeline for employers' responses to notices of benefits claims sent by the department; authorizing claimants to request the department to reconsider a monetary determination; providing requirements for such request; providing that monetary determinations and redeterminations are final after a specified period of time; providing exceptions; deleting a requirement that appeals referees be attorneys in good standing with The Florida Bar or be admitted to The Florida Bar within 8 months after the date of employment; prohibiting appeals from being filed after a specified time; amending s. 445.004, F.S.; revising the membership of the state board, which directs CareerSource Florida, Inc.; amending s. 553.79, F.S.; requiring specified building permit applications applied for by licensed contractors for property owners under certain programs administered by the department to be issued within a reduced timeframe; amending ss. 14.20195, 16.615, 20.04, 213.053, 220.194, 288.005, 288.061, 288.0656, 288.106, 288.1089, 288.1251, 288.8014, 288.955,

288.9604, 288.987, 290.0065, 311.09, 311.105, 334.065, 373.4149, 380.045, 403.0752, 420.0005, 420.0006, 420.101, 420.503, 420.504, 420.506, 420.507, 420.511, 420.602, 420.609, 420.622, 427.012, 443.1116, 446.53, 450.261, 624.5105, and 1004.015, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsections (2) and (3), paragraph (a) of subsection (5), paragraph (b) of subsection (6), and subsection (9) of section 20.60, Florida Statutes, are amended, and subsection (1) of that section is republished, to read:

20.60 Department of Economic Opportunity; creation; powers and duties.—

(1) There is created the Department of Economic Opportunity.

(2) The head of the department is the Secretary of Economic Opportunity ~~executive director~~, who shall be appointed by the Governor, subject to confirmation by the Senate. The secretary ~~executive director~~ shall serve at the pleasure of and report to the Governor. The secretary may appoint deputy and assistant secretaries as necessary to aid the secretary in fulfilling his or her statutory obligations.

(3)(a) The following divisions and offices of the Department of Economic Opportunity are established:

1.~~(a)~~ The Division of Strategic Business Development.

2.~~(b)~~ The Division of Community Development.

3.~~(c)~~ The Division of Workforce Services.

4.~~(d)~~ The Division of Finance and Administration.

5.~~(c)~~ The Division of Information Technology.

6. The Office of the Secretary.

7. The Office of Economic Accountability and Transparency, which shall:

a. Oversee the department's critical objectives as determined by the secretary and make sure that the department's key objectives are clearly communicated to the public.

b. Organize department resources, expertise, data, and research to focus on and solve the complex economic challenges facing the state.

c. Provide leadership for the department's priority issues that require integration of policy, management, and critical objectives from multiple programs and organizations internal and external to the department; and organize and manage external communication on such priority issues.

d. Promote and facilitate key department initiatives to address priority economic issues and explore data and identify opportunities for innovative approaches to address such economic issues.

e. Promote strategic planning for the department.

(b) The secretary:

1. May create offices within the Office of the Secretary and within the divisions established in paragraph (a) to promote efficient and effective operation of the department.

2. Shall appoint a director for each division, who shall directly administer his or her division and be responsible to the secretary.

(5) The divisions within the department have specific responsibilities to achieve the duties, responsibilities, and goals of the department. Specifically:

(a) The Division of Strategic Business Development shall:

1. Analyze and evaluate business prospects identified by the Governor, the secretary ~~executive director of the department~~, and Enterprise Florida, Inc.

2. Administer certain tax refund, tax credit, and grant programs created in law. Notwithstanding any other provision of law, the department may expend interest earned from the investment of program funds deposited in the Grants and Donations Trust Fund to contract for the administration of those programs, or portions of the programs, assigned to the department by law, by the appropriations process, or by the Governor. Such expenditures shall be subject to review under chapter 216.

3. Develop measurement protocols for the state incentive programs and for the contracted entities which will be used to determine their performance and competitive value to the state. Performance measures, benchmarks, and sanctions must be developed in consultation with the legislative appropriations committees and the appropriate substantive committees, and are subject to the review and approval process provided in s. 216.177. The approved performance measures, standards, and sanctions shall be included and made a part of the strategic plan for contracts entered into for delivery of programs authorized by this section.

4. Develop a 5-year statewide strategic plan. The strategic plan must include, but need not be limited to:

a. Strategies for the promotion of business formation, expansion, recruitment, and retention through aggressive marketing, international development, and export assistance, which lead to more and better jobs and higher wages for all geographic regions, disadvantaged communities, and populations of the state, including rural areas, minority businesses, and urban core areas.

b. The development of realistic policies and programs to further the economic diversity of the state, its regions, and their associated industrial clusters.

c. Specific provisions for the stimulation of economic development and job creation in rural areas and midsize cities and counties of the state, including strategies for rural marketing and the development of infrastructure in rural areas.

d. Provisions for the promotion of the successful long-term economic development of the state with increased emphasis in market research and information.

e. Plans for the generation of foreign investment in the state which create jobs paying above-average wages and which result in reverse investment in the state, including programs that establish viable overseas markets, assist in meeting the financing requirements of export-ready firms, broaden opportunities for international joint venture relationships, use the resources of academic and other institutions, coordinate trade assistance and facilitation services, and facilitate availability of and access to education and training programs that assure requisite skills and competencies necessary to compete successfully in the global marketplace.

f. The identification of business sectors that are of

current or future importance to the state's economy and to the state's global business image, and development of specific strategies to promote the development of such sectors.

g. Strategies for talent development necessary in the state to encourage economic development growth, taking into account factors such as the state's talent supply chain, education and training opportunities, and available workforce.

5. Update the strategic plan every 5 years.

6. Involve Enterprise Florida, Inc.; CareerSource Florida, Inc.; local governments; the general public; local and regional economic development organizations; other local, state, and federal economic, international, and workforce development entities; the business community; and educational institutions to assist with the strategic plan.

(6)

(b) The Department of Economic Opportunity shall serve as the designated agency for purposes of each federal workforce development grant assigned to it for administration. The department shall carry out the duties assigned to it by the Governor, under the terms and conditions of each grant. The department shall have the level of authority and autonomy necessary to be the designated recipient of each federal grant assigned to it and shall disburse such grants pursuant to the plans and policies of the state board as defined in s. 445.002. The secretary ~~executive director~~ may, upon delegation from the Governor and pursuant to agreement with the state board, sign contracts, grants, and other instruments as necessary to execute functions assigned to the department. Notwithstanding other provisions of law, the department shall administer other

programs funded by federal or state appropriations, as determined by the Legislature in the General Appropriations Act or other law.

(9) The secretary ~~executive director~~ shall:

(a) Manage all activities and responsibilities of the department.

(b) Serve as the manager for the state with respect to contracts with Enterprise Florida, Inc., and all applicable direct-support organizations. To accomplish the provisions of this section and applicable provisions of chapter 288, and notwithstanding the provisions of part I of chapter 287, the secretary ~~director~~ shall enter into specific contracts with Enterprise Florida, Inc., and other appropriate direct-support organizations. Such contracts may be for multiyear terms and must include specific performance measures for each year. For purposes of this section, the Florida Tourism Industry Marketing Corporation and the Institute for Commercialization of Florida Technology are not appropriate direct-support organizations.

(c) Serve as a member of the board of directors of the Florida Development Finance Corporation. The secretary ~~executive director~~ may designate an employee of the department to serve in this capacity.

Section 2. Paragraph (a) of subsection (5) of section 288.901, Florida Statutes, is amended to read:

288.901 Enterprise Florida, Inc.—

(5) APPOINTED MEMBERS OF THE BOARD OF DIRECTORS.—

(a) In addition to the Governor or his or her designee, the board of directors shall consist of the following appointed members:

1. The Commissioner of Education or his or her designee.

2. The Chief Financial Officer or his or her designee.

3. The Attorney General or his or her designee.

4. The Commissioner of Agriculture or his or her designee.

5. The chairperson of the state board as defined in s. 445.002.

6. The Secretary of State or his or her designee.

7. The Secretary of Economic Opportunity or his or her designee.

8. Twelve members from the private sector, six of whom shall be appointed by the Governor, three of whom shall be appointed by the President of the Senate, and three of whom shall be appointed by the Speaker of the House of Representatives. Members appointed by the Governor are subject to Senate confirmation.

All board members shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061. Such expenses must be paid out of funds of Enterprise Florida, Inc.

Section 3. Subsection (2) of section 290.042, Florida Statutes, is amended to read:

290.042 Definitions relating to Florida Small Cities Community Development Block Grant Program Act.—As used in ss. 290.0401-290.048, the term:

(2) "Administrative costs" has the same meaning as defined in the Housing and Community Development Act of 1974, as amended, and applicable federal regulations ~~means the payment of all reasonable costs of management, coordination, monitoring,~~

~~and evaluation, and similar costs and carrying charges, related to the planning and execution of community development activities which are funded in whole or in part under the Florida Small Cities Community Development Block Grant Program. Administrative costs shall include all costs of administration, including general administration, planning and urban design, and project administration costs~~.

Section 4. Subsections (3), (4), and (5) of section 290.044, Florida Statutes, are amended to read:

290.044 Florida Small Cities Community Development Block Grant Program Fund; administration; distribution.—

(3) The department shall require applicants for grants to compete against each other in ~~the following grant program~~ categories that may include one or more of the following:

(a) Housing rehabilitation.

(b) Economic development.

(c) Neighborhood revitalization.

(d) Commercial revitalization.

(e) Any other activity authorized by the Housing and Community Development Act of 1974, as amended, and applicable federal regulations.

(4) The department shall define broad community development objectives to be achieved by the activities in ~~each of~~ the grant program categories with the use of funds from the Florida Small Cities Community Development Block Grant Program Fund. Such objectives shall be designed to meet at least one of the national objectives provided in the Housing and Community Development Act of 1974.

(5) The department may set aside an amount of up to 15 ~~5~~

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percent of the funds annually for use in any eligible local government jurisdiction for which an emergency or natural disaster has been declared by executive order. Such funds may only be provided to a local government to fund eligible emergency-related activities for which no other source of federal, state, or local disaster funds is available. The department may provide for such set-aside by rule. In the last quarter of the state fiscal year, any funds not allocated under the emergency-related set-aside shall be distributed to unfunded applications ~~from the most recent funding cycle~~.

Section 5. Subsection (2), paragraph (b) of subsection (3), and subsection (6) of section 290.046, Florida Statutes, are amended to read:

290.046 Applications for grants; procedures; requirements.—

~~(2)(a) Except for applications for economic development grants as provided in subparagraph (b)1., an eligible local government may submit one application for a grant during each application cycle.~~

~~(b)1. An eligible local government may apply up to three times in any one annual funding cycle for an economic development grant but may not receive more than one such grant per annual funding cycle. A local government may have more than one open economic development grant.~~

(2)(a)~~2.~~ The department shall establish minimum criteria pertaining to the number of jobs created for persons of low or moderate income, the degree of private sector financial commitment, and the economic feasibility of the proposed project and shall establish any other criteria the department deems appropriate. Assistance to a private, for-profit business may

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not be provided from a grant award unless sufficient evidence exists to demonstrate that without such public assistance the creation or retention of such jobs would not occur.

(b) ~~(c) 1.~~ A local government with an open housing rehabilitation, neighborhood revitalization, or commercial revitalization contract is not eligible to apply for another housing rehabilitation, neighborhood revitalization, or commercial revitalization grant until administrative closeout of its existing contract. The department shall notify a local government of administrative closeout or of any outstanding closeout issues within 45 days after receipt of a closeout package from the local government. A local government with an open housing rehabilitation, neighborhood revitalization, or commercial revitalization community development block grant contract whose activities are on schedule in accordance with the expenditure rates and accomplishments described in the contract may apply for an economic development grant.

(c) ~~2.~~ A local government with an open economic development community development block grant contract whose activities are on schedule in accordance with the expenditure rates and accomplishments described in the contract may apply for a housing rehabilitation, neighborhood revitalization, or commercial revitalization community development block grant. A local government with an open economic development contract whose activities are on schedule in accordance with the expenditure rates and accomplishments described in the contract may receive ~~no~~ more than one additional economic development grant in each fiscal year.

(d) The department may not award a grant until it has

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conducted a site visit to verify the information contained in the local government's application.

(3)

(b) Funds shall be distributed according to the rankings established in each application cycle. If economic development funds remain available after the application cycle closes, the remaining funds shall be awarded to eligible projects ~~on a first-come, first-served basis until such funds are fully obligated~~.

(6) The department shall, before approving an application for a grant, determine that the applicant has the administrative capacity to carry out the proposed activities and has performed satisfactorily in carrying out past activities funded by community development block grants. The evaluation of past performance shall take into account procedural aspects of previous grants as well as substantive results. If the department determines that any applicant has failed to accomplish substantially the results it proposed in ~~its last~~ previously funded applications ~~application~~, it may prohibit the applicant from receiving a grant or may penalize the applicant in the rating of the current application. An application for grant funds may not be denied solely upon the basis of the past performance of the eligible applicant.

Section 6. Section 331.3081, Florida Statutes, is amended to read:

331.3081 Board of directors.—Space Florida shall be governed by a 13-member independent board of directors that consists of the members appointed to the board of directors of Enterprise Florida, Inc., by the Governor, the President of the

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Senate, and the Speaker of the House of Representatives pursuant to s. 288.901(5)(a)8. ~~s. 288.901(5)(a)7.~~ and the Governor, who shall serve ex officio, or who may appoint a designee to serve, as the chair and a voting member of the board.

Section 7. Subsection (5) of section 435.02, Florida Statutes, is amended to read:

435.02 Definitions.—For the purposes of this chapter, the term:

(5) "Specified agency" means the Department of Health, the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Juvenile Justice, the Agency for Persons with Disabilities, regional workforce boards providing services as defined in s. 445.002(3), and local licensing agencies approved pursuant to s. 402.307, when these agencies are conducting state and national criminal history background screening on persons who work with children or persons who are elderly or disabled.

Section 8. Subsection (43) of section 443.036, Florida Statutes, is amended to read:

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

(43) "Temporary layoff" means an individual's ~~a~~ job separation due to lack of work which does not exceed 8 consecutive weeks and which has a fixed or approximate return-to-work date; or an individual's employer-initiated furlough that causes a mandatory complete stoppage of work if such furlough is temporary and the individual remains job attached and is expected to return to work with the employer.

Section 9. Paragraph (c) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(c) To make continued claims for benefits, she or he is reporting to the department in accordance with this paragraph and department rules. Department rules may not conflict with s. 443.111(1)(b), which requires that each claimant continue to report regardless of any pending appeal relating to her or his eligibility or disqualification for benefits.

1. For each week of unemployment claimed, each report must, at a minimum, include the name and~~,~~ address~~, and telephone number~~ of each prospective employer contacted, or the date the claimant reported to a one-stop career center, pursuant to paragraph (d). For the purposes of this subparagraph, the term "address" means a website address, a physical address, or an e-mail address.

2. The department shall offer an online assessment aimed at identifying an individual's skills, abilities, and career aptitude. The skills assessment must be voluntary, and the department shall allow a claimant to choose whether to take the skills assessment. The online assessment shall be made available to any person seeking services from a local workforce development board or a one-stop career center.

a. If the claimant chooses to take the online assessment, the outcome of the assessment shall be made available to the claimant, local workforce development board, and one-stop career

center. The department, local workforce development board, or one-stop career center shall use the assessment to develop a plan for referring individuals to training and employment opportunities. Aggregate data on assessment outcomes may be made available to CareerSource Florida, Inc., and Enterprise Florida, Inc., for use in the development of policies related to education and training programs that will ensure that businesses in this state have access to a skilled and competent workforce.

b. Individuals shall be informed of and offered services through the one-stop delivery system, including career counseling, the provision of skill match and job market information, and skills upgrade and other training opportunities, and shall be encouraged to participate in such services at no cost to the individuals. The department shall coordinate with CareerSource Florida, Inc., the local workforce development boards, and the one-stop career centers to identify, develop, and use best practices for improving the skills of individuals who choose to participate in skills upgrade and other training opportunities. The department may contract with an entity to create the online assessment in accordance with the competitive bidding requirements in s. 287.057. The online assessment must work seamlessly with the Reemployment Assistance Claims and Benefits Information System.

Section 10. Paragraph (a) of subsection (1) and subsection (6) of section 443.101, Florida Statutes, are amended to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(1)(a) For the week in which he or she has voluntarily left work without good cause attributable to his or her employing

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unit or for the week in which he or she has been discharged by the employing unit for misconduct connected with his or her work, based on a finding by the Department of Economic Opportunity. As used in this paragraph, the term "work" means any work, whether full-time, part-time, or temporary.

1. Disqualification for voluntarily quitting continues for the full period of unemployment next ensuing after the individual has left his or her full-time, part-time, or temporary work voluntarily without good cause and until the individual has earned income equal to or greater than 17 times his or her weekly benefit amount. As used in this subsection, the term "good cause" includes only that cause attributable to the employing unit which would compel a reasonable employee to cease working or attributable to the individual's illness or disability requiring separation from his or her work. Any other disqualification may not be imposed.

2. An individual is not disqualified under this subsection for:

a. Voluntarily leaving temporary work to return immediately when called to work by the permanent employing unit that temporarily terminated his or her work within the previous 6 calendar months;

b. Voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders; or

c. Voluntarily leaving work if he or she proves that his or her discontinued employment is a direct result of circumstances related to domestic violence as defined in s. 741.28. An individual who voluntarily leaves work under this sub-

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subparagraph must:

(I) Make reasonable efforts to preserve employment, unless the individual establishes that such remedies are likely to be futile or to increase the risk of future incidents of domestic violence. Such efforts may include seeking a protective injunction, relocating to a secure place, or seeking reasonable accommodation from the employing unit, such as a transfer or change of assignment;

(II) Provide evidence such as an injunction, a protective order, or other documentation authorized by state law which reasonably proves that domestic violence has occurred; and

(III) Reasonably believe that he or she is likely to be the victim of a future act of domestic violence at, in transit to, or departing from his or her place of employment. ~~An individual who is otherwise eligible for benefits under this sub-subparagraph is ineligible for each week that he or she no longer meets such criteria or refuses a reasonable accommodation offered in good faith by his or her employing unit.~~

3. The employment record of an employing unit may not be charged for the payment of benefits to an individual who has voluntarily left work under sub-subparagraph 2.c.

4. Disqualification for being discharged for misconduct connected with his or her work continues for the full period of unemployment next ensuing after having been discharged and until the individual is reemployed and has earned income of at least 17 times his or her weekly benefit amount and for not more than 52 weeks immediately following that week, as determined by the department in each case according to the circumstances or the seriousness of the misconduct, under the department's rules for

determining disqualification for benefits for misconduct.

5. If an individual has provided notification to the employing unit of his or her intent to voluntarily leave work and the employing unit discharges the individual for reasons other than misconduct before the date the voluntary quit was to take effect, the individual, if otherwise entitled, shall receive benefits from the date of the employer's discharge until the effective date of his or her voluntary quit.

6. If an individual is notified by the employing unit of the employer's intent to discharge the individual for reasons other than misconduct and the individual quits without good cause before the date the discharge was to take effect, the claimant is ineligible for benefits pursuant to s. 443.091(1)(d) for failing to be available for work for the week or weeks of unemployment occurring before the effective date of the discharge.

(6) For making any false or fraudulent representation for the purpose of obtaining benefits contrary to this chapter, constituting a violation under s. 443.071. The disqualification imposed under this subsection shall begin with the week for ~~in~~ which the false or fraudulent representation was ~~is~~ made and shall continue for a period not to exceed 1 year after the date the Department of Economic Opportunity discovers the false or fraudulent representation and until any overpayment of benefits resulting from such representation has been repaid in full. This disqualification may be appealed in the same manner as any other disqualification imposed under this section. A conviction by any court of competent jurisdiction in this state of the offense prohibited or punished by s. 443.071 is conclusive upon the

appeals referee and the commission of the making of the false or fraudulent representation for which disqualification is imposed under this section.

Section 11. Section 443.1113, Florida Statutes, is amended to read:

443.1113 Reemployment Assistance Claims and Benefits Information System.—

(1) The Department of Economic Opportunity shall implement an integrated, modular system hosted in a cloud computing service, as defined in s. 282.0041, that provides for rapid provisioning of additional data processing when necessary. The system must support the efficient distribution of benefits and the effective operation and management of the reemployment assistance program. ~~To~~ The ~~extent that funds are appropriated for each phase of the Reemployment Assistance Claims and Benefits Information~~ system may be cited ~~by the Legislature, the Department of Economic Opportunity shall replace and enhance the functionality provided in the following systems with an integrated Internet-based system that is known~~ as the "Reemployment Assistance Claims and Benefits Information System" and must:

(a) Be accessible through the Internet on both mobile devices and personal computers ~~Claims and benefit mainframe system~~.

(b) Process reemployment assistance claims ~~Florida unemployment Internet direct~~.

(c) Process benefit payments ~~Florida continued claim Internet directory~~.

(d) Process and manage overpayments ~~Call center interactive~~

~~voice response system~~.

(e) Perform adjudication functions ~~Benefit overpayment screening system~~.

(f) Process appeals and manage appeal hearings ~~Internet and Intranet appeals system~~.

(g) Manage and process employer charging.

(2) Wherever cost-effective and operationally feasible, the Reemployment Assistance Claims and Benefits System shall accomplish the following main ~~business~~ objectives:

(a) ~~Wherever cost-effective and operationally feasible,~~ Eliminate or automate existing paper processes and enhance any existing automated workflows in order to expedite customer transactions and eliminate redundancy.

(b) Enable and enhance online, self-service capabilities ~~access~~ to claimant and employer information and federal and state reporting.

(c) Integrate benefit payment control with the adjudication program and collection system in order to improve the detection of fraud.

(d) Comply with all requirements established in federal and state law for reemployment assistance.

(e) Integrate with the Department of Revenue's statewide unified tax system that collects reemployment assistance taxes.

(f) Maintain interoperability with other department workforce systems.

(g) Allow for employer-assisted claims.

(3) The scope of the Reemployment Assistance Claims and Benefits Information System does not include any of the following functionalities:

(a) Collection of reemployment assistance taxes.

(b) General ledger, financial management, or budgeting capabilities.

(c) Human resource planning or management capabilities.

(4)(a) The Department of Economic Opportunity shall perform an annual review of the system and identify enhancements or modernization efforts that improve the delivery of services to claimants and employers and reporting to state and federal entities. These improvements must include, but need not be limited to:

1. Infrastructure upgrades through cloud services.

2. Software improvements.

3. Enhanced data analytics and reporting.

4. Increased cybersecurity pursuant to s. 282.318.

(b) The department shall seek input on recommended enhancements from, at a minimum, the following entities:

1. The Florida Digital Service within the Department of Management Services.

2. The General Tax Administration Program Office within the Department of Revenue.

3. The Division of Accounting and Auditing within the Department of Financial Services.

(5) By October 1, 2023, and each year thereafter, the Department of Economic Opportunity shall submit a Reemployment Assistance Claims and Benefits Information System report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must, at a minimum, include:

(a) A summary of maintenance, enhancement, and

modernization efforts over the last fiscal year.

(b) A 3-year outlook of recommended enhancements or modernization efforts that includes projected costs and timeframes for completion ~~The project to implement the Reemployment Assistance Claims and Benefits Information System is comprised of the following phases and corresponding implementation timeframes:~~

~~(a) No later than the end of fiscal year 2009-2010 completion of the business re-engineering analysis and documentation of both the detailed system requirements and the overall system architecture~~.

~~(b) The Reemployment Assistance Claims and Benefits Internet portal that replaces the Florida Unemployment Internet Direct and the Florida Continued Claims Internet Directory systems, the Call Center Interactive Voice Response System, the Benefit Overpayment Screening System, the Internet and Intranet Appeals System, and the Claims and Benefits Mainframe System shall be deployed to full operational status no later than the end of fiscal year 2013-2014.~~

~~(5) The Department of Economic Opportunity shall implement the following project governance structure until such time as the project is completed, suspended, or terminated:~~

~~(a) The project sponsor for the Reemployment Assistance Claims and Benefits Information System project is the department.~~

~~(b) The project shall be governed by an executive steering committee composed of the following voting members or their designees:~~

~~1. The executive director of the department.~~

~~2. The executive director of the Department of Revenue.~~

~~3. The director of the Division of Workforce Services within the department.~~

~~4. The program director of the General Tax Administration Program Office within the Department of Revenue.~~

~~5. The chief information officer of the department.~~

~~(c) The executive steering committee has the overall responsibility for ensuring that the project meets its primary objectives and is specifically responsible for:~~

~~1. Providing management direction and support to the project management team.~~

~~2. Assessing the project's alignment with the strategic goals of the department for administering the reemployment assistance program.~~

~~3. Reviewing and approving or disapproving any changes to the project's scope, schedule, and costs.~~

~~4. Reviewing, approving or disapproving, and determining whether to proceed with any major project deliverables.~~

~~5. Recommending suspension or termination of the project to the Governor, the President of the Senate, and the Speaker of the House of Representatives if it determines that the primary objectives cannot be achieved.~~

~~(d) The project management team shall work under the direction of the executive steering committee and shall be minimally comprised of senior managers and stakeholders from the department and the Department of Revenue. The project management team is responsible for:~~

~~1. Providing daily planning, management, and oversight of the project~~.

~~2. Submitting an operational work plan and providing quarterly updates to that plan to the executive steering committee. The plan must specify project milestones, deliverables, and expenditures.~~

~~3. Submitting written monthly project status reports to the executive steering committee which include:~~

~~a. Planned versus actual project costs;~~

~~b. An assessment of the status of major milestones and deliverables;~~

~~c. Identification of any issues requiring resolution, the proposed resolution for these issues, and information regarding the status of the resolution;~~

~~d. Identification of risks that must be managed; and~~

~~e. Identification of and recommendations regarding necessary changes in the project's scope, schedule, or costs. All recommendations must be reviewed by project stakeholders before submission to the executive steering committee in order to ensure that the recommendations meet required acceptance criteria.~~

Section 12. For the 2021-2022 fiscal year, the Department of Economic Opportunity shall take actions to modernize the Reemployment Assistance Claims and Benefits Information System as provided in the General Appropriations Act.

Section 13. Section 443.1118, Florida Statutes, is created to read:

443.1118 Employer-assisted claims.—

(1) DEFINITIONS.—For purposes of this section:

(a) "Employer-assisted claim" means an initial claim filed by an employer on behalf of its employees who are a part of a

mass separation from the employer.

(b) "Mass separation" means a full, partial, permanent, or temporary separation, including a temporary layoff, of full-time employees from their employer if the separation occurs at or around the same time, the employees are separated for the same reason, and the separation is due to circumstances for which the employees are not at fault. At a minimum, a mass separation involves 1,000 or more employees.

(2) EMPLOYER-ASSISTED CLAIM PROCESS.—

(a) *Initiation*.—An employer that commences a mass separation may initiate an employer-assisted claim by submitting employee information to the department within 10 days after the date of the mass separation pursuant to rules adopted by the department.

(b) *Form of submission*.—Due to the sensitive nature of employee information, an employer shall submit employee information through secure means approved by department rule.

(c) *Notice and Affidavit*.—For each employer-assisted claim, the employer shall give notice and instructions to the employees for which claims are filed and direct the employees to complete further steps as required by the department. The employer shall provide an attestation to the department in a form and format required by the department.

(3) EFFECTIVE DATE OF CLAIM.—The effective date of an employer-assisted claim is the Sunday immediately preceding the date on which the employer-assisted claim was received by the department.

(4) PAYMENTS.—Weeks of benefits paid to a claimant pursuant to an employer-assisted claim count toward the maximum benefits

for which the claimant is eligible.

(5) CLAIMANT FILING REQUIREMENTS.—A claimant covered by an employer-assisted claim must file continued biweekly claims pursuant to department rule.

(6) CONSTRUCTION.—This section does not limit, alter, or amend a claimant's rights under this chapter relating to a hearing if a claimant is denied a claim.

(7) RULEMAKING.—The department shall adopt rules establishing additional procedures for filing an employer-assisted claim and may adopt additional rules to administer this section.

Section 14. Paragraphs (a) and (b) of subsection (3) and paragraphs (a) and (b) of subsection (4) of section 443.151, Florida Statutes, are amended to read:

443.151 Procedure concerning claims.—

(3) DETERMINATION OF ELIGIBILITY.—

(a) *Notices of claim*.—The Department of Economic Opportunity shall promptly provide a notice of claim to the claimant's most recent employing unit and all employers whose employment records are liable for benefits under the monetary determination. The employer must respond to the notice of claim within 14 ~~20~~ days after the mailing date of the notice, or in lieu of mailing, within 14 ~~20~~ days after the delivery of the notice. If a contributing employer or its agent fails to timely or adequately respond to the notice of claim or request for information, the employer's account may not be relieved of benefit charges as provided in s. 443.131(3)(a), notwithstanding paragraph (5)(b). The department may adopt rules as necessary to implement the processes described in this paragraph relating to

notices of claim.

(b) *Monetary determinations.*—In addition to the notice of claim, the department shall also promptly provide an initial monetary determination to the claimant and each base period employer whose account is subject to being charged for its respective share of benefits on the claim. The monetary determination must include a statement of whether and in what amount the claimant is entitled to benefits, and, in the event of a denial, must state the reasons for the denial. A monetary determination for the first week of a benefit year must also include a statement of whether the claimant was paid the wages required under s. 443.091(1)(g) and, if so, the first day of the benefit year, the claimant's weekly benefit amount, and the maximum total amount of benefits payable to the claimant for a benefit year. The claimant may file a request for the department to reconsider a monetary determination within 20 days after the department mails the notice to the claimant's last known address or, in lieu of mailing, within 20 days after the delivery of the notice. A monetary determination is final for a claimant if the claimant does not file a timely request for the department to reconsider the monetary determination. A monetary redetermination is final for a claimant unless within 20 days after the mailing of the notice of monetary redetermination to the claimant's last known address or, in lieu of mailing, within 20 days after the delivery of the notice, the claimant files an appeal. The monetary determination or monetary redetermination is final for an employer or other party entitled to notice unless within 20 days after the mailing of the respective notice to the employer or party to its last known address or, in lieu

of mailing, within 20 days after delivery of the notice, an appeal is filed by the employer or the party ~~The monetary determination is final unless within 20 days after the mailing of the notices to the parties' last known addresses, or in lieu of mailing, within 20 days after the delivery of the notices, an appeal or written request for reconsideration is filed by the claimant or other party entitled to notice~~. The department may adopt rules as necessary to implement the processes described in this paragraph relating to notices of monetary determinations and the appeals or reconsideration requests filed in response to such notices.

(4) APPEALS.—

(a) *Appeals referees.*—

1. The Department of Economic Opportunity shall appoint one or more impartial salaried appeals referees in accordance with s. 443.171(3) to hear and decide appealed claims.

2. ~~An appeals referee must be an attorney in good standing with The Florida Bar or be successfully admitted to The Florida Bar within 8 months after his or her date of employment. This subparagraph does not apply to an appeals referee appointed before January 1, 2014.~~

~~3.~~ A person may not participate on behalf of the department as an appeals referee in any case in which she or he is an interested party.

3.~~4.~~ The department may designate alternates to serve in the absence or disqualification of any appeals referee on a temporary basis. These alternates must have the same qualifications required of appeals referees.

4.~~5.~~ The department shall provide the commission and the

appeals referees with proper facilities and assistance for the execution of their functions.

(b) *Filing and hearing.*—

1. The claimant or any other party entitled to notice of a determination may appeal an adverse determination to an appeals referee within 20 days after the date of mailing of the notice to her or his last known address or, if the notice is not mailed, within 20 days after the date of delivering the notice.

2. Unless the appeal is untimely or withdrawn or review is initiated by the commission, the appeals referee, after mailing all parties and attorneys of record a notice of hearing at least 10 days before the date of hearing, notwithstanding the 14-day notice requirement in s. 120.569(2)(b), may only affirm, modify, or reverse the determination. An appeal may not be withdrawn without the permission of the appeals referee.

3. ~~However,~~ If an appeal appears to have been filed after the permissible time limit, the Office of Appeals may issue an order to show cause to the appellant which requires the appellant to show why the appeal should not be dismissed as untimely. If, within 15 days after the mailing date of the order to show cause, the appellant does not provide written evidence of timely filing or good cause for failure to appeal timely, the appeal shall be dismissed. <u>However, an appeal may not be filed more than 5 years after the date of the mailing of the determination or, if the determination is not mailed, more than 5 years after the date of the delivery of the determination.</u>

4. If an appeal involves a question of whether services were performed by a claimant in employment or for an employer, the referee must give special notice of the question and of the

pendency of the appeal to the employing unit and to the department, both of which become parties to the proceeding.

5.a. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath.

b. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence would be admissible in a trial in state court.

c. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, or to support a finding if it would be admissible over objection in civil actions. Notwithstanding s. 120.57(1)(c), hearsay evidence may support a finding of fact if:

(I) The party against whom it is offered has a reasonable opportunity to review such evidence prior to the hearing; and

(II) The appeals referee or special deputy determines, after considering all relevant facts and circumstances, that the evidence is trustworthy and probative and that the interests of justice are best served by its admission into evidence.

6. The parties must be notified promptly of the referee's decision. The referee's decision is final unless further review is initiated under paragraph (c) within 20 days after the date of mailing notice of the decision to the party's last known address or, in lieu of mailing, within 20 days after the delivery of the notice.

Section 15. Paragraph (d) of subsection (3) of section 445.004, Florida Statutes, is amended, and subsections (1) and

(2) of that section are republished, to read:

445.004 CareerSource Florida, Inc., and the state board; creation; purpose; membership; duties and powers.—

(1) CareerSource Florida, Inc., is created as a not-for-profit corporation, which shall be registered, incorporated, organized, and operated in compliance with chapter 617 and shall operate at the direction of the state board. CareerSource Florida, Inc., is not a unit or entity of state government and is exempt from chapters 120 and 287. CareerSource Florida, Inc., shall apply the procurement and expenditure procedures required by federal law for the expenditure of federal funds. CareerSource Florida, Inc., shall be administratively housed within the department and shall operate under agreement with the department. The Legislature finds that public policy dictates that CareerSource Florida, Inc., operate in the most open and accessible manner consistent with its public purpose. To this end, the Legislature specifically declares that CareerSource Florida, Inc., its board, councils, and any advisory committees or similar groups created by CareerSource Florida, Inc., are subject to the provisions of chapter 119 relating to public records, and those provisions of chapter 286 relating to public meetings.

(2) CareerSource Florida, Inc., provides administrative support for the state board, the principal workforce policy organization for the state. The purpose of the state board is to design and implement strategies that help Floridians enter, remain in, and advance in the workplace, so that they may become more highly skilled and successful, which benefits these Floridians, Florida businesses, and the entire state, and

fosters the development of the state's business climate. CareerSource Florida, Inc., shall, consistent with its agreement with the department, implement the policy directives of the state board and administer state workforce development programs as authorized by law.

(3)

(d) The state board must include the Secretary of Economic Opportunity or his or her designee, the vice chairperson of the board of directors of Enterprise Florida, Inc., and one member representing each of the Workforce Innovation and Opportunity Act partners, including the Division of Career and Adult Education, and other entities representing programs identified in the Workforce Innovation and Opportunity Act, as determined necessary.

Section 16. Subsection (14) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(14)(a) Except as provided in paragraph (b), a building permit for a single-family residential dwelling must be issued within 30 working days after receipt of the application ~~therefor~~ unless unusual circumstances require a longer time for processing the application or unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

(b) A building permit for a single-family residential dwelling applied for by a contractor licensed in this state on behalf of a property owner who participates in a Community Development Block Grant-Disaster Recovery program administered by the Department of Economic Opportunity must be issued within

15 working days after receipt of the application unless the permit application fails to satisfy the Florida Building Code or the enforcing agency's laws or ordinances.

Section 17. Paragraph (b) of subsection (2) of section 14.20195, Florida Statutes, is amended to read:

14.20195 Suicide Prevention Coordinating Council; creation; membership; duties.—There is created within the Statewide Office for Suicide Prevention a Suicide Prevention Coordinating Council. The council shall develop strategies for preventing suicide.

(2) MEMBERSHIP.—The Suicide Prevention Coordinating Council shall consist of 31 voting members and 1 nonvoting member.

(b) The following state officials or their designees shall serve on the coordinating council:

1. The Secretary of Elderly Affairs.

2. The State Surgeon General.

3. The Commissioner of Education.

4. The Secretary of Health Care Administration.

5. The Secretary of Juvenile Justice.

6. The Secretary of Corrections.

7. The executive director of the Department of Law Enforcement.

8. The executive director of the Department of Veterans' Affairs.

9. The Secretary of Children and Families.

10. The Secretary ~~executive director of the Department~~ of Economic Opportunity.

Section 18. Paragraph (j) of subsection (1) of section 16.615, Florida Statutes, is amended to read:

16.615 Council on the Social Status of Black Men and Boys.—

(1) The Council on the Social Status of Black Men and Boys is established within the Department of Legal Affairs and shall consist of 19 members appointed as follows:

(j) The Secretary ~~executive director of the Department~~ of Economic Opportunity or his or her designee.

Section 19. Subsection (3) and paragraph (b) of subsection (7) of section 20.04, Florida Statutes, are amended to read:

20.04 Structure of executive branch.—The executive branch of state government is structured as follows:

(3) For their internal structure, all departments, except for the Department of Financial Services, the Department of Economic Opportunity, the Department of Children and Families, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation, must adhere to the following standard terms:

(a) The principal unit of the department is the "division." Each division is headed by a "director."

(b) The principal unit of the division is the "bureau." Each bureau is headed by a "chief."

(c) The principal unit of the bureau is the "section." Each section is headed by an "administrator."

(d) If further subdivision is necessary, sections may be divided into "subsections," which are headed by "supervisors."

(7)

(b) Within the limitations of this subsection, the head of the department may recommend the establishment of additional divisions, bureaus, sections, and subsections of the department to promote efficient and effective operation of the department.

However, additional divisions, or offices in the Department of Children and Families, the Department of Corrections, the Department of Economic Opportunity, and the Department of Transportation, may be established only by specific statutory enactment. New bureaus, sections, and subsections of departments may be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor, or may be established by specific statutory enactment.

Section 20. Paragraph (a) of subsection (7) of section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.—

(7)(a) Any information received by the Department of Revenue in connection with the administration of taxes, including, but not limited to, information contained in returns, reports, accounts, or declarations filed by persons subject to tax, shall be made available to the following in performance of their official duties:

1. The Auditor General or his or her authorized agent;

2. The director of the Office of Program Policy Analysis and Government Accountability or his or her authorized agent;

3. The Chief Financial Officer or his or her authorized agent;

4. The Director of the Office of Insurance Regulation of the Financial Services Commission or his or her authorized agent;

5. A property appraiser or tax collector or their authorized agents pursuant to s. 195.084(1);

6. Designated employees of the Department of Education

solely for determination of each school district's price level index pursuant to s. 1011.62(2);

7. The Secretary ~~executive director of the Department~~ of Economic Opportunity or his or her authorized agent;

8. The taxpayers' rights advocate or his or her authorized agent pursuant to s. 20.21(3); and

9. The coordinator of the Office of Economic and Demographic Research or his or her authorized agent.

Section 21. Paragraph (b) of subsection (5) of section 220.194, Florida Statutes, is amended to read:

220.194 Corporate income tax credits for spaceflight projects.—

(5) APPLICATION AND CERTIFICATION.—

(b) In order to take a tax credit under subparagraph (a)1. or, if applicable, to transfer an approved credit under subparagraph (a)2., a spaceflight business must submit an application for certification to the Department of Economic Opportunity along with a nonrefundable $250 fee.

1. The application must include:

a. The name and physical in-state address of the taxpayer.

b. Documentation demonstrating to the satisfaction of the Department of Economic Opportunity that:

(I) The taxpayer is a spaceflight business.

(II) The business has engaged in a qualifying spaceflight project before taking or transferring a credit under this section.

c. In addition to any requirement specific to a credit, documentation that the business has:

(I) Created 35 new jobs in this state directly associated

with spaceflight projects during its immediately preceding 3 taxable years. The business shall be deemed to have created new jobs if the number of full-time jobs located in this state at the time of application for certification is greater than the total number of full-time jobs located in this state at the time of application for approval to earn credits; and

(II) Invested a total of at least $15 million in this state on a spaceflight project during its immediately preceding 3 taxable years.

d. The total amount and types of credits sought.

e. An acknowledgment that a transfer of a tax credit is to be accomplished pursuant to subsection (5).

f. A copy of an audit or audits of the preceding 3 taxable years, prepared by a certified public accountant licensed to practice in this state, which identifies that portion of the business's activities in this state related to spaceflight projects in this state.

g. An acknowledgment that the business must file an annual report on the spaceflight project's progress with the Department of Economic Opportunity.

h. Any other information necessary to demonstrate that the applicant meets the job creation, investment, and other requirements of this section.

2. Within 60 days after receipt of the application for certification, the Department of Economic Opportunity shall evaluate the application and recommend the business for certification or denial. The Secretary ~~executive director of the Department~~ of Economic Opportunity must approve or deny the application within 30 days after receiving the recommendation.

If approved, the Department of Economic Opportunity must provide a letter of certification to the applicant consistent with any restrictions imposed. If the Department of Economic Opportunity denies any part of the requested credit, the Department of Economic Opportunity must inform the applicant of the grounds for the denial. A copy of the certification shall be submitted to the department within 10 days after the secretary's ~~executive director's~~ approval.

Section 22. Subsection (3) of section 288.005, Florida Statutes, is amended to read:

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

~~(3) "Executive director" means the executive director of the Department of Economic Opportunity, unless otherwise stated.~~

Section 23. Subsections (1) and (3), paragraph (a) of subsection (5), and subsection (6) of section 288.061, Florida Statutes, are amended to read:

288.061 Economic development incentive application process.—

(1) Upon receiving a submitted economic development incentive application, the Division of Strategic Business Development of the Department of Economic Opportunity and designated staff of Enterprise Florida, Inc., shall review the application to ensure that the application is complete, whether and what type of state and local permits may be necessary for the applicant's project, whether it is possible to waive such permits, and what state incentives and amounts of such incentives may be available to the applicant. The department shall recommend to the Secretary of Economic Opportunity ~~executive director~~ to approve or disapprove an applicant

business. If review of the application demonstrates that the application is incomplete, the secretary ~~executive director~~ shall notify the applicant business within the first 5 business days after receiving the application.

(3) Within 10 business days after the department receives the submitted economic development incentive application, the Secretary of Economic Opportunity ~~executive director~~ shall approve or disapprove the application and issue a letter of certification to the applicant which includes a justification of that decision, unless the business requests an extension of that time.

(a) The contract or agreement with the applicant must specify the total amount of the award, the performance conditions that must be met to obtain the award, the schedule for payment, and sanctions that would apply for failure to meet performance conditions. The department may enter into one agreement or contract covering all of the state incentives that are being provided to the applicant. The contract must provide that release of funds is contingent upon sufficient appropriation of funds by the Legislature.

(b) The release of funds for the incentive or incentives awarded to the applicant depends upon the statutory requirements of the particular incentive program.

(5)(a) The Secretary of Economic Opportunity ~~executive director~~ may not approve an economic development incentive application unless the application includes a signed written declaration by the applicant which states that the applicant has read the information in the application and that the information is true, correct, and complete to the best of the applicant's

knowledge and belief.

(6) Beginning July 1, 2020, the Secretary of Economic Opportunity ~~executive director~~ may not approve an economic development incentive application unless the application includes proof to the department that the applicant business is registered with and uses the E-Verify system, as defined in s. 448.095, to verify the work authorization status of all newly hired employees. If the department determines that an awardee is not complying with this subsection, the department must notify the awardee by certified mail of the department's determination of noncompliance and the awardee's right to appeal the determination. Upon a final determination of noncompliance, the awardee must repay all moneys received as an economic development incentive to the department within 30 days after the final determination.

Section 24. Paragraph (a) of subsection (6) of section 288.0656, Florida Statutes, is amended to read:

288.0656 Rural Economic Development Initiative.—

(6)(a) By August 1 of each year, the head of each of the following agencies and organizations shall designate a deputy secretary or higher-level staff person from within the agency or organization to serve as the REDI representative for the agency or organization:

1. The Department of Transportation.
2. The Department of Environmental Protection.
3. The Department of Agriculture and Consumer Services.
4. The Department of State.
5. The Department of Health.
6. The Department of Children and Families.

7. The Department of Corrections.
8. The Department of Education.
9. The Department of Juvenile Justice.
10. The Fish and Wildlife Conservation Commission.
11. Each water management district.
12. Enterprise Florida, Inc.
13. CareerSource Florida, Inc.
14. VISIT Florida.
15. The Florida Regional Planning Council Association.
16. The Agency for Health Care Administration.
17. The Institute of Food and Agricultural Sciences (IFAS).

An alternate for each designee shall also be chosen, and the names of the designees and alternates shall be sent to the Secretary of Economic Opportunity ~~executive director of the department~~.

Section 25. Paragraph (c) of subsection (5) and subsection (8) of section 288.106, Florida Statutes, are amended to read:

288.106 Tax refund program for qualified target industry businesses.—

(5) TAX REFUND AGREEMENT.—

(c) The agreement must be signed by the Secretary of Economic Opportunity ~~executive director~~ and by an authorized officer of the qualified target industry business within 120 days after the issuance of the letter of certification under subsection (4), but not before passage and receipt of the resolution of local financial support. The department may grant an extension of this period at the written request of the qualified target industry business.

(8) SPECIAL INCENTIVES.—If the department determines it is in the best interest of the public for reasons of facilitating economic development, growth, or new employment opportunities within a Disproportionally Affected County, the department may, between July 1, 2011, and June 30, 2014, waive any or all wage or local financial support eligibility requirements and allow a qualified target industry business from another state which relocates all or a portion of its business to a Disproportionally Affected County to receive a tax refund payment of up to $6,000 multiplied by the number of jobs specified in the tax refund agreement under subparagraph (5)(a)1. over the term of the agreement. Before ~~Prior to~~ granting such waiver, the Secretary of Economic Opportunity ~~executive director of the department~~ shall file with the Governor a written statement of the conditions and circumstances constituting the reason for the waiver. Such business shall be eligible for the additional tax refund payments specified in subparagraph (3)(b)4. if it meets the criteria. As used in this section, the term "Disproportionally Affected County" means Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, Walton County, or Wakulla County.

Section 26. Subsection (5) of section 288.1089, Florida Statutes, is amended to read:

288.1089 Innovation Incentive Program.—

(5) The department shall review proposals pursuant to s. 288.061 for all three categories of innovation incentive awards. Before making a recommendation to the Secretary of Economic Opportunity ~~executive director~~, the department shall solicit comments and recommendations from the Department of Agriculture

and Consumer Services. For each project, the evaluation and recommendation to the department must include, but need not be limited to:

(a) A description of the project, its required facilities, and the associated product, service, or research and development associated with the project.

(b) The percentage of match provided for the project.

(c) The number of full-time equivalent jobs that will be created by the project, the total estimated average annual wages of such jobs, and the types of business activities and jobs likely to be stimulated by the project.

(d) The cumulative investment to be dedicated to the project within 5 years and the total investment expected in the project if more than 5 years.

(e) The projected economic and fiscal impacts on the local and state economies relative to investment.

(f) A statement of any special impacts the project is expected to stimulate in a particular business sector in the state or regional economy or in the state's universities and community colleges.

(g) A statement of any anticipated or proposed relationships with state universities.

(h) A statement of the role the incentive is expected to play in the decision of the applicant to locate or expand in this state.

(i) A recommendation and explanation of the amount of the award needed to cause the applicant to expand or locate in this state.

(j) A discussion of the efforts and commitments made by the

local community in which the project is to be located to induce the applicant's location or expansion, taking into consideration local resources and abilities.

(k) A recommendation for specific performance criteria the applicant would be expected to achieve in order to receive payments from the fund and penalties or sanctions for failure to meet or maintain performance conditions.

(l) Additional evaluative criteria for a research and development facility project, including:

1. A description of the extent to which the project has the potential to serve as catalyst for an emerging or evolving cluster.

2. A description of the extent to which the project has or could have a long-term collaborative research and development relationship with one or more universities or community colleges in this state.

3. A description of the existing or projected impact of the project on established clusters or targeted industry sectors.

4. A description of the project's contribution to the diversity and resiliency of the innovation economy of this state.

5. A description of the project's impact on special needs communities, including, but not limited to, rural areas, distressed urban areas, and enterprise zones.

(m) Additional evaluative criteria for alternative and renewable energy proposals, including:

1. The availability of matching funds or other in-kind contributions applied to the total project from an applicant. The Department of Agriculture and Consumer Services shall give

greater preference to projects that provide such matching funds or other in-kind contributions.

2. The degree to which the project stimulates in-state capital investment and economic development in metropolitan and rural areas, including the creation of jobs and the future development of a commercial market for renewable energy technologies.

3. The extent to which the proposed project has been demonstrated to be technically feasible based on pilot project demonstrations, laboratory testing, scientific modeling, or engineering or chemical theory that supports the proposal.

4. The degree to which the project incorporates an innovative new technology or an innovative application of an existing technology.

5. The degree to which a project generates thermal, mechanical, or electrical energy by means of a renewable energy resource that has substantial long-term production potential.

6. The degree to which a project demonstrates efficient use of energy and material resources.

7. The degree to which the project fosters overall understanding and appreciation of renewable energy technologies.

8. The ability to administer a complete project.

9. Project duration and timeline for expenditures.

10. The geographic area in which the project is to be conducted in relation to other projects.

11. The degree of public visibility and interaction.

Section 27. Paragraph (b) of subsection (1) of section 288.1251, Florida Statutes, is amended to read:

288.1251 Promotion and development of entertainment

industry; Office of Film and Entertainment; creation; purpose; powers and duties.—

(1) CREATION.—

(b) The department shall conduct a national search for a qualified person to fill the position of Commissioner of Film and Entertainment when the position is vacant. The Secretary of Economic Opportunity ~~executive director of the department~~ has the responsibility to hire the film commissioner. Qualifications for the film commissioner include, but are not limited to, the following:

1. A working knowledge of the equipment, personnel, financial, and day-to-day production operations of the industries to be served by the Office of Film and Entertainment;

2. Marketing and promotion experience related to the film and entertainment industries to be served;

3. Experience working with a variety of individuals representing large and small entertainment-related businesses, industry associations, local community entertainment industry liaisons, and labor organizations; and

4. Experience working with a variety of state and local governmental agencies.

Section 28. Subsection (8) of section 288.8014, Florida Statutes, is amended to read:

288.8014 Triumph Gulf Coast, Inc.; organization; board of directors.—

(8) The Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, the secretary of the Department of Environmental Protection, or his or her designee, and the chair of the Committee of 8 Disproportionally

Affected Counties, or his or her designee, shall be available to consult with the board of directors and may be requested to attend meetings of the board of directors. These individuals shall not be permitted to vote on any matter before the board.

Section 29. Paragraph (a) of subsection (4) of section 288.955, Florida Statutes, is amended to read:

288.955 Scripps Florida Funding Corporation.—

(4) BOARD; MEMBERSHIP.—The corporation shall be governed by a board of directors.

(a) The board of directors shall consist of nine voting members, of whom the Governor shall appoint three, the President of the Senate shall appoint three, and the Speaker of the House of Representatives shall appoint three. The Secretary of Economic Opportunity ~~executive director of the department~~ or the secretary's ~~director's~~ designee shall serve as an ex-officio, nonvoting member of the board of directors.

Section 30. Subsection (2) of section 288.9604, Florida Statutes, is amended to read:

288.9604 Creation of the corporation.—

(2) The board of directors of the corporation shall consist of seven directors. The Secretary of Economic Opportunity ~~executive director of the department~~, or his or her designee, shall serve as chair of the board of directors of the corporation. The director of the Division of Bond Finance of the State Board of Administration, or his or her designee, shall serve as a director on the board of directors of the corporation. The Governor, subject to confirmation by the Senate, shall appoint the remaining five directors of the board of directors of the corporation. The terms of office for the

appointed directors are for 4 years after the date of their appointment. A vacancy occurring during a term of an appointed director shall be filled for the unexpired term. An appointed director is eligible for reappointment. At least three of the appointed directors of the corporation must have experience in finance, and one of the directors must have experience in economic development.

Section 31. Subsection (5) of section 288.987, Florida Statutes, is amended to read:

288.987 Florida Defense Support Task Force.—

(5) The Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, shall serve as the ex officio, nonvoting executive director of the task force.

Section 32. Paragraph (a) of subsection (6) of section 290.0065, Florida Statutes, is amended to read:

290.0065 State designation of enterprise zones.—

(6)(a) The department may develop guidelines necessary for the approval of areas under this section by the Secretary of Economic Opportunity ~~executive director~~.

Section 33. Subsection (1) of section 311.09, Florida Statutes, is amended to read:

311.09 Florida Seaport Transportation and Economic Development Council.—

(1) The Florida Seaport Transportation and Economic Development Council is created within the Department of Transportation. The council consists of the following 17 members: the port director, or the port director's designee, of each of the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee,

St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina; the secretary of the Department of Transportation or his or her designee; and the secretary ~~director~~ of the Department of Economic Opportunity or his or her designee.

Section 34. Paragraph (b) of subsection (1) of section 311.105, Florida Statutes, is amended to read:

311.105 Florida Seaport Environmental Management Committee; permitting; mitigation.—

(1)

(b) The committee shall consist of the following members: the Secretary of Environmental Protection, or his or her designee, as an ex officio, nonvoting member; a designee from the United States Army Corps of Engineers, as an ex officio, nonvoting member; a designee from the Florida Inland Navigation District, as an ex officio, nonvoting member; the Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, as an ex officio, nonvoting member; and five or more port directors, as voting members, appointed to the committee by the council chair, who shall also designate one such member as committee chair.

Section 35. Subsection (3) of section 334.065, Florida Statutes, is amended to read:

334.065 Center for Urban Transportation Research.—

(3) An advisory board shall be created to periodically and objectively review and advise the center concerning its research program. Except for projects mandated by law, state-funded base projects shall not be undertaken without approval of the advisory board. The membership of the board shall consist of

nine experts in transportation-related areas, including the secretaries of the Department ~~Florida Departments~~ of Transportation, the Department of ~~and~~ Environmental Protection, and ~~the executive director of~~ the Department of Economic Opportunity, or their designees, and a member of the Florida Transportation Commission. The nomination of the remaining members of the board shall be made to the President of the University of South Florida by the College of Engineering at the University of South Florida, and the appointment of these members must be reviewed and approved by the Florida Transportation Commission and confirmed by the Board of Governors.

Section 36. Subsection (5) of section 373.4149, Florida Statutes, is amended to read:

373.4149 Miami-Dade County Lake Belt Plan.—

(5) The secretary of the Department of Environmental Protection, the secretary ~~executive director~~ of the Department of Economic Opportunity, the secretary of the Department of Transportation, the Commissioner of Agriculture, the executive director of the Fish and Wildlife Conservation Commission, and the executive director of the South Florida Water Management District may enter into agreements with landowners, developers, businesses, industries, individuals, and governmental agencies as necessary to effectuate the Miami-Dade County Lake Belt Plan and the provisions of this section.

Section 37. Subsection (2) of section 380.045, Florida Statutes, is amended to read:

380.045 Resource planning and management committees; objectives; procedures.—

(2) The committee must ~~shall~~ include, but is ~~shall~~ not ~~be~~ limited to, representation from each of the following: elected officials from the local governments within the area under study; the planning office of each of the local governments within the area under study; the state land planning agency; any other state agency under chapter 20 a representative of which the Governor feels is relevant to the compilation of the committee; and a water management district, if appropriate, and regional planning council all or part of whose jurisdiction lies within the area under study. After the appointment of the members, the Governor shall select a chair and vice chair. A staff member of the state land planning agency shall be appointed by the secretary ~~director~~ of such agency to serve as the secretary of the committee. The state land planning agency shall, to the greatest extent possible, provide technical assistance and administrative support to the committee. Meetings will be called as needed by the chair or on the demand of three or more members of the committee. The committee will act on a simple majority of a quorum present and shall make a report within 6 months to the head of the state land planning agency. The committee must ~~shall~~, from the time of appointment, remain in existence for no less than 6 months.

Section 38. Subsection (5) of section 403.0752, Florida Statutes, is amended to read:

403.0752 Ecosystem management agreements.—

(5) The Secretary ~~Executive Director of the Department~~ of Economic Opportunity, the Secretary of Transportation, the Commissioner of Agriculture, the Executive Director of the Fish and Wildlife Conservation Commission, and the executive

directors of the water management districts are authorized to participate in the development of ecosystem management agreements with regulated entities and other governmental agencies as necessary to effectuate the provisions of this section. Local governments are encouraged to participate in ecosystem management agreements.

Section 39. Subsection (1) of section 420.0005, Florida Statutes, is amended to read:

420.0005 State Housing Trust Fund; State Housing Fund.—

(1) There is established in the State Treasury a separate trust fund to be named the "State Housing Trust Fund." There shall be deposited in the fund all moneys appropriated by the Legislature, or moneys received from any other source, for the purpose of this chapter, and all proceeds derived from the use of such moneys. The fund shall be administered by the Florida Housing Finance Corporation on behalf of the department, as specified in this chapter. Money deposited to the fund and appropriated by the Legislature must, notwithstanding the provisions of chapter 216 or s. 420.504(3), be transferred quarterly in advance, to the extent available, or, if not so available, as soon as received into the State Housing Trust Fund, and subject to the provisions of s. 420.5092(6)(a) and (b) by the Chief Financial Officer to the corporation upon certification by the Secretary ~~executive director of the Department~~ of Economic Opportunity that the corporation is in compliance with the requirements of s. 420.0006. The certification made by the secretary ~~executive director~~ shall also include the split of funds among programs administered by the corporation and the department as specified in chapter 92-

317, Laws of Florida, as amended. Moneys advanced by the Chief Financial Officer must be deposited by the corporation into a separate fund established with a qualified public depository meeting the requirements of chapter 280 to be named the "State Housing Fund" and used for the purposes of this chapter. Administrative and personnel costs incurred in implementing this chapter may be paid from the State Housing Fund, but such costs may not exceed 5 percent of the moneys deposited into such fund. To the State Housing Fund shall be credited all loan repayments, penalties, and other fees and charges accruing to such fund under this chapter. It is the intent of this chapter that all loan repayments, penalties, and other fees and charges collected be credited in full to the program account from which the loan originated. Moneys in the State Housing Fund which are not currently needed for the purposes of this chapter shall be invested in such manner as is provided for by statute. The interest received on any such investment shall be credited to the State Housing Fund.

Section 40. Section 420.0006, Florida Statutes, is amended to read:

420.0006 Authority to contract with corporation; contract requirements; nonperformance.—The Secretary ~~executive director~~ of Economic Opportunity ~~the department~~ shall contract, notwithstanding part I of chapter 287, with the Florida Housing Finance Corporation on a multiyear basis to stimulate, provide, and foster affordable housing in the state. The contract must incorporate the performance measures required by s. 420.511 and be consistent with the corporation's strategic business plan prepared in accordance with s. 420.511. The contract must

provide that if the corporation fails to comply with a performance measure required by s. 420.511, the secretary ~~executive director~~ shall notify the Governor and refer the nonperformance to the department's inspector general for review and determination as to whether such failure is due to forces beyond the corporation's control or whether such failure is due to inadequate management of the corporation's resources. Advances shall continue to be made pursuant to s. 420.0005 during the pendency of the review. If such failure is due to outside forces, it may not be deemed a violation of the contract. If such failure is due to inadequate management, the department's inspector general shall provide recommendations regarding solutions. The Governor may resolve differences of opinion with respect to performance under the contract and may request that advances continue in the event of a failure under the contract due to inadequate management. The Chief Financial Officer shall approve the request absent a finding by the Chief Financial Officer that continuing such advances would adversely impact the state; however, the Chief Financial Officer shall provide advances sufficient to meet the debt service requirements of the corporation and sufficient to fund contracts committing funds from the State Housing Trust Fund if such contracts are in accordance with the laws of this state.

Section 41. Paragraph (d) of subsection (1) of section 420.101, Florida Statutes, is amended to read:

420.101 Housing Development Corporation of Florida; creation, membership, and purposes.—

(1) Twenty-five or more persons, a majority of whom shall be residents of this state, who may desire to create a housing

development corporation under the provisions of this part for the purpose of promoting and developing housing and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated by filing in the Department of State, as hereinafter provided, articles of incorporation. The articles of incorporation shall contain:

(d) The names and post office addresses of the members of the first board of directors. The first board of directors shall be elected by and from the stockholders of the corporation and shall consist of 21 members. However, five of such members shall consist of the following persons, who shall be nonvoting members: the Secretary ~~executive director of the Department~~ of Economic Opportunity or her or his designee; the head of the Department of Financial Services or her or his designee with expertise in banking matters; a designee of the head of the Department of Financial Services with expertise in insurance matters; one state senator appointed by the President of the Senate; and one representative appointed by the Speaker of the House of Representatives.

Section 42. Subsection (8) of section 420.503, Florida Statutes, is amended to read:

420.503 Definitions.—As used in this part, the term:

(8) "Contract" means the contract between the Secretary ~~executive director~~ of Economic Opportunity ~~the department~~ and the corporation for provision of housing services referenced in s. 420.0006.

Section 43. Subsections (1) and (3) of section 420.504, Florida Statutes, are amended to read:

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

420.504 Public corporation; creation, membership, terms, expenses.—

(1) A public corporation and a public body corporate and politic, to be known as the "Florida Housing Finance Corporation," is created within the Department of Economic Opportunity. It is declared to be the intent of and constitutional construction by the Legislature that the Florida Housing Finance Corporation constitutes an entrepreneurial public corporation organized to provide and promote the public welfare by administering the governmental function of financing or refinancing housing and related facilities in this state and that the corporation is not a department of the executive branch of state government within the scope and meaning of s. 6, Art. IV of the State Constitution, but is functionally related to the Department of Economic Opportunity in which it is placed. The executive function of state government to be performed by the Secretary ~~executive director of the Department~~ of Economic Opportunity in the conduct of the business of the Florida Housing Finance Corporation must be performed pursuant to a contract to monitor and set performance standards for the implementation of the business plan for the provision of housing approved for the corporation as provided in s. 420.0006. This contract must include performance standards for the provision of affordable housing in this state established in the strategic business plan described in s. 420.511.

(3) The corporation is a separate budget entity and is not subject to control, supervision, or direction by the Department of Economic Opportunity in any manner, including, but not limited to, personnel, purchasing, transactions involving real

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or personal property, and budgetary matters. The corporation shall consist of a board of directors composed of the Secretary ~~executive director of the Department~~ of Economic Opportunity as an ex officio and voting member, or a senior-level agency employee designated by the secretary ~~director~~, and eight members appointed by the Governor subject to confirmation by the Senate from the following:

(a) One citizen actively engaged in the residential home building industry.

(b) One citizen actively engaged in the banking or mortgage banking industry.

(c) One citizen who is a representative of those areas of labor engaged in home building.

(d) One citizen with experience in housing development who is an advocate for low-income persons.

(e) One citizen actively engaged in the commercial building industry.

(f) One citizen who is a former local government elected official.

(g) Two citizens of the state who are not principally employed as members or representatives of any of the groups specified in paragraphs (a)-(f).

Section 44. Subsection (1) of section 420.506, Florida Statutes, is amended to read:

420.506 Executive director; agents and employees; inspector general.—

(1) The appointment and removal of an executive director shall be by the Secretary ~~executive director of the Department~~ of Economic Opportunity, with the advice and consent of the

corporation's board of directors. The executive director shall employ legal and technical experts and such other agents and employees, permanent and temporary, as the corporation may require, and shall communicate with and provide information to the Legislature with respect to the corporation's activities. Notwithstanding s. 216.262, the board may develop and implement rules regarding the employment of employees of the corporation and service providers, including legal counsel. The board is entitled to establish travel procedures and guidelines for employees of the corporation, subject to s. 112.061(6) and (7). The executive director's office and the corporation's files and records must be located in Leon County.

Section 45. Subsection (30) of section 420.507, Florida Statutes, is amended to read:

420.507 Powers of the corporation.—The corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:

(30) To prepare and submit to the Secretary ~~executive director~~ of Economic Opportunity ~~the department~~ a budget request for purposes of the corporation, which request shall, notwithstanding the provisions of chapter 216 and in accordance with s. 216.351, contain a request for operational expenditures and separate requests for other authorized corporation programs. The request need not contain information on the number of employees, salaries, or any classification thereof, and the approved operating budget therefor need not comply with s. 216.181(8)-(10). The secretary ~~executive director~~ may include

within the department's budget request the corporation's budget request in the form as authorized by this section.

Section 46. Subsection (2) of section 420.511, Florida Statutes, is amended to read:

420.511 Strategic business plan; long-range program plan; annual report; audited financial statements.—

(2) The corporation, in coordination with the department, shall annually develop a long-range program plan for the provision of affordable housing in this state as required pursuant to chapter 186. In part, the plan must include provisions that maximize the abilities of the corporation to implement the state housing strategy established under s. 420.0003, to respond to federal housing initiatives, and to develop programs in a manner that is more responsive to the needs of public and private partners. The plan shall be developed on a schedule consistent with that established by s. 186.021. For purposes of this section, the Secretary of Economic Opportunity ~~executive director~~ or his or her designee shall serve as the corporation's representative to achieve a coordinated and integrated planning relationship with the department.

Section 47. Subsection (7) of section 420.602, Florida Statutes, is amended to read:

420.602 Definitions.—As used in this part, the following terms shall have the following meanings, unless the context otherwise requires:

~~(7) "Director" means the executive director of the Department of Economic Opportunity.~~

Section 48. Subsection (5) of section 420.609, Florida

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Statutes, is amended to read:

420.609 Affordable Housing Study Commission.—Because the Legislature firmly supports affordable housing in Florida for all economic classes:

(5) The commission shall review, evaluate, and make recommendations regarding existing and proposed housing programs and initiatives. The commission shall provide these and any other housing recommendations to the Secretary ~~director~~ of Economic Opportunity ~~the department~~ and the executive director of the corporation.

Section 49. Subsection (2) of section 420.622, Florida Statutes, is amended to read:

420.622 State Office on Homelessness; Council on Homelessness.—

(2) The Council on Homelessness is created to consist of 19 representatives of public and private agencies who shall develop policy and advise the State Office on Homelessness. The council members shall be: the Secretary of Children and Families, or his or her designee; the Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, who shall advise the council on issues related to rural development; the State Surgeon General, or his or her designee; the Executive Director of Veterans' Affairs, or his or her designee; the Secretary of Corrections, or his or her designee; the Secretary of Health Care Administration, or his or her designee; the Commissioner of Education, or his or her designee; the Executive Director of CareerSource Florida, Inc., or his or her designee; one representative of the Florida Association of Counties; one representative of the Florida League of Cities; one

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representative of the Florida Supportive Housing Coalition; one representative of the Florida Housing Coalition; the Executive Director of the Florida Housing Finance Corporation, or his or her designee; one representative of the Florida Coalition for the Homeless; the secretary of the Department of Elder Affairs, or his or her designee; and four members appointed by the Governor. The council members shall be nonpaid volunteers and shall be reimbursed only for travel expenses. The appointed members of the council shall be appointed to staggered 2-year terms and are encouraged to have experience in the administration or provision of resources, services, or housing that addresses the needs of persons experiencing homelessness. The council shall meet at least four times per year. The importance of minority, gender, and geographic representation shall be considered in appointing members to the council.

Section 50. Paragraph (g) of subsection (1) of section 427.012, Florida Statutes, is amended to read:

427.012 The Commission for the Transportation Disadvantaged.—There is created the Commission for the Transportation Disadvantaged in the Department of Transportation.

(1) The commission shall consist of seven members, all of whom shall be appointed by the Governor, in accordance with the requirements of s. 20.052.

(g) The Secretary of Transportation, the Secretary of Children and Families, the Secretary ~~executive director of the Department~~ of Economic Opportunity, the executive director of the Department of Veterans' Affairs, the Secretary of Elderly Affairs, the Secretary of Health Care Administration, the

director of the Agency for Persons with Disabilities, and a county manager or administrator who is appointed by the Governor, or a senior management level representative of each, shall serve as ex officio, nonvoting advisors to the commission.

Section 51. Subsections (2), (3), and (4) of section 443.1116, Florida Statutes, are amended to read:

443.1116 Short-time compensation.—

(2) APPROVAL OF SHORT-TIME COMPENSATION PLANS.—An employer wishing to participate in the short-time compensation program must submit a signed, written, short-time plan to the Department of Economic Opportunity for approval. The Secretary of Economic Opportunity ~~director~~ or his or her designee shall approve the plan if:

(a) The plan applies to and identifies each specific affected unit;

(b) The individuals in the affected unit are identified by name and social security number;

(c) The normal weekly hours of work for individuals in the affected unit are reduced by at least 10 percent and by not more than 40 percent;

(d) The plan includes a certified statement by the employer that the aggregate reduction in work hours is in lieu of layoffs that would affect at least 10 percent of the employees in the affected unit and that would have resulted in an equivalent reduction in work hours;

(e) The plan applies to at least 10 percent of the employees in the affected unit;

(f) The plan is approved in writing by the collective bargaining agent for each collective bargaining agreement

covering any individual in the affected unit;

(g) The plan does not serve as a subsidy to seasonal employers during the off-season or as a subsidy to employers who traditionally use part-time employees;

(h) The plan certifies that, if the employer provides fringe benefits to any employee whose workweek is reduced under the program, the fringe benefits will continue to be provided to the employee participating in the short-time compensation program under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in the short-time compensation program. As used in this paragraph, the term "fringe benefits" includes, but is not limited to, health insurance, retirement benefits under defined benefit pension plans as defined in subsection 35 of s. 1002 of the Employee Retirement Income Security Act of 1974, 29 U.S.C., contributions under a defined contribution plan as defined in s. 414(i) of the Internal Revenue Code, paid vacation and holidays, and sick leave;

(i) The plan describes the manner in which the requirements of this subsection will be implemented, including a plan for giving notice, if feasible, to an employee whose workweek is to be reduced, together with an estimate of the number of layoffs that would have occurred absent the ability to participate in short-time compensation; and

(j) The terms of the employer's written plan and implementation are consistent with employer obligations under applicable federal laws and laws of this state.

(3) APPROVAL OR DISAPPROVAL OF THE PLAN.—The Secretary of

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Economic Opportunity ~~director~~ or his or her designee shall approve or disapprove a short-time compensation plan in writing within 15 days after its receipt. If the plan is denied, the secretary ~~director~~ or his or her designee shall notify the employer of the reasons for disapproval.

(4) BEGINNING AND TERMINATION OF SHORT-TIME COMPENSATION BENEFIT PERIOD.—A plan takes effect on the date of its approval by the Secretary of Economic Opportunity ~~director~~ or his or her designee and expires at the end of the 12th full calendar month after its effective date.

Section 52. Paragraph (d) of subsection (2) of section 446.53, Florida Statutes, is amended to read:

446.53 Concrete masonry education.—

(2)

(d) In addition to the 13 voting members described in paragraph (a), the Secretary ~~executive director of the Department~~ of Economic Opportunity, or his or her designee, shall serve ex officio as a nonvoting member of the board of directors of the council.

Section 53. Section 450.261, Florida Statutes, is amended to read:

450.261 Interstate Migrant Labor Commission; Florida membership.—In selecting the Florida membership of the Interstate Migrant Labor Commission, the Governor may designate the Secretary ~~executive director of the Department~~ of Economic Opportunity as his or her representative.

Section 54. Paragraph (d) of subsection (1), paragraph (a) of subsection (4), and paragraphs (b), (c), and (d) of subsection (5) of section 624.5105, Florida Statutes, are

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amended to read:

624.5105 Community contribution tax credit; authorization; limitations; eligibility and application requirements; administration; definitions; expiration.—

(1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.—

(d) Each proposal for the granting of such tax credit requires the prior approval of the Secretary of Economic Opportunity ~~director~~.

(4) ADMINISTRATION.—

(a)1. The Department of Economic Opportunity may adopt rules to administer this section, including rules for the approval or disapproval of proposals by insurers.

2. The decision of the Secretary of Economic Opportunity ~~director~~ shall be in writing, and, if approved, the proposal shall state the maximum credit allowable to the insurer. A copy of the decision shall be transmitted to the executive director of the Department of Revenue, who shall apply such credit to the tax liability of the insurer.

3. The Department of Economic Opportunity shall monitor all projects periodically, in a manner consistent with available resources to ensure that resources are utilized in accordance with this section; however, each project shall be reviewed no less frequently than once every 2 years.

4. The Department of Economic Opportunity shall, in consultation with the Florida Housing Finance Corporation and the statewide and regional housing and financial intermediaries, market the availability of the community contribution tax credit program to community-based organizations.

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

~~(b) "Director" means the director of the Department of Economic Opportunity.~~

(b) ~~(c)~~ "Local government" means any county or incorporated municipality in the state.

(c) ~~(d)~~ "Project" means an activity as defined in s. 220.03(1)(t).

Section 55. Paragraph (f) of subsection (2) of section 1004.015, Florida Statutes, is amended to read:

1004.015 Florida Talent Development Council.—

(2) Members of the council shall include:

(f) The Secretary ~~executive director of the Department~~ of Economic Opportunity.

Section 56. 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 1966
INTRODUCER:	Appropriations Committee; Regulated Industries Committee; and Senator Diaz and others
SUBJECT:	Department of Business and Professional Regulation
DATE:	April 19, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Davis	Sadberry	AP	**Fav/CS**
3.	Oxamendi	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1966 revises provisions relating to the licensing and regulation of cosmetics manufacturers, construction contractors, tobacco products, alcoholic beverages, pugilistic events, condominium associations, and public food and lodging establishments by the Department of Business and Professional Regulation (DBPR).

Relating to reporting requirements for tobacco product wholesalers, the bill:

- Requires tax and sales reports to be filed with the Division of Alcoholic Beverages and Tobacco through the agency's electronic system; and
- Revises the reporting requirements.

Relating to construction contracting, the bill allows registered contractors to apply for a statewide certified contractors' license without having to take the state licensure examination.

Relating to construction and electrical contractors, the bill repeals the $4 fee all certificate holders and registrants must pay 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.

Relating to cosmetic manufacturers, the bill:

- Creates an exemption from the cosmetic manufacturing permit requirements for a person who manufactures limited cosmetic products, such as soaps, and has annual gross sales of $25,000 or less;
- Authorizes a temporary permit for 90 calendar days to allow continued operation of a cosmetics establishment when there is a change of ownership, controlling interest, or location; and
- Authorizes the DBPR to issue remedial, nondisciplinary citations for violations that do not pose a substantial threat to the public health, safety, or welfare.

Relating to regulation of pugilistic events, the bill:
- Changes the name of the Florida State Boxing Commission to the Florida Athletic Commission (commission);
- Authorizes the commission to establish the weight of any gloves used in pugilistic matches by rule; and
- Deletes the requirement for all participants in pugilistic matches to wear gloves.

Relating to alcoholic beverage regulations, the bill:
- Requires applicants for an alcoholic beverage license to submit fingerprints to the DBPR electronically, provide proof of the applicant's right of occupancy for the entire premises they are seeking to license, and maintain a current electronic mailing address with the DBPR;
- Requires licensees to submit alcohol sales reports through the DBPR's electronic system;
- Requires notices related to a vendor's delinquent payment to a distributor be provided by the DBPR through electronic mail;
- Revises the compliance audit timeframes for special restaurant licensees; and
- Removes "grains of paradise" from the list of prohibited ingredients in liquor under the crime of "adulterating liquor."

Relating to condominium and cooperative associations, the bill:
- Requires a proposed annual budget to be provided to members of the association and adopted by its board of directors no later than 14 days before the beginning of the fiscal year;
- Provides the board's failure to timely adopt the annual budget a second time is a minor violation and the prior year's budget will continue in effect until a new budget is adopted.

Relating to condominium associations, the bill:
- Defines the circumstances when a person is delinquent in a payment due to an association;
- Deletes the requirement that the condominium ombudsman keep his or her principal office in Leon County; and
- Authorizes the DBPR to adopt rules for submitting complaints against condominium associations.

The bill has a negative fiscal impact on state revenues. According to the DBPR, state government revenues deposited in the Professional Regulation Trust Fund will be reduced by $162,266 in Fiscal Year 2021-2022 and $281,937 in Fiscal Year 2022-2023 resulting from the elimination of the $4 fee for construction licensure applications and renewals. As a result, revenues transferred to the General Revenue Fund as the general revenue service charge will be reduced by $35,536 over the next two fiscal years.

The bill takes effect July 1, 2021.

II. Present Situation:

For ease of reference, the Present Situation for each section of SB 1966 is addressed in the Effect of Proposed Changes portion of this bill analysis. Background information about the Department of Business and Professional Regulation (DBPR) is provided below.

Organization of the DBPR

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has the following 12 divisions:

- Administration.
- Alcoholic Beverages and Tobacco.
- Certified Public Accounting.
- Drugs, Devices, and Cosmetics.
- Florida Condominiums, Timeshares, and Mobile Homes.
- Hotels and Restaurants.
- Pari-mutuel Wagering.
- Professions.
- Real Estate.
- Regulation.
- Service Operations.
- Technology.

The Florida State Boxing Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.[1] The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.[2]

Powers and Duties of the DBPR

Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by the [DBPR] in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[3] The chapter also provides the procedural and administrative framework for those divisions and the professional boards within the DBPR.[4]

The DBPR's regulation of professions is to be undertaken "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."[5] Regulation is required when:

[1] Section 548.003(1), F.S.
[2] *See* parts I and III of ch. 450, F.S.
[3] Section 455.01(6), F.S.
[4] *See* s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of the DBPR. *See* s. 455.221(1), F.S.
[5] Section 455.201(2), F.S.

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.[6]

However, "neither the [DBPR] nor any board may create a regulation that has an unreasonable effect on job creation or job retention," or a regulation that unreasonably restricts the ability of those desiring to engage in a profession or occupation from finding employment.[7]

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.[8] The FCTMH has limited regulatory authority over the following entities and individuals:[9]

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (jurisdiction is limited to arbitration of election and recall disputes).

Division of Hotels and Restaurants

The Division of Hotels and Restaurants (DHR) licenses, inspects, and regulates public lodging and food service establishments in Florida. The DHR also licenses and regulates elevators, escalators, and other vertical conveyance devices.[10]

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco regulates the manufacturing, distribution, sale, and service of alcoholic beverages and tobacco products in Florida, including:

- Receipt and processing of license applications;
- Collection and auditing of taxes, surcharges, and fees paid by licensees; and
- Enforcement of the laws and regulations governing the sale of alcoholic beverages and tobacco products.[11]

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[6] *Id.*
[7] Section 455.201(4)(b), F.S.
[8] Department of Business and Professional Regulation (DBPR), *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/ (last visited Apr. 8, 2021).
[9] *Id.*
[10] DBPR, *Division of Hotels and Restaurants*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/ (last visited Apr. 8, 2021).
[11] DBPR, *Division of Alcoholic Beverages and Tobacco*, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/ (last visited Apr. 8, 2021).

III. Effect of Proposed Changes:

Tobacco Products Regulation and Taxation

Present Situation

The Division of Alcoholic Beverages and Tobacco (DABT) is responsible for the regulation of tobacco products under ch. 210, F.S., which sets out tax requirements for cigarettes and other tobacco products, and ch. 569, F.S., which sets out requirements for the retail sale of tobacco products.[12]

"Cigarettes" are defined in s. 210.01(1), F.S., for the purpose of taxation, as:

> …any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

"Tobacco products" are defined in s. 210.25(12), F.S., in the context of state taxes on tobacco products other than cigarettes or cigars, as:

> …loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing.

Cigars, nicotine products, and nicotine dispensing devices are not included in the above definitions and therefore are not taxed as a cigarette or tobacco product in Florida.[13]

A person, firm, association, or corporation must obtain a permit from the DABT to function as any of the following in Florida:

- Retail tobacco products dealer.[14]
- Cigarette manufacturer.[15]
- Cigarette wholesale dealer.[16]
- Cigarette distributing agent.[17]
- Cigarette importer.[18]

[12] Section 561.02, F.S.
[13] Sections 210.01(1) and 210.25(12), F.S. "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product. "Nicotine products" do not include tobacco products, certain smoking cessation products, and products with incidental nicotine. Sections 877.112(1)(a) and (b), F.S.
[14] Section 569.003, F.S.
[15] Sections 210.01(21) and 210.15, F.S.
[16] Sections 210.01(6) and 210.15(1), F.S.
[17] Sections 210.01(14) and 210.15(1), F.S.
[18] Sections 210.01(20) and 210.15(1), F.S.

- Cigarette exporter.[19]
- Cigar wholesale dealer.[20]
- Tobacco wholesale dealer/distributor.[21]

The DABT collects monthly business records related to cigarettes, which are used to accurately collect and distribute cigarette taxes. Such records must be submitted to the DABT by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting, or possessing cigarettes for sale or distribution in Florida. The DABT prescribes the manner in which these records are submitted.[22]

The DABT also collects monthly returns showing the taxable price of each tobacco product (other than cigarettes or cigars) brought or caused to be brought into Florida for sale, or made, manufactured, or fabricated in this state for sale in this state. Such returns must be submitted by every place of business that sells or manufactures such tobacco products in Florida. The DABT prescribes the form and content for submitting such returns to the DABT. Each return must be accompanied by a remittance for the full tax liability shown.[23]

Effect of Proposed Changes

The bill amends ss. 210.09(2) and 210.55(1), F.S., related to monthly reports and records for cigarettes and other tobacco products, to require that all reports filed with the DABT must be made through the DABT's electronic data submission system. Under the bill, manufacturers, importers, distributing agents, wholesale dealers, agents, and retail dealers may keep records in an electronic or paper format.

The bill also amends s. 210.55(1), F.S., to require a tobacco wholesaler (the taxpayer) to submit a full and complete report with the DABT showing the tobacco products (other than cigars or cigarettes) brought or caused to be brought into Florida for sale, or made, manufactured, or fabricated in this state for sale in this state. The bill replaces the term "return" with the term "report." It requires the tax report to be submitted to the DABT electronically, and permits any records that are required to be kept to be in an electronic or paper format.

[19] Sections 210.01(17) and 210.15(1), F.S.
[20] The term "cigar wholesale dealer" is not defined or referenced in ch. 210, F.S. However, the DABT issues a permit for "cigar wholesale dealer." See DBPR, *Permits for Cigarettes and Other Tobacco Products*, page 20, *available at* www.myfloridalicense.com/dbpr/abt/documents/ABTLicenses.pdf (last visited Apr. 8, 2021).
[21] Sections 210.25(5) and 210.40, F.S.
[22] Section 210.09(2), F.S. Some tax forms are electronically filed with the DABT, and some require manual transmission. DBPR, *Alcoholic Beverages and Tobacco- Forms & Publications, Licensing Related Forms, Tax-Related Forms*, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/forms-and-publications/#1516309637983-6566a2a4-a2f1 (last visited Apr. 8, 2021).
[23] Section 210.55(1), F.S.

Construction Industry Licensing Board

Present Situation

Construction Contractor Divisions

The Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.[24] 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.[25]

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.[26]

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.[27]

Section 489.118, F.S., permits registered contractors to obtain statewide certification without taking the state licensure examination if they meet certain criteria. To qualify for this examination exception, a registered contractor must have applied to the DBPR before November 1, 2015. Because the "grandfathering" date of the November 1, 2015, has passed, registered contractors must sit for and satisfactorily pass the state certified license examination to receive a state certified contractor's license.

License Fees

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

[24] *See* s. 489.107, F.S.
[25] Section 489.105(3), F.S.
[26] Sections 489.105(8) and 489.113(1), F.S.
[27] Sections 489.105(10) and 489.117(1)(b), F.S.

renewal fee may not exceed $200. [28] The initial application fee and the renewal fee is $50 for an application to certify or register a business.[29]

Fees must be adequate to ensure the continued operation of the CILB, and must be based on the DBPR's estimates of revenue required to implement part I of ch. 489, F.S., and statutory provisions regulating the construction industry.[30]

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.[31] The Florida Building Commission's advice is not binding on the DBPR, but the DBPR must ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry.[32]

Electrical contractors licensed by the Electrical Contractors' Licensing Board (ECLB) are also required to 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.[33]

Each biennium, upon receipt of funds from the CILB and the ECLB collected under ss. 489.109(3) and 489.509(3), F.S., the DBPR must determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program.[34]

Effect of Proposed Changes

The bill amends ss. 489.109(3) and 489.509(3), F.S., to repeal the $4 fee all construction contracting and electrical contracting, respectively, certificate holders and registrants must pay 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.

The bill repeals s. 553.841(5), F.S., to delete the requirement that the CILB and ECLB each biennium determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program from the $4 fee collected under ss. 489.109(3) and 489.509(3), F.S.

The bill amends s. 489.118, F. S., to delete the November 1, 2015, application deadline for registered contractors to apply for a statewide certified contractors' license without having to take the state licensure examination.

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[28] 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.
[29] *Id*.
[30] *Id*.
[31] Section 489.109(3), F.S.
[32] *Id.*
[33] Section 489.509(3), F.S.
[34] Section 553.841, F.S.

Cosmetic Manufacturers

Present Situation

The Division of Drugs, Devices and Cosmetics within the DBPR administers the "Florida Drug and Cosmetic Act," in part I of ch. 499, F.S., which is intended to safeguard the health, safety, and welfare of the citizens of the state of Florida from injury due to the use of adulterated, contaminated, misbranded drugs, drug ingredients and cosmetics.

Section 499.01(2)(p), F.S., requires a person manufacturing or repackaging cosmetics in the state to obtain a cosmetic manufacturing permit. Current law provides an exemption from the permit requirement if a person only labels or changes the labeling of a cosmetic, but does not open the container sealed by the manufacturer of the product.

According to the DBPR, there are numerous home businesses without the cosmetic manufacturing permit who manufacture "pour soaps," creams, and lotions.[35] These cosmetic products are typically offered for sale at flea markets, online, and at open markets.

A cosmetic manufacturer's permit holder must comply with current good manufacturing practices that apply to all cosmetic manufacturers whether the cosmetic manufacturer is manufacturing a "pour soap," bath wash, eye liner, lip gloss, or liquid foundation. According to the DBPR, many initial applicants for a cosmetic manufacturing permit cannot meet the criteria for the permit and are currently manufacturing cosmetics as unlicensed cosmetic manufacturers.[36]

A cosmetics manufacturer permit is nontransferable, and is valid only for the person or governmental unit for which the permit is issued.[37] A permit is also only valid for the establishment, i.e., the physical location,[38] for which the permit is issued.[39] A cosmetics manufacturer must submit an application for a new permit when a change of ownership, change of controlling interest, or a change of location occurs. According to the DBPR, cosmetics manufacturers are often unable to present the documentation to establish the change of ownership or controlling interest when submitting the application for the new permit because the legal change of ownership, controlling interest, or location has not occurred.[40] Consequently, there may be a period between such change and an application during which the permit holder is not legally compliant. For example, when an establishment changes location a lapse may occur because the business rarely is able to shut down one location and move equipment to the new location simultaneously with the issuance of the new permit thus requiring the business to maintain two permitted locations to continue to operate.[41]

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[35] *See* Department of Business and Professional Regulation, CS/*SB 1966 Bill Analysis*, p. 4, (Apr. 1, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[36] *Id*.
[37] Section 499.012(6), F.S.
[38] *See* s. 499.003(18), F.S.
[39] Section 499.012(6), F.S.
[40] *See* DBPR, CS/*SB 1966 Bill Analysis*, p. 4, (Apr. 1, 2021) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[41] *Id*.

If a person violates any criminal provision in ch. 499, F.S., the DBPR may provide relevant information to the appropriate state attorney or prosecuting agency having jurisdiction. The DBPR may seek a cease and desist order in circuit court to permanently or temporarily enjoin any person violating any provision of ch. 499, F.S., or any rule adopted under that chapter. The DBPR may also impose an administrative fine not to exceed $5,000 per day, for a violation relating to ch. 499, F.S., or any rule adopted under that chapter.

The DBPR or the Florida Department of Health (DOH) may issue such citations as a remedial or nondisciplinary tool for resolution of violations for which there is no substantial threat to the public health, safety, or welfare, but for which the licensee or permit holder has been provided prior opportunity to correct.[42] Current law does not authorize the DBPR to issue a remedial, nondisciplinary citation for violations of ch. 499, F.S., or any rule adopted thereunder.

Effect of Proposed Changes

Permit Exemption

The bill amends s. 499.01(2)(p), F.S., to exempt from the requirement for a cosmetic manufacturing permit a person who manufacturers cosmetics with annual gross sales of $25,000 or less. Under the bill, an exempt cosmetics manufacturer may only:

- Sell prepackaged cosmetics affixed with a label containing information required by the United States Food and Drug Administration.
- Manufacture and sell cosmetics that are soaps, not otherwise exempt from the definition of cosmetics, lotions, moisturizers, and creams.
- Sell cosmetic products that are not adulterated or misbranded, in accordance with 21 U.S.C. ss. 361 and 362.

Each unit of cosmetic product must contain, in a contrasting color, a statement in the form provided by the bill, indicating that the product is "made by a manufacturer exempt from Florida's cosmetic manufacturing permit requirements."

The bill authorizes the DBPR to investigate complaints. It provides that any officer or employee of the DBPR may enter and inspect the premises of an exempt cosmetic manufacturer to determine compliance with ch. 499, F.S., and rules of the DBPR. A refusal to permit entry to the premises or to permit an inspection is a violation of the prohibition in s. 499.005(6), F.S.,[43] which prohibits refusing to allow an authorized officer or employee of the DBPR to enter the premises to conduct an inspection. Under the bill, refusal to allow an inspection is grounds for disciplinary action pursuant to s. 499.066, F.S., which provides remedies and penalties for violations of ch. 499, F.S., including administrative fines of up to $5,000 per violation.

[42] *See* ss. 455.224 and 456.077, F.S., authorizing the DBPR and the Department of Health (DOH) to issue citations, respectively.

[43] Section 499.005, F.S., specifies several prohibited acts, but does not specify any disciplinary actions. Disciplinary actions for violations of ch. 499, F.S, are specified in s. 499.066, F.S., relating to penalties and remedies, s. 499.0661, F.S., relating to cease and desist orders, and s. 499.067, F.S., relating to denial, suspension, or revocation of permit, certification, or registration.

The bill clarifies that s. 499.01(2)(p), F.S., does not exempt any person from any state or federal tax law, rule, regulation, or county or municipal law or ordinance that applies to cosmetic manufacturing.

Temporary Permits

The bill creates s. 499.012(6)(d), F.S., to authorize a 90 day temporary permit for issuance upon an application for change of ownership, controlling interest, or location. The existing permit expires when the DBPR authorizes the temporary permit. The temporary permit would allow the new owner to continue to operate for 90 days until the new owner's permit is issued, and would allow an establishment to continue to operate at the old location without renewing the permit if necessary until the new location is inspected and appropriately permitted, thus avoiding two separate permitting fees.

Citations

The bill creates s. 499.066(8), F.S., to authorize the DBPR to adopt rules to issue remedial, nondisciplinary citations to a permit holder alleged to have committed a violation. The bill specifies the information that must be included in the citation, including a brief factual statement, the sections of law allegedly violated, and the monetary assessment or other remedial measures imposed. The person receiving the citation will have 30 days after the citation is served to contest the citation by providing supplemental and clarifying information to the DBPR.

The citation must clearly state that the person may choose, in lieu of accepting the citation, to have the DBPR rescind the citation and conduct an investigation of violations alleged in the citation. The DBPR may rescind the citation if the person remedies or corrects the violations or deficiencies contained in the citation within 30 days after the citation is served. However, if the person does not successfully contest the citation to the satisfaction of the department, or complete the remedial action, the citation becomes a final order but does not constitute discipline.

Although the bill provides that a citation may become a final order and that such order does not constitute discipline, the bill requires the citation to include any monetary assessment imposed for the violation. The bill also provides that the DBPR is entitled to recover the costs of investigation, in addition to any penalty provided according to DBPR rule, as part of the penalty levied pursuant to a citation.

The DBPR must issue a citation within six months after the filing of a complaint against the manufacturer, e.g., a consumer or other person notifies the DBPR alleging a violation, which is the basis for the citation.

The citation may be served by personal service or certified mail, restricted delivery, to the person at their last known address of record with the DBPR, or to the person's Florida registered agent.

The bill authorizes the DBPR to adopt rules to designate the violations for which a person may be subject to issuance of a citation and the monetary assessments or other remedial measures that must be taken for those violations. Violations designated as subject to issuance of a citation must

be limited to violations for which there is no substantial threat to the public health, safety, or welfare. The DBPR may amend such rules.

State Boxing Commission

Present Situation

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing,[44] and mixed martial arts[45] by the Florida State Boxing Commission (commission), which is assigned to the DBPR for administrative and fiscal purposes.[46]

The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held in Florida,[47] which involves a professional.[48] Professional matches held in Florida must meet the requirements set forth in ch. 548, F.S., and the rules adopted by the commission.[49] Chapter 548, F.S., does not apply to certain professional or amateur "martial arts," such as karate, aikido, judo, and kung fu; the term "martial arts" is distinct from and does not include "mixed martial arts."[50]

However, as to amateur matches, the commission's jurisdiction is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts matches held in Florida.[51] Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.[52] During Fiscal Year 2018-2019, there were 59 sanctioned professional events and 137 amateur events.[53]

Under current law, certain persons providing certain services for a match involving a professional competing in a boxing, kickboxing, or mixed martial arts match must be licensed by the commission before directly or indirectly performing those services. Licensing is mandated for a participant,[54] manager, second, judge, physician, matchmaker, promoter,[55] trainer, timekeeper, referee, or announcer.[56]

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[44] The term "kickboxing" means the unarmed combat sport of fighting by striking with the fists, hands, feet, legs, or any combination, but does not include ground fighting techniques. *See* s. 548.002(12), F.S.
[45] The term "mixed martial arts" means the unarmed combat sport involving the use of a combination of techniques, including, but not limited to, grappling, kicking, striking, and using techniques from martial arts disciplines, including, but not limited to, boxing, kickboxing, Muay Thai, jujitsu, and wrestling. *See* s. 548.002(16), F.S.
[46] Section 548.003(1), F.S.
[47] Section 548.006(1), F.S.
[48] The term "professional" means a person who has received or competed for a purse or other article of a value greater than $50, either for the expenses of training or for participating in a match. *See* s. 548.002(19), F.S.
[49] Section 548.006(4), F.S.
[50] Section 548.007(6), F.S., and *supra* n. 50 for the definition of "mixed martial arts."
[51] Section 548.006(3), F.S.
[52] Section 548.002(2), F.S.
[53] *See* DBPR, *Florida State Boxing Commission Annual Report, Fiscal Year 2018-2019*, at p. 2, available at: http://www.myfloridalicense.com/dbpr/os/documents/Boxing18_19.pdf (last visited Apr. 8, 2021).
[54] Section 548.002(17), F.S., defines "participant" as a professional competing in a boxing, kickboxing, or mixed martial arts match.
[55] *See* s. 548.002, F.S., for the definitions of "manager," "second," "judge," "physician," "matchmaker," and "promoter."
[56] The terms "trainer," "timekeeper," "referee," and "announcer" are not defined in ch. 548, F.S.

The commission must establish, by rule, the appropriate weight of gloves used in each boxing match. All participants in boxing matches must wear gloves weighing not less than eight ounces each, and participants in mixed martial arts matches must wear gloves weighing between four to eight ounces each. Participants must also wear any protective devices the commission deems necessary.[57]

Effect of Proposed Changes

The bill amends s. 548.003, F.S., to change the name of the commission to the Florida Athletic Commission.

The bill amends s. 548.043(3), F.S., to authorize the commission to establish by rule the need for gloves, if any, in each pugilistic match. The bill also authorizes the commission to establish by rule the weight of any gloves used in pugilistic matches, and deletes the requirement that the gloves weigh between four to eight ounces each. The bill also deletes the requirement for all participants in pugilistic matches to wear gloves.

The bill amends ss. 455.219, 548.002, 548.05, 548.071, and 548.077, F.S., to conform references to the name of the commission, as revised by the bill.

Division of Alcoholic Beverages and Tobacco

Present Situation

The Division of Alcoholic Beverages and Tobacco (DABT) is responsible for enforcing the beverage law and supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages in Florida.[58]

Permit Carriers

Section 561.57(1), F.S., permits an alcoholic beverage vendor to make deliveries. Deliveries made by a manufacturer, distributor, or vendor away from its place of business may only be made in vehicles owned or leased by the licensee. By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the DABT or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.[59]

The term "permit carrier" is defined as a licensee authorized to make deliveries as provided in s. 561.57, F.S.[60] A separate permit is not required for licensees making a delivery of alcoholic beverages under this section.

In 2015, the Legislature amended s. 561.57, F.S., to delete a requirement that each vehicle used to deliver alcoholic beverages from a distributor's place of business to the vendor's licensed

[57] Section 548.043(3), F.S.
[58] Section 561.02, F.S.
[59] Section 561.57(2), F.S.
[60] Section 561.01(20), F.S.

premises or to an off-premises storage have a permit. The 2015 amendment to s. 561.57, F.S., also removed a requirement for vendors to possess an invoice or sales ticket during the transportation of alcoholic beverages.[61]

License Application Process

Before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, a person must file a sworn application in the format prescribed by the DABT. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. The format and content of the application is determined by the DABT.[62]

Before any application is approved, the DABT may require an applicant, and any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, to file a set of fingerprints with the DABT on regular United States Department of Justice forms.[63]

All applications for alcoholic beverage licenses for consumption on the premises must be accompanied by a certificate from the DHR, the Department of Agriculture and Consumer Services, the DOH, the Agency for Health Care Administration, or the county health department stating that the place of business where the business is to be conducted meets all of the sanitary requirements of the state.[64]

The application for an alcoholic beverage license must include a sketch of the licensed premises over which the applicant must have some dominion and control.[65] Current law does not require an applicant for an alcoholic beverage license to submit proof of the applicant's right of occupancy for the entire premises sought to be licensed.

Current law does not require an alcoholic beverage licensee or an applicant for a license to provide and maintain an electronic mail address for communications with the DABT.

Quota Licenses

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation, if certain conditions are met.

Section 561.19(2)(a), F.S., authorizes the DABT to hold a public drawing by double random selection to determine which applicants may be considered for a quota license when one or more additional licenses become available due to an increase in county population or if a quota license

[61] Chapter 2015-52, Laws of Fla.
[62] Section 561.17(1), F.S.
[63] *Id*.
[64] Section 561.17(2), F.S.
[65] Section 561.01(11), F.S., defining the term "licensed premises," and s. 565.03(2)(c), F.S., for craft distilleries.

is revoked. Current law does not reference the availability of a quota license due to the cancellation of a license.

Special Restaurant Licenses

A "special license" is an exception to the quota licensing scheme that allows the sale of beer, wine, and distilled spirits without a quota license and subject to conditions. One such special license is a "special restaurant license," which applies to a food service establishment that has 2,500 square feet, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages. The DABT must perform an audit to confirm compliance with the food and nonalcoholic beverage sales percentage requirements during the first 60-day operating period and each 12-month operating period thereafter.[66]

If a special restaurant licensee fails to satisfy the percentage requirements of food and nonalcoholic beverage sales, the license must be revoked or a pending license application must be denied. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation or denial of a license application.[67]

Recordkeeping and Reporting Requirements

Each manufacturer, distributor, broker, sales agent, importer, and exporter must keep a complete and accurate record and make reports to the DABT showing the amount of alcoholic beverages:[68]

- Manufactured or sold within the state and to whom sold;
- Imported from beyond the limits of the state and to whom sold; and
- Exported beyond the limits of the state, to whom sold, the place where sold, and the address of the person to whom sold.

Each manufacturer, distributor, broker, sales agent, and importer must send this full and complete report to the DABT by the 10th day of each month for the previous calendar month. The report must be made out in triplicate with two copies sent to the DABT and a third copy to be retained for the licensee's record. Reports must be made on forms prepared and furnished by the DABT.[69]

Credit for the Sale of Liquor

A retail vendor must make a timely payment to a distributor of alcoholic beverages within 10 days after the calendar week in which the alcoholic beverages were purchased. When a vendor does not make a timely payment, the distributor who made the sale must, within three days, notify the DABT in writing that payment has not been made.[70]

The DABT must then give notice to the vendor that it has received a notice of payment delinquency from a distributor. The vendor has five days after receipt of the notice to show cause

[66] Section 561.20(2)(a)4., F.S.
[67] *Id.*
[68] Section 561.55(1), F.S.
[69] Section 561.55(2), F.S.
[70] Section 561.42(3), F.S.

why further sales to the vendor should not be prohibited. The vendor may demand a hearing before the DABT. The demand for a hearing must be delivered to the DABT in person or by mail within those five days.[71]

If a vendor does not demand a hearing, the DABT must declare in writing to the vendor and to all manufacturers and distributors in Florida that all further sales to such vendor are prohibited until the DABT certifies in writing that such vendor has fully paid for all liquors previously purchased.[72]

Adulterated Liquor

Section 562.455, F.S., provides that a person who adulterates, for the purpose of sale, any liquor, used or intended for drink with cocculus indicus, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any liquor so adulterated, is guilty of a third degree felony.[73] This law was enacted in 1868.

Grains of paradise is a spice related to ginger and native to West Africa.[74] It is commonly used in alcoholic beverages, food, and medicine.[75] Grains of paradise has been found to be generally regarded as safe by the Food and Drug Administration (FDA).[76]

On January 28, 2020, the United States District Court for the Southern District of Florida held that s. 562.455, F.S., as it relates to prohibiting the use of grains of paradise in liquor, is preempted by federal law.[77] The court found that the Federal Food, Drug, and Cosmetic Act (FFDCA) and FDA regulations conflict with s. 562.455, F.S., because it frustrates the purposes and objectives of the FFDCA and implementing FDA regulations. Under FFDCA, the FDA has broad regulatory authority to monitor and control the introduction of "food additives" in interstate commerce. The FFDCA seeks to advance food technology by allowing the use of safe food additives, and the Florida law prohibits the use of an additive that is generally regarded as safe by the FDA.[78]

Effect of Proposed Changes

The bill deletes the definition for the term "permit carrier" in s. 561.01(20), F.S. The bill also corrects cross-references in s. 561.20(2)(a), F.S., affected by the deletion of the definition of the term "permit carrier."

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[71] Section 561.42(4), F.S.
[72] *Id*.
[73] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.
[74] Merriam-Webster Dictionary, *Grains of Paradise*, https://www.merriam-webster.com/dictionary/grains%20of%20paradise (last visited Mar. 24, 2021).
[75] WebMD, *Grains of Paradise*, https://www.webmd.com/vitamins/ai/ingredientmono-670/grains-of-paradise (last visited Mar. 24, 2021); SPICEography, *Grains of Paradise: An African Spice with a European History*, https://www.spiceography.com/grains-of-paradise/ (last visited Mar. 24, 2021).
[76] 21 C.F.R. s. 182.10 (2021).
[77] *Marrache v. Bacardi U.S.A., Inc*., 2020 WL 434928 (S.D. Fla. 2020).
[78] *Id.* at p. 2.

The bill amends the alcoholic beverage license application process in s. 561.17(1), F.S., to require applicants to file fingerprints electronically through an approved electronic fingerprinting vendor, or to use a form prescribed by the Florida Department of Law Enforcement. The bill deletes the requirement that the fingerprints be submitted on regular United States Department of Justice forms.

The bill amends s. 561.17(2), F.S., to require an applicant for any alcoholic beverage license to provide proof of the applicant's right of occupancy for the entire premises sought to be licensed.

The bill creates s. 561.17(5), F.S., to require any person or entity licensed or permitted by the DABT to provide an electronic mail address to the DABT to function as the primary contact for all communication by the DABT to the licensee or permittee. Under the bill, licensees and permittees are responsible for maintaining accurate contact information with the DABT.

The bill amends s. 561.19(2)(a), F.S., to authorize the DABT to hold a public drawing by double random selection to determine which applicants may be considered for a quota license when one or more additional licenses become available due to the cancellation of a license.

The bill amends s. 561.20(2)(a)4., F.S., to revise the auditing timeframes for special restaurant licensees. Under the bill, the DABT must perform the initial compliance audit within the first 120 days of operation, instead of within the first 60 days.

In addition, the bill revises the frequency of subsequent audits. Under the bill, the frequency of compliance audits is determined by the percentage of the licensee's gross revenue from the sale of food and nonalcoholic beverages, as established by the licensee's most recent audit. The bill provides the following audit levels:

- Level 1 licensees, 51 to 60 percent, will be audited every year;
- Level 2 licensees, 61 to 75 percent, will be audited every two years;
- Level 3 licensees, 76 to 90 percent, will be audited every three years; and
- Level 4 licensees, 91 to 100 percent, will be audited every four years.

The bill amends s. 561.42(4), F.S., to require the DABT to give a retail vendor notice of a payment delinquency via electronic mail. The bill deletes the requirement that the delinquency notice be a written notice. The bill also allows a vendor to send a demand for a hearing to the DABT by electronic mail.

The bill amends s. 561.55(2), F.S., to delete the requirement that reports by a manufacturer, distributor, broker, sales agent, and importer be made out in triplicate. Under the bill, the reports must be submitted to the DABT through the DABT's electronic data submission system.

The bill amends s. 562.455, F.S., to remove "grains of paradise" as an ingredient that if added to liquor, would cause the liquor to be adulterated. Anyone who sells adulterated liquor commits a third degree felony.

Condominiums and Cooperative Associations

Present Situation

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., the Condominium Act, comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[79] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[80] All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, which enacts bylaws governing the administration of the association.[81]

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) within the DBPR administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The FCTMH may investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to associations that are still under developer control.[82] The FCTMH also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.[83] After control of the condominium is transferred from the developer to the unit owners, the FCTMH's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.[84] For cooperatives, the FCTMH's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.[85]

As part of the FCTMH's authority to investigate complaints, the FCTMH may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers and associations.[86]

If the FCTMH has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the FCTMH may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The FCTMH may conduct an investigation and issue an order to cease and desist from unlawful practices and take affirmative action to carry out the purpose of the applicable chapter. In addition, the FCTMH is authorized to petition a court to appoint a receiver or conservator to implement a court order, or to enforce an injunction or temporary restraining order. The FCTMH may also impose civil penalties.[87]

[79] Section 718.103(11), F.S.
[80] Section 718.104(2), F.S.
[81] Section 718.103(4), F.S.
[82] Sections 718.501(1) and 719.501(1), F.S.
[83] *Id.*
[84] Section 718.501(1), F.S.
[85] Section 719.501(1), F.S.
[86] Sections 718.501(1) and 719.501(1), F.S.
[87] *Id.*

Annual Budget - Condominium and Cooperative Associations

Every condominium and cooperative association must have an annual financial budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the condominium association. The annual budget must include operating expenses for the coming year and reserve accounts for capital expenditures and deferred maintenance.[88]

A condominium and cooperative association must hold a meeting to adopt a proposed budget. These associations must provide notice of the meeting and a copy of the proposed budget to the members of the association at least 14 days before the meeting.[89] The proposed budget must be detailed, and, at a minimum, include the condominium's estimated revenues and expenses.[90]

Current law does not define the timing for adoption of the budget for a condominium or cooperative association.

Board of Directors – Eligibility based on Payment of Monetary Obligations

A condominium association is overseen by an elected board of directors, termed a Board of Administration. The board is responsible for managing the affairs of the association, has a fiduciary relationship with the unit owners, has the responsibility to act with the highest degree of good faith, and must place the interests of the unit owners above the personal interests of the directors.[91]

To become a board member, a person may be:
- Elected to the board by the members of the association;[92]
- Appointed to the board by the developer if the developer is still entitled to representation; or
- Appointed by the board of directors if a vacancy on the board occurs between meetings.[93]

A condominium association's bylaws establish the eligibility requirements to serve on the association's board of directors.[94] However, current law also establishes minimum qualifications to serve on an association's board of directors.[95] To serve as a director, a person may not:[96]
- Be a co-owner of a unit with another director unless they own more than one unit or the condominium association is made up of less than ten units;
- Be delinquent in the payment of any monetary obligation to the condominium association;
- Have been previously suspended or removed from a condominium association's board of directors or by the FCTMH; or
- Have been convicted of a felony, under certain circumstances.[97]

[88] Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively.
[89] Sections 718.112(2)(e)1 and 718.106(1)(e), F.S., relating to condominium and cooperative associations, respectively.
[90] Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively.
[91] Sections 718.103(4), 718.111, and 718.112, F.S.
[92] Section 718.112(2)(d)4., F.S.
[93] Sections 617.0809 and 718.112(2)(d)9., F.S.
[94] Section 718.112(2)(a), F.S.
[95] Section 718.112(2)(d), F.S.
[96] *Id*.
[97] Section 718.111(1)(d), F.S.

Chapter 718, F.S., does not define the terms "monetary obligation" or "delinquent." According to the DBPR, defining the term "delinquent" would assist in the FCTMH's investigation of cases in which the unit owner alleges they were left off of an election ballot because of a delinquent payment to the association.[98] The DBPR also maintains that it is the practice of a "controlling board of directors to issue fines to unit owners in an effort to limit the pool of eligible candidates who can compete in an election."[99]

Condominium Ombudsman

The Office of the Ombudsman within the FCTMH is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the FCTMH, and the Legislature on any matter or subject within the jurisdiction of the FCTMH. In addition, the ombudsman may make recommendations to the FCTMH for changes in rules and procedures for the filing, investigation, and resolution of complaints.[100]

The ombudsman also acts as a liaison among the FCTMH, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.[101]

The ombudsman is required to maintain his or her principal office in Leon County.[102]

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)2., F.S., to replace the term "monetary obligation" with the term "assessment." The bill also provides that a person is delinquent if a payment is not made by the due date identified in the association's governing documents, which include the declaration, articles of incorporation, and bylaws. If no due date is specifically identified in the governing documents, the due date is the first day of the assessment period.

The bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to require the annual budget for condominium and cooperative associations to be proposed to unit owners and adopted by the board of directors no later than 14 days before the beginning of the fiscal year. Under the bill, the failure by an association's board to timely adopt the annual budget a second time is a minor violation[103] and the prior year's budget shall continue in effect until a new budget is adopted.

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[98] *See* Department of Business Professional Regulation, *SB 1966 Bill Analysis*, p. 4, (Mar. 12, 2021) (on file with Senate Committee on Regulated Industries).
[99] *Id.*
[100] Sections 718.5011 and 718.5012, F.S.
[101] *Id.*
[102] Section 718.5014, F.S.
[103] The term "minor violation" is not defined in ch. 718 and 719, F.S. Fla. Admin. Code R. 61B-21.001(3), relating to condominium resolution guidelines for unit owner-controlled associations, defines a "minor violation" as a violation in which the FCTMH will issue a notice of noncompliance as a first response to a violation of a rule due to the violation's lower potential for public harm. Failure to timely comply with the notice of noncompliance may result in further sanctions and enforcement. Fla. Admin. Code R. 61B-77.003(7)(a), provides a comparable definition for the term for violations related to cooperative associations.

The bill amends s. 718.501, F.S., to authorize the FCTMH to adopt rules regarding the submission of a complaint against a condominium association.

The bill amends s. 718.5014, F.S., to delete the requirement that the condominium ombudsman maintain his or her principal office in Leon County.

Effective Date

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Division of Professions of the Department of Business and Professional Regulation (DBPR) estimates that the bill will result in a reduction of application and license renewal fees paid by the private sector of approximately $162,266 in Fiscal Year 2021-2022 and $281,937 in Fiscal Year 2022-2023.[104]

B. Private Sector Impact:

The bill has an indeterminate positive fiscal impact for the private sector. Under the bill, construction and electrical contractors would not have to pay the $4 fee to the Department of Business and Professional Regulation (DBPR) at the time of application or

[104] *See* Department of Business and Professional Regulation, *CS/SB 1966 Bill Analysis*, p. 10, (Apr. 1, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

renewal to fund projects relating to the building construction industry or continuing education programs.

The bill may provide an opportunity for small cosmetic manufacturing businesses to generate revenues up to $25,000 in annual gross sales without the cost of a cosmetic manufacturing permit.

Relating to cosmetic manufacturers, the bill may save license expenses needed to continue operation of the business during permitting transfers due to change of ownership, change of controlling interest, or change of location. According to the DBPR, the bill will eliminate the dual permit fee many firms currently pay to continue operating pending approval of the new permit.[105]

C. Government Sector Impact:

The DBPR expects the following fiscal impact on revenues:[106]

Division of Alcoholic Beverages and Tobacco: Tax revenue may be maximized by the required electronic submission of tax reports.

Division of Professions: The bill repeals the $4 fee for Construction Industry Licensing Board (CILB) and the Electrical Contractors' Licensing Board (ECLB) license applications and license renewals. According to the DBPR, based on historical data, the repeal of the fee may result in a revenue reduction of $162,266 in Fiscal Year 2021-2022 and $281,937 in Fiscal Year 2022-2023 deposited into the Professional Regulation Trust Fund for the CILB and ECLB.[107]

The $4.00 fee collected in the Professional Regulation Trust fund is also subject to the GR service charge. The elimination of the fee would reduce transfers to GR by $12,981 in Fiscal Year 2021-2022, and $22,555 in Fiscal Year 2022-2023. The total loss of revenue over the two fiscal years would be an estimated $479,739, of which $35,536 would be a reduction in transfers to GR. The net loss to the Professional Regulations Trust Fund would be an estimated $444,203 over the next two fiscal years.

The bill amends s. 489.118, F.S., to delete the November 1, 2015, application deadline for registered contractors to apply for a statewide certified contractors' license without having to take the state licensure examination. According to the DBPR, by allowing registered contractors to be certified without sitting for the certification examination, there may be an indeterminate reduction in local registered license, renewal, and reciprocity fees.[108]

[105] *Id.*
[106] *Id.*
[107] *See* Department of Business and Professional Regulation, CS/*SB 1966 Bill Analysis*, p. 10, (Apr. 1, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).
[108] *Id*.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.09, 210.55, 210.60, 489.109, 489.118, 489.509, 499.01, 499.012, 499.066, 548.003, 548.043, 553.841, 561.01, 561.17, 561.19, 561.20, 561.42, 561.55, 562.455, 718.112, 718.501, 718.5014, 719.106, 455.219, 548.002, 548.05, 548.071, and 548.077.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Appropriations on April 15, 2021:

The committee substitute:

- Removes from the bill the provisions amending ss. 509.241 and 509.251, F.S., to revise the staggered licensing schedule for public lodging establishments.
- Reduces from 30 days to 14 days before the beginning of the fiscal year the date by which the bill requires the annual budget for a condominium association to be proposed to unit owners and adopted by the board of directors.
- Requires the board of a cooperative association to propose to the unit owners and adopt the annual budget at least 14 days before the beginning of the fiscal year.
- Provides that, in the event the board of a condominium or cooperative association fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

CS by Regulated Industries on March 30, 2021:

The committee substitute (CS):

- Repeals s. 489.509(3), F.S., to delete the $4 fee that all certified and registered electrical contractors must pay to the DBPR at the time of application or renewal.
- Clarifies that refusal to permit an authorized officer or employee of the Department of Business and Professional Regulation to enter the premises is a violation of s. 499.005(6), F.S., and is grounds for disciplinary action pursuant to s. 499.066, F.S.

B. Amendments:

None.

356500

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Diaz) recommended the following:

Senate Amendment (with title amendment)

Between lines 1025 and 1026
insert:

Section 19. Section 562.03, Florida Statutes, is amended to read:

562.03 Storage on licensed premises.—

(1) It is unlawful for any vendor to store or keep any alcoholic beverages in any building or room other than:

(a) The building or room shown in the diagram accompanying the vendor's license application;

356500

(b) A building or room approved by the division and located in a county where the vendor has a license issued pursuant to s. 565.02(1)(a)-(f); or

(c) A building or room approved by the division and used only in conjunction with a catered event operated by an entity with a license issued pursuant to s. 565.02(1)(a)-(f).

(2) This section does not apply to any alcoholic beverages that are intended only ~~except~~ for the personal consumption of the vendor, the vendor's family, or the vendor's personal guests ~~and guest in any building or room other than the building or room shown in the diagram accompanying his or her license application or in another building or room approved by the division~~.

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

And the title is amended as follows:

Delete line 84

and insert:

relating to alcoholic beverages; amending s. 562.03, F.S.; revising requirements for the storage of alcoholic beverages on a vendor's licensed premises; providing applicability; amending s. 562.455,

By the Committees on Appropriations; and Regulated Industries; and Senators Diaz and Garcia

576-04220-21 20211966c2

A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 210.09, F.S.; requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division's electronic data submission system; providing that specified records relating to cigarettes received, sold, or delivered within the state may be kept in an electronic or paper format; amending s. 210.55, F.S.; requiring that certain entities file reports, rather than returns, relating to tobacco products with the division; providing requirements for such reports; amending s. 210.60, F.S.; providing that specified records relating to tobacco products may be kept in an electronic or paper format; amending s. 489.109, F.S.; removing provisions relating to an additional fee for application and renewal, transfer of funds, recommendations by the Construction Industry Licensing Board for use of such funds, distribution of such funds by the department, and required reports of the department; amending s. 489.118, F.S.; removing an obsolete date; amending s. 489.509, F.S.; deleting requirements relating to certain fees collected by the department for electrical and alarm system contracting; amending s. 499.01, F.S.; exempting certain persons from specified permit requirements under certain circumstances; requiring an exempt cosmetics manufacturer to provide,

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

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upon request, to the department specified documentation verifying his or her annual gross sales; authorizing an exempt cosmetics manufacturer to only manufacture and sell specified products; requiring specified labeling for each unit of cosmetics manufactured by an exempt cosmetics manufacturer; authorizing the department to investigate complaints and to enter and inspect the premises of an exempt cosmetics manufacturer; providing disciplinary actions; providing construction; amending s. 499.012, F.S.; authorizing specified establishments to submit a request for a temporary permit; requiring such establishments to submit the request to the department on specified forms; providing that upon authorization by the department for a temporary permit for a certain location, the existing permit for such location is immediately null and void; prohibiting a temporary permit from being extended; providing for expiration of a temporary permit; prohibiting an establishment from operating under an expired temporary permit; amending s. 499.066, F.S.; requiring the department to adopt rules to permit the issuance of remedial, nondisciplinary citations; providing requirements for such citations; providing for contest of and the rescinding of a citation; authorizing the department to recover specified costs relating to a citation; providing a timeframe for when a citation may be issued; providing requirements for the service of a citation; authorizing the department to adopt and

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

amend rules, designate violations and monetary assessments, and order remedial measures that must be taken for such violations; amending s. 548.003, F.S.; renaming the Florida State Boxing Commission as the Florida Athletic Commission; amending s. 548.043, F.S.; revising rulemaking requirements for the commission relating to gloves; amending s. 553.841, F.S.; conforming a provision to changes made by the act; amending s. 561.01, F.S.; deleting the definition of the term "permit carrier"; amending s. 561.17, F.S.; revising a requirement related to the filing of fingerprints with the division; requiring that applications be accompanied by certain information relating to right of occupancy; providing requirements relating to contact information for licensees and permittees; amending s. 561.19, F.S.; revising provisions relating to the availability of beverage licenses to include by reason of the cancellation of a quota beverage license; amending s. 561.20, F.S.; conforming cross-references; revising requirements for issuing special licenses to certain food service establishments; amending s. 561.42, F.S.; requiring the division, and authorizing vendors, to use electronic mail to give certain notice; amending s. 561.55, F.S.; revising requirements for reports relating to alcoholic beverages; amending s. 562.455, F.S.; removing grains of paradise as a form of adulteration of liquor used or intended for drink; amending s. 718.112, F.S.; providing the circumstances

under which a person is delinquent in the payment of an assessment in the context of eligibility for membership on certain condominium boards; requiring boards to adopt annual budgets within a specified timeframe; specifying that the failure to adopt a timely budget a second time is a minor violation and that the previous year's budget continues in effect until a new budget is adopted; amending s. 718.501, F.S.; authorizing the Division of Florida Condominiums, Timeshares, and Mobile Homes to adopt rules regarding the submission of complaints against a condominium association; amending s. 718.5014, F.S.; revising the location requirements for the principal office of the condominium ombudsman; amending s. 719.106, F.S.; requiring boards of administration to adopt annual budgets within a specified timeframe; specifying that the failure to adopt a timely budget a second time is a minor violation and that the previous year's budget continues in effect until a new budget is adopted; amending ss. 455.219, 548.002, 548.05, 548.071, and 548.077, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 210.09, Florida Statutes, are amended to read:

210.09 Records to be kept; reports to be made; examination.—

(2) The division is authorized to prescribe and promulgate by rules and regulations, which shall have the force and effect of the law, such records to be kept and reports to be made to the division by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state as may be necessary to collect and properly distribute the taxes imposed by s. 210.02. All reports shall be made on or before the 10th day of the month following the month for which the report is made, unless the division by rule or regulation shall prescribe that reports be made more often. All reports shall be filed with the division through the division's electronic data submission system.

(3) All manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers shall maintain and keep for a period of 3 years at the place of business where any transaction takes place, such records of cigarettes received, sold, or delivered within the state as may be required by the division. Such records may be kept in an electronic or paper format. The division or its duly authorized representative is hereby authorized to examine the books, papers, invoices, and other records, the stock of cigarettes in and upon any premises where the same are placed, stored, and sold, and the equipment of any such manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers, pertaining to the sale and delivery of cigarettes taxable under this part. To verify the accuracy of the tax imposed and assessed by this part, each person is hereby directed and required to give to the division or its duly authorized representatives the means,

facilities, and opportunity for such examinations as are herein provided for and required.

Section 2. Section 210.55, Florida Statutes, is amended to read:

210.55 Distributors; monthly reports ~~returns~~.—

(1) On or before the 10th of each month, every taxpayer with a place of business in this state shall file a full and complete report ~~return~~ with the division showing the taxable price of each tobacco product brought or caused to be brought into this state for sale, or made, manufactured, or fabricated in this state for sale in this state, during the preceding month. Every taxpayer outside this state shall file a full and complete report with the division through the division's electronic data submission system ~~return~~ showing the quantity and taxable price of each tobacco product shipped or transported to retailers in this state, to be sold by those retailers, during the preceding month. Reports must ~~Returns shall~~ be made upon forms furnished and prescribed by the division and must ~~shall~~ contain any other information that the division requires. Each report must ~~return shall~~ be accompanied by a remittance for the full tax liability shown and be filed with the division through the division's electronic data submission system.

(2) As soon as practicable after any report ~~return~~ is filed, the division shall examine each report ~~return~~ and correct it, if necessary, according to its best judgment and information. If the division finds that any amount of tax is due from the taxpayer and unpaid, it shall notify the taxpayer of the deficiency, stating that it proposes to assess the amount due together with interest and penalties. If a deficiency

disclosed by the division's examination cannot be allocated to one or more particular months, the division shall notify the taxpayer of the deficiency, stating its intention to assess the amount due for a given period without allocating it to any particular months.

(3) If, within 60 days after the mailing of notice of the proposed assessment, the taxpayer files a protest to the proposed assessment and requests a hearing on it, the division shall give notice to the taxpayer of the time and place fixed for the hearing, shall hold a hearing on the protest, and shall issue a final assessment to the taxpayer for the amount found to be due as a result of the hearing. If a protest is not filed within 60 days, the division shall issue a final assessment to the taxpayer. In any action or proceeding in respect to the proposed assessment, the taxpayer shall have the burden of establishing the incorrectness or invalidity of any final assessment made by the division.

(4) If any taxpayer required to file any report ~~return~~ fails to do so within the time prescribed, the taxpayer shall, on the written demand of the division, file the report ~~return~~ within 20 days after mailing of the demand and at the same time pay the tax due on its basis. If the taxpayer fails within that time to file the report ~~return~~, the division shall prepare the report ~~return~~ from its own knowledge and from the information that it obtains and on that basis shall assess a tax, which shall be paid within 10 days after the division has mailed to the taxpayer a written notice of the amount and a demand for its payment. In any action or proceeding in respect to the assessment, the taxpayer shall have the burden of establishing

the incorrectness or invalidity of any report ~~return~~ or assessment made by the division because of the failure of the taxpayer to make a report ~~return~~.

(5) All taxes are due not later than the 10th day of the month following the calendar month in which they were incurred, and thereafter shall bear interest at the annual rate of 12 percent. If the amount of tax due for a given period is assessed without allocating it to any particular month, the interest shall begin with the date of the assessment.

(6) In issuing its final assessment, the division shall add to the amount of tax found due and unpaid a penalty of 10 percent, but if it finds that the taxpayer has made a false report ~~return~~ with intent to evade the tax, the penalty shall be 50 percent of the entire tax as shown by the corrected report ~~return~~. In assessing a tax on the basis of a report ~~return~~ made under subsection (4), the division shall add to the amount of tax found due and unpaid a penalty of 25 percent.

(7) For the purpose of compensating the distributor for the keeping of prescribed records and the proper accounting and remitting of taxes imposed under this part, the distributor shall be allowed 1 percent of the amount of the tax due and accounted for and remitted to the division in the form of a deduction in submitting his or her report and paying the amount due; and the division shall allow such deduction of 1 percent of the amount of the tax to the person paying the same for remitting the tax in the manner herein provided, for paying the amount due to be paid by him or her, and as further compensation to the distributor for the keeping of prescribed records and for collection of taxes and remitting the same.

(a) The collection allowance may not be granted, nor may any deduction be permitted, if the tax is delinquent at the time of payment.

(b) The division may reduce the collection allowance by 10 percent or $50, whichever is less, if a taxpayer files an incomplete report ~~return~~.

1. An "incomplete report ~~return~~" means ~~is~~, for purposes of this section ~~part~~, a report ~~return~~ which is lacking such uniformity, completeness, and arrangement that the physical handling, verification, or review of the report ~~return~~ may not be readily accomplished.

2. The division shall adopt rules requiring such information as it may deem necessary to ensure that the tax levied hereunder is properly collected, reviewed, compiled, and enforced, including, but not limited to: the amount of taxable sales; the amount of tax collected or due; the amount claimed as the collection allowance; the amount of penalty and interest; the amount due with the report ~~return~~; and such other information as the division may specify.

Section 3. Section 210.60, Florida Statutes, is amended to read:

210.60 Books, records, and invoices to be kept and preserved; inspection by agents of division.—Every distributor shall keep in each licensed place of business complete and accurate records for that place of business, including itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to an ultimate

consumer. Such records shall show the names and addresses of purchasers and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. When a licensed distributor sells tobacco products exclusively to ultimate consumers at the addresses given in the license, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers, and other documents required by this section to be kept shall be preserved for a period of at least 3 years after the date of the documents, as aforesaid, or the date of the entries thereof appearing in the records, unless the division, in writing, authorizes their destruction or disposal at an earlier date. At any time during usual business hours, duly authorized agents or employees of the division may enter any place of business of a distributor and inspect the premises, the records required to be kept under this part, and the tobacco products contained therein to determine whether all the provisions of this part are being fully complied with. Refusal to permit such inspection by a duly authorized agent or employee of the division shall be grounds for revocation of the license. Every person who sells tobacco products to persons other than an ultimate consumer shall render with each sale an itemized invoice showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. The seller shall preserve legible copies of all such invoices for 3 years from the date of sale. Every retailer shall produce itemized invoices of all tobacco products purchased. The invoices shall show the name and address

of the seller and the date of purchase. The retailer shall preserve a legible copy of each such invoice for 3 years from the date of purchase. Invoices shall be available for inspection by authorized agents or employees of the division at the retailer's place of business. Any records required by this section may be kept in an electronic or paper format.

Section 4. Subsection (3) of section 489.109, Florida Statutes, is amended to read:

489.109 Fees.—

~~(3) In addition to the fees provided in subsection (1) for application and renewal for certification and registration, all certificateholders and registrants must pay a fee of $4 to the department at the time of application or renewal. The funds must be transferred at the end of each licensing period to the department to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida, to be selected by the Florida Building Commission. The board shall, at the time the funds are transferred, advise the department on the most needed areas of research or continuing education based on significant changes in the industry's practices or on changes in the state building code or on the most common types of consumer complaints or on problems costing the state or local governmental entities substantial waste. The board's advice is not binding on the department. The department shall ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry to which they relate. The department shall report to the board in October of each year,~~

~~summarizing the allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.~~

Section 5. Section 489.118, Florida Statutes, is amended to read:

489.118 Certification of registered contractors; grandfathering provisions.—The board shall, upon receipt of a completed application and appropriate fee, issue a certificate in the appropriate category to any contractor registered under this part who makes application to the board and can show that he or she meets each of the following requirements:

(1) Currently holds a valid registered local license in one of the contractor categories defined in s. 489.105(3)(a)-(p).

(2) Has, for that category, passed a written examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Experior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(3) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on

probation shall count toward the 5 years required by this subsection.

(4) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended within the last 5 years, or been assessed a fine in excess of $500 within the last 5 years.

(5) Is in compliance with the insurance and financial responsibility requirements in s. 489.115(5).

~~Applicants wishing to obtain a certificate pursuant to this section must make application by November 1, 2015.~~

Section 6. Subsection (3) of section 489.509, Florida Statutes, is amended, and subsection (1) of that section is republished, to read:

489.509 Fees.—

(1) The board, by rule, shall establish fees to be paid for applications, examination, reexamination, transfers, licensing and renewal, reinstatement, and recordmaking and recordkeeping. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination. The application fee is nonrefundable. The fee for initial application and examination for certification of electrical contractors may not exceed $400. The initial application fee for registration may not exceed $150. The biennial renewal fee may not exceed $400 for certificateholders and $200 for registrants. The fee for initial application and examination for certification of alarm system contractors may not exceed $400. The biennial renewal fee for certified alarm

system contractors may not exceed $450. The board may establish a fee for a temporary certificate as an alarm system contractor not to exceed $75. The board may also establish by rule a delinquency fee not to exceed $50. The fee to transfer a certificate or registration from one business organization to another may not exceed $200. The fee for reactivation of an inactive license may not exceed $50. The board shall establish fees that are adequate to ensure the continued operation of the board. Fees shall be based on department estimates of the revenue required to implement this part and the provisions of law with respect to the regulation of electrical contractors and alarm system contractors.

~~(3) Four dollars of each fee under subsection (1) paid to the department at the time of application or renewal shall be transferred at the end of each licensing period to the department to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida. The board shall, at the time the funds are transferred, advise the department on the most needed areas of research or continuing education based on significant changes in the industry's practices or on the most common types of consumer complaints or on problems costing the state or local governmental entities substantial waste. The board's advice is not binding on the department. The department shall ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry to which they relate. The department shall report to the board in October of each year, summarizing the~~

~~allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.~~

Section 7. Paragraph (p) of subsection (2) of section 499.01, Florida Statutes, is amended to read:

499.01 Permits.—

(2) The following permits are established:

(p) *Cosmetic manufacturer permit.*—A cosmetic manufacturer permit is required for any person that manufactures or repackages cosmetics in this state. A person that only labels or changes the labeling of a cosmetic but does not open the container sealed by the manufacturer of the product is exempt from obtaining a permit under this paragraph. A person who manufactures cosmetics and has annual gross sales of $25,000 or less is exempt from the permit requirements of this paragraph. Upon request, an exempt cosmetics manufacturer must provide to the department written documentation to verify his or her annual gross sales, including all sales of cosmetic products at any location, regardless of the types of products sold or the number of persons involved in the operation.

1. An exempt cosmetics manufacturer may only:

a. Sell prepackaged cosmetics affixed with a label containing information required by the United States Food and Drug Administration.

b. Manufacture and sell cosmetics that are soaps, not otherwise exempt from the definition of cosmetics, lotions, moisturizers, and creams.

c. Sell cosmetics that are not adulterated or misbranded in accordance with 21 U.S.C. ss. 361 and 362.

d. Sell cosmetic products that are stored on the premises

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

of the cosmetic manufacturing operation.

2. Each unit of cosmetics manufactured under this paragraph must contain, in contrasting color and not less than 10-point type, the following statement: "Made by a manufacturer exempt from Florida's cosmetic manufacturing permit requirements."

3. The department may investigate any complaint which alleges that an exempt cosmetics manufacturer has violated an applicable provision of this chapter or a rule adopted under this chapter. The department's authorized officer or employee may enter and inspect the premises of an exempt cosmetic manufacturer to determine compliance with this chapter and department rules, as applicable. A refusal to permit an authorized officer or employee of the department to enter the premises or to conduct an inspection is a violation of s. 499.005(6) and is grounds for disciplinary action pursuant to s. 499.066.

4. This paragraph does not exempt any person from any state or federal tax law, rule, regulation, or certificate or from any county or municipal law or ordinance that applies to cosmetic manufacturing.

Section 8. Paragraph (d) is added to subsection (6) of section 499.012, Florida Statutes, to read:

499.012 Permit application requirements.—

(6) A permit issued by the department is nontransferable. Each permit is valid only for the person or governmental unit to which it is issued and is not subject to sale, assignment, or other transfer, voluntarily or involuntarily; nor is a permit valid for any establishment other than the establishment for which it was originally issued.

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

(d) When an establishment that requires a permit pursuant to this part submits an application to the department for a change of ownership or controlling interest or a change of location with the required fees under this subsection, the establishment may also submit a request for a temporary permit granting the establishment authority to operate for no more than 90 calendar days. The establishment must submit the request for a temporary permit to the department on a form provided by the department and obtain authorization to operate with the temporary permit before operating under the change of ownership or operating at the new location. Upon authorization of a temporary permit, the existing permit at the location for which the temporary permit is submitted is immediately null and void. A temporary permit may not be extended and shall expire and become null and void by operation of law without further action by the department at 12:01 a.m. on the 91st day after the department authorizes such permit. Upon expiration of the temporary permit, the establishment may not continue to operate under such permit.

The department may revoke the permit of any person that fails to comply with the requirements of this subsection.

Section 9. Subsection (8) is added to section 499.066, Florida Statutes, to read:

499.066 Penalties; remedies.—In addition to other penalties and other enforcement provisions:

(8)(a) The department shall adopt rules to authorize the issuance of a remedial, nondisciplinary citation. A citation shall be issued to the person alleged to have committed a

violation and contain the person's name, address, and license number, if applicable; a brief factual statement; the sections of the law allegedly violated; and the monetary assessment and or other remedial measures imposed. The person shall have 30 days after the citation is served to contest the citation by providing supplemental and clarifying information to the department. The citation must clearly state that the person may choose, in lieu of accepting the citation, to have the department rescind the citation and conduct an investigation pursuant to s. 499.051 of only those alleged violations contained in the citation. The citation shall be rescinded by the department if the person remedies or corrects the violations or deficiencies contained in the citation within 30 days after the citation is served. If the person does not successfully contest the citation to the satisfaction of the department, or complete remedial action pursuant to this paragraph, the citation becomes a final order and does not constitute discipline.

(b) The department is entitled to recover the costs of investigation, in addition to any penalty provided according to department rule, as part of the penalty levied pursuant to a citation.

(c) A citation must be issued within 6 months after the filing of the complaint that is the basis for the citation.

(d) Service of a citation may be made by personal service or certified mail, restricted delivery, to the person at the person's last known address of record with the department, or to the person's Florida registered agent.

(e) The department may adopt rules to designate those

violations for which a person is subject to the issuance of a citation and the monetary assessments or other remedial measures that must be taken for those violations. Violations designated as subject to issuance of a citation shall include violations for which there is no substantial threat to the public health, safety, or welfare. The department has continuous authority to amend its rules adopted pursuant to this section.

Section 10. Section 548.003, Florida Statutes, is amended to read:

548.003 Florida Athletic ~~State Boxing~~ Commission.—

(1) The Florida Athletic ~~State Boxing~~ Commission is created and is assigned to the Department of Business and Professional Regulation for administrative and fiscal accountability purposes only. The ~~Florida State Boxing~~ commission shall consist of five members appointed by the Governor, subject to confirmation by the Senate. One member must be a physician licensed under ~~pursuant to~~ chapter 458 or chapter 459, who must maintain an unencumbered license in good standing, and who must, at the time of her or his appointment, have practiced medicine for at least 5 years. Upon the expiration of the term of a commissioner, the Governor shall appoint a successor to serve for a 4-year term. A commissioner whose term has expired shall continue to serve on the commission until such time as a replacement is appointed. If a vacancy on the commission occurs before ~~prior to~~ the expiration of the term, it shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(2) The ~~Florida State Boxing~~ commission, as created by subsection (1), shall administer the provisions of this chapter.

The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission, including, but not limited to:

(a) Development of an ethical code of conduct for commissioners, commission staff, and commission officials.

(b) Facility and safety requirements relating to the ring, floor plan and apron seating, emergency medical equipment and services, and other equipment and services necessary for the conduct of a program of matches.

(c) Requirements regarding a participant’s apparel, bandages, handwraps, gloves, mouthpiece, and appearance during a match.

(d) Requirements relating to a manager’s participation, presence, and conduct during a match.

(e) Duties and responsibilities of all licensees under this chapter.

(f) Procedures for hearings and resolution of disputes.

(g) Qualifications for appointment of referees and judges.

(h) Qualifications for and appointment of chief inspectors and inspectors and duties and responsibilities of chief inspectors and inspectors with respect to oversight and coordination of activities for each program of matches regulated under this chapter.

(i) Setting fee and reimbursement schedules for referees and other officials appointed by the commission or the representative of the commission.

(j) Establishment of criteria for approval, disapproval, suspension of approval, and revocation of approval of amateur

sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts held in this state, including, but not limited to, the health and safety standards the organizations use before, during, and after the matches to ensure the health, safety, and well-being of the amateurs participating in the matches, including the qualifications and numbers of health care personnel required to be present, the qualifications required for referees, and other requirements relating to the health, safety, and well-being of the amateurs participating in the matches. The commission may adopt by rule, or incorporate by reference into rule, the health and safety standards of USA Boxing as the minimum health and safety standards for an amateur boxing sanctioning organization, the health and safety standards of the International Sport Kickboxing Association as the minimum health and safety standards for an amateur kickboxing sanctioning organization, and the minimum health and safety standards for an amateur mixed martial arts sanctioning organization. The commission shall review its rules for necessary revision at least every 2 years and may adopt by rule, or incorporate by reference into rule, the then-existing current health and safety standards of USA Boxing and the International Sport Kickboxing Association. The commission may adopt emergency rules to administer this paragraph.

(3) The commission shall maintain an office in Tallahassee. At the first meeting of the commission after June 1 of each year, the commission shall select a chair and a vice chair from among its membership. Three members shall constitute a quorum and the concurrence of at least three members is necessary for official commission action.

(4) Three consecutive unexcused absences or absences constituting 50 percent or more of the commission's meetings within any 12-month period shall cause the commission membership of the member in question to become void, and the position shall be considered vacant. The commission shall, by rule, define unexcused absences.

(5) Each commission member shall be accountable to the Governor for the proper performance of duties as a member of the commission. The Governor shall cause to be investigated any complaint or unfavorable report received by the Governor or the department concerning an action of the commission or any member and shall take appropriate action thereon. The Governor may remove from office any member for malfeasance, unethical conduct, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or pleading guilty or nolo contendere to or being found guilty of a felony.

(6) Each member of the commission shall be compensated at the rate of $50 for each day she or he attends a commission meeting and shall be reimbursed for other expenses as provided in s. 112.061.

(7) The commission shall be authorized to join and participate in the activities of the Association of Boxing Commissions (ABC).

(8) The department shall provide all legal and investigative services necessary to implement this chapter. The department may adopt rules as provided in ss. 120.536(1) and 120.54 to carry out its duties under this chapter.

Section 11. Subsection (3) of section 548.043, Florida Statutes, is amended to read:

548.043 Weights and classes, limitations; gloves.—

(3) The commission shall establish by rule the need for gloves, if any, and the weight of any such gloves to be used in each pugilistic match ~~the appropriate weight of gloves to be used in each boxing match; however, all participants in boxing matches shall wear gloves weighing not less than 8 ounces each and participants in mixed martial arts matches shall wear gloves weighing 4 to 8 ounces each~~. Participants shall wear such protective devices as the commission deems necessary.

Section 12. Subsection (5) of section 553.841, Florida Statutes, is amended to read:

553.841 Building code compliance and mitigation program.—

~~(5) Each biennium, upon receipt of funds by the Department of Business and Professional Regulation from the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board provided under ss. 489.109(3) and 489.509(3), the department shall determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program.~~

Section 13. Subsection (20) of section 561.01, Florida Statutes, is amended to read:

561.01 Definitions.—As used in the Beverage Law:

~~(20) "Permit carrier" means a licensee authorized to make deliveries as provided in s. 561.57.~~

Section 14. Subsections (1) and (2) of section 561.17, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

561.17 License and registration applications; approved person.—

(1) Any person, before engaging in the business of

manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, shall file, with the district licensing personnel of the district of the division in which the place of business for which a license is sought is located, a sworn application in the format prescribed by the division. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. However, the applicant does not include any person that derives revenue from the license solely through a contractual relationship with the licensee, the substance of which contractual relationship is not related to the control of the sale of alcoholic beverages. Before any application is approved, the division may require the applicant to file a set of fingerprints electronically through an approved electronic fingerprinting vendor or on ~~regular United States Department of Justice~~ forms prescribed by the Florida Department of Law Enforcement for herself or himself and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, when required by the division. If the applicant or any person who is interested with the applicant either directly or indirectly in the business or who has a security interest in the license being sought or has a right to a percentage payment from the proceeds of the business, either by lease or otherwise, is not qualified, the division shall deny the application. However, any company regularly traded on a national securities exchange and not over the counter; any insurer, as defined in the Florida Insurance

Code; or any bank or savings and loan association chartered by this state, another state, or the United States which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain the division's approval of its officers, directors, or stockholders or any change of such positions or interests. A shopping center with five or more stores, one or more of which has an alcoholic beverage license and is required under a lease common to all shopping center tenants to pay no more than 10 percent of the gross proceeds of the business holding the license to the shopping center, is not considered as having an interest, directly or indirectly, in the license. A performing arts center, as defined in s. 561.01, which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain division approval of its volunteer officers or directors or of any change in such positions or interests.

(2) All applications for any alcoholic beverage license must be accompanied by proof of the applicant's right of occupancy for the entire premises sought to be licensed. All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.

(5) Any person or entity licensed or permitted by the division must provide an electronic mail address to the division

to function as the primary contact for all communication by the division to the licensee or permittees. Licensees and permittees are responsible for maintaining accurate contact information on file with the division.

Section 15. Paragraph (a) of subsection (2) of section 561.19, Florida Statutes, is amended to read:

561.19 License issuance upon approval of division.—

(2)(a) When beverage licenses become available by reason of an increase in the population of a county, by reason of a county permitting the sale of intoxicating beverages when such sale had been prohibited, or by reason of the cancellation or revocation of a quota beverage license, the division, if there are more applicants than the number of available licenses, shall provide a method of double random selection by public drawing to determine which applicants shall be considered for issuance of licenses. The double random selection drawing method shall allow each applicant whose application is complete and does not disclose on its face any matter rendering the applicant ineligible an equal opportunity of obtaining an available license. After all applications are filed with the director, the director shall then determine by random selection drawing the order in which each applicant's name shall be matched with a number selected by random drawing, and that number shall determine the order in which the applicant will be considered for a license. This paragraph does not prohibit a person holding a perfected lien or security interest in a quota alcoholic beverage license, in accordance with s. 561.65, from enforcing the lien or security interest against the license within 180 days after a final order of revocation or suspension. A revoked

quota alcoholic beverage license encumbered by a lien or security interest, perfected pursuant to s. 561.65, may not be issued under this subsection until the 180-day period has elapsed or until such enforcement proceeding is final.

Section 16. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) The limitation of the number of licenses as provided in this section does not prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only

on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under chapter 509, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

4. A food service establishment that has 2,500 square feet of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 120-day ~~60-day~~ operating period and the first ~~each~~ 12-month operating period thereafter. Subsequent audit timeframes must be based upon the audit percentage established by the most recent audit and conducted on a

staggered scale as follows: level 1, 51 percent to 60 percent, every year; level 2, 61 percent to 75 percent, every 2 years; level 3, 76 percent to 90 percent, every 3 years; and level 4, 91 percent to 100 percent, every 4 years. A food service establishment granted a special license on or after January 1, 1958, pursuant to general or special law may not operate as a package store and may not sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after the date of the final denial or revocation;

5. Any caterer, deriving at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages at each catered event, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered

event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other

license under the Beverage Law, the license issued under this subparagraph may ~~shall~~ not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first $300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; or

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated pursuant to s. 561.01(11) and may not be removed from the designated area. Such license shall

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be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this subparagraph shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell

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alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is

leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 17. Subsection (4) of section 561.42, Florida Statutes, is amended to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(4) Before the division shall so declare and prohibit such sales to such vendor, ~~it shall,~~ within 2 days after receipt of such notice~~,~~ the division shall give ~~written~~ notice to such vendor by electronic mail of the receipt by the division of such notification of delinquency and such vendor shall be directed to

forthwith make payment thereof or, upon failure to do so, to show cause before the division why further sales to such vendor may ~~shall~~ not be prohibited. Good and sufficient cause to prevent such action by the division may be made by showing payment, failure of consideration, or any other defense which would be considered sufficient in a common-law action. The vendor shall have 5 days after service ~~receipt~~ of such notice via electronic mail within which to show such cause, and he or she may demand a hearing thereon, provided he or she does so in writing within said 5 days, such written demand to be delivered to the division either in person, by electronic mail, or by due course of mail within such 5 days. If no such demand for hearing is made, the division shall thereupon declare in writing to such vendor and to all manufacturers and distributors within the state that all further sales to such vendor are prohibited until such time as the division certifies in writing that such vendor has fully paid for all liquors previously purchased. In the event such prohibition of sales and declaration thereof to the vendor, manufacturers, and distributors is ordered by the division, the vendor may seek review of such decision by the Department of Business and Professional Regulation within 5 days. In the event application for such review is filed within such time, such prohibition of sales may ~~shall~~ not be made, published, or declared until final disposition of such review by the department.

Section 18. Subsection (2) of section 561.55, Florida Statutes, is amended to read:

561.55 Manufacturers', distributors', brokers', sales agents', importers', vendors', and exporters' records and

reports.—

(2) Each manufacturer, distributor, broker, sales agent, and importer shall make a full and complete report by the 10th day of each month for the previous calendar month. The report must be ~~shall be made out in triplicate; two copies shall be sent to the division, and the third copy shall be retained for the manufacturer's, distributor's, broker's, sales agent's, or importer's record. Reports shall be~~ made on forms prepared ~~and furnished~~ by the division and filed with the division through the division's electronic data submission system.

Section 19. Section 562.455, Florida Statutes, is amended to read:

562.455 Adulterating liquor; penalty.—Whoever adulterates, for the purpose of sale, any liquor, used or intended for drink, with cocculus indicus, vitriol, ~~grains of paradise,~~ opium, alum, capsicum, copperas, laurel water, logwood, brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any liquor so adulterated, commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 20. Paragraphs (d) and (f) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the

location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws

provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any assessment ~~monetary obligation~~ due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any

offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is

provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide

an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic

transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association’s declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully

discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium

documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass emails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case

the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The board shall adopt the annual budget at least 14 days prior to the

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start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it shall be deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted. A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an

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adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the

developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

Section 21. Paragraph (m) of subsection (1) of section 718.501, Florida Statutes, is amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with the provisions of this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to

associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12).

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57. The

division may adopt rules regarding the submission of a complaint against an association.

Section 22. Section 718.5014, Florida Statutes, is amended to read:

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office at a ~~in Leon County on the premises of the division or, if suitable space cannot be provided there, at another~~ place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

Section 23. Paragraph (j) of subsection (1) of section 719.106, Florida Statutes, is amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(j) *Annual budget.*—

1. The proposed annual budget of common expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20). The board of administration shall adopt the annual budget at least 14 days prior to the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it shall be deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

2. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other items for which the deferred maintenance expense or replacement cost exceeds $10,000. The amount to be reserved shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This paragraph shall not apply to any budget in which the members of an association have, at a duly called meeting of the association, determined for a fiscal year to provide no reserves or reserves less adequate than required by this subsection. However, prior to turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 719.301, the developer may vote to waive the reserves or reduce the funding of reserves for the first 2 years of the operation of the association after which time reserves may only be waived or reduced upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine to provide no reserves, or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a vote of the majority of the voting interests, voting in person or by limited proxy at a duly called meeting of the association. Prior to turnover of control of an association by a developer to unit owners other than the developer under s. 719.301, the developer may not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

Section 24. Subsection (1) of section 455.219, Florida Statutes, is amended to read:

455.219 Fees; receipts; disposition; periodic management reports.—

(1) Each board within the department shall determine by rule the amount of license fees for its profession, based upon department-prepared long-range estimates of the revenue required to implement all provisions of law relating to the regulation of professions by the department and any board; however, when the department has determined, based on the long-range estimates of such revenue, that a profession’s trust fund moneys are in excess of the amount required to cover the necessary functions of the board, or the department when there is no board, the department may adopt rules to implement a waiver of license renewal fees for that profession for a period not to exceed 2 years, as determined by the department. Each board, or the department when there is no board, shall ensure license fees are

adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the department, with advice of the applicable board. If sufficient action is not taken by a board within 1 year of notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for the advancement of sufficient funds to any profession or the Florida Athletic ~~State Boxing~~ Commission operating with a negative cash balance. Such advancement may be for a period not to exceed 2 consecutive years and shall require interest to be paid by the regulated profession. Interest shall be calculated at the current rate earned on Professional Regulation Trust Fund investments. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

Section 25. Subsection (4) of section 548.002, Florida Statutes, is amended to read:

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

(4) "Commission" means the Florida Athletic ~~State Boxing~~ Commission.

Section 26. Subsections (3) and (4) of section 548.05, Florida Statutes, are amended to read:

548.05 Control of contracts.—

(3) The commission may require that each contract contain

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language authorizing the ~~Florida State Boxing~~ commission to withhold any or all of any manager's share of a purse in the event of a contractual dispute as to entitlement to any portion of a purse. The commission may establish rules governing the manner of resolution of such dispute. In addition, if the commission deems it appropriate, the commission is hereby authorized to implead interested parties over any disputed funds into the appropriate circuit court for resolution of the dispute before ~~prior to~~ release of all or any part of the funds.

(4) Each contract subject to this section shall contain the following clause: "This agreement is subject to the provisions of chapter 548, Florida Statutes, and to the rules of the Florida Athletic ~~State Boxing~~ Commission and to any future amendments of either."

Section 27. Subsection (12) of section 548.071, Florida Statutes, is amended to read:

548.071 Suspension or revocation of license or permit by commission.—The commission may suspend or revoke a license or permit if the commission finds that the licensee or permittee:

(12) Has been disciplined by the ~~Florida State Boxing~~ commission or similar agency or body of any jurisdiction.

Section 28. Section 548.077, Florida Statutes, is amended to read:

548.077 Florida Athletic ~~State Boxing~~ Commission; collection and disposition of moneys.—All fees, fines, forfeitures, and other moneys collected under the provisions of this chapter shall be paid by the commission to the Chief Financial Officer who, after the expenses of the commission are paid, shall deposit them in the Professional Regulation Trust

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Fund to be used for the administration and operation of the commission and to enforce the laws and rules under its jurisdiction. In the event the unexpended balance of such moneys collected under the provisions of this chapter exceeds $250,000, any excess of that amount shall be deposited in the General Revenue Fund.

Section 29. 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:	SB 7002
INTRODUCER:	Health Policy Committee
SUBJECT:	OGSR/Trade Secrets/Department of Health
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Smith	Brown		**HP Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Smith	Phelps	RC	**Favorable**

I. Summary:

SB 7002 saves from repeal the public record exemption for trade secrets contained in records, reports, or information submitted to the Department of Health (DOH) under ch. 381, F.S. People or entities may be required to submit trade secrets to the DOH under ch. 381, F.S., to obtain a license or permit, such as with Medical Marijuana Treatment Centers, or to provide the DOH with the person's or entity's qualifications as the DOH seeks to procure services or commodities.

The public records exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act. This bill removes the scheduled repeal of the exemption to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local government revenues and expenditures.

The bill takes effect October 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]

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the 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]

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[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2010-2022) 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).
[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

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 Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended[17] 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:

- The exemption allows the state or its political subdivisions to effectively and efficiently administer a governmental program and such administration would be significantly impaired without the exemption;[21]
- The exemption 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

(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 Courts 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.

[22] Section 119.15(6)(b)2., F.S.

- 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 question carefully 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, then records created before the sunset date may not be made public unless otherwise provided by law.[26]

Trade Secrets

For the purpose of s. 381.83, F.S., the term "trade secrets" is defined in s. 812.081(1)(c), F.S. In short, when the owner of the information in question takes measures to prevent it from becoming available to persons other than those selected by the owner to have access for limited purposes, a trade secret is considered to be secret, of value, for use or in use by the business, and of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.

The First District Court of Appeal held that the names and related information of a Medical Marijuana Treatment Center's ("MMTC's") individual investors and partners are not trade secrets under s. 812.081(c), F.S. (2015), but that the names and related information of an MMTC's consultants may be protected as trade secrets.[27]

In 2016, the definition of "trade secret" in section 812.081, F.S., was expanded to include financial information.[28] As a result, this public record exemption was amended to include the new definition of "trade secret" and is subject to the Open Government Sunset Review Act.[29]

[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] Surterra Florida, LLC. v. Florida Department of Health, 233 So.2d 376, 640 (Fla. 1st DCA 2017).
[28] Ch. 5, s. 1, Laws of Fla. (2016).
[29] Ch. 6, s. 6, Laws of Fla. (2016).

Chapter 381 - Public Health: General Provisions

Chapter 381, F.S. encompasses a wide variety of health services and licensing provisions under the DOH regulation. This includes patients submitting medical records to apply for various programs, physicians providing reports and records on research and testing, permitting of MMTCs, licensing systems for medical marijuana patients and caregivers, permitting of migrant labor camps, and any other programs or service listed under the statute.

Licenses and permits that are issued by the DOH under ch. 381, F.S., and the number of active licenses or permits in the state for each type:[30]

- MMTCs – 22
- Certified Medical Marijuana Testing Labs - 5
- Medical Marijuana Patients and Caregivers – 435,105
- Tattoo Artist Licensure: Tattoo Artist–11,865
- Tattoo Artist Licensure: Guest Tattoo Artist– 89
- Radon Program Certification: Radon Measurement Professional -379
- Radon Program Certification: Radon Mitigation Professional -46
- Certified Environmental Health Professional: Food Protection Only – 209
- Certified Environmental Health Professional: OSTDS Only - 249
- Certified Environmental Health Professional: Food Protection & OSTDS - 349
- Septic Tank Contractor Registration – 650
- Biomedical Waste Permits (46,648):
- Generator – 45,767
- Needle Collection – 356
- Storage – 217
- Transporter – 288
- Treatment - 20
- Body Piercing Establishments (481):
- Salon – 479
- Temporary - 2
- Food Hygiene Permits (14,747):
- Adult Day Care – 381
- Afterschool Meal Program – 334
- Assisted Living Facility – 1,490
- Bar/Lounge – 2,540
- CCFP-Religious Exempt – 26
- Civic Organization – 440
- Crisis Stabilization Unit – 33
- Detention Facility – 737
- Domestic Violence Shelter – 38
- Fraternal Organization – 921
- Homes for Special Services – 18

[30] Department of Health, *Open Government Sunset Review Questionnaire relating to Trade Secrets contained in records, reports, or information submitted to the Department of Health under chapter 381, F.S.*, (prepared on Oct. 26, 2020) (on file with the Senate Committee on Health Policy).

- Hospice – 56
- Intermediate Care Facility for the Developmentally Disabled – 52
- Migrant Labor – 8
- Movie Theater – 56
- Prescribed Pediatric Extended Care Center – 114
- Recreational Camp – 94
- Residential Treatment Facility (AHCA) – 154
- School (9 months or less) – 2,831
- School (more than 9 months) – 4,245
- Short-Term Residential Treatment Center (DCF) – 164
- Transitional Living Facility - 15
- Limited Use Water Permits (11,270):
- Limited Use Commercial – 2,953
- Limited Use Community – 3,887
- Multifamily – 90
- Registered Limited Use Commercial – 4,340
- Migrant Labor Camp Permit (1,150):
- H2A Migrant Camp – 438
- HUD Housing – 3
- MHP/RV/Migrant Housing – 3
- Migrant Labor Camp – 526
- Non-permitted – 45
- Other – 5
- Residential Migrant Housing - 130
- Mobile Home Parks Permits (5,399):
- Lodging Park – 173
- MHP/RV/Migrant Housing – 28
- Mobile Home Park – 3,800
- Recreational Camp – 147
- Recreational Vehicle Park -1,225
- Temporary Event - 26
- Onsite Sewage Treatment & Disposal System (OSTDS) Operating Permits (22,192):
- Aerobic – 11,165
- Commercial – 3,105
- Industrial or manufacturing – 5,781
- Performance Based – 2,141
- OSTDS Service Permits – 1,220
- OSTDS Construction Permits – 56,716
- OSTDS Septic Tank Business Authorizations – 576
- Public Swimming Pools (42,119):
- Exempt Pools < 32 Units – 1,813
- Exempt Pools > 32 Units – 1,304
- Exempt Pool Therapy – 33
- Fountains – 51

- Natural Bathing Place – 29
- Other – 141
- Public Pool <= 25,000 Gallons – 8,788
- Public Pool > 25,000 Gallons – 20,963
- River Ride – 16
- Spa-Type Pools - 7,245
- Special Purpose Pool – 148
- Wading Pool – 839
- Water Activity – 485
- Water Attractions – 193
- Water Slide Plunge Pool – 24
- Zero Depth Entry Pool - 47
- Radon Measurement Business – 45
- Radon Mitigation Business - 26
- Tanning Establishments – 718
- Tattoo Establishments – 4,188

Trade Secrets Submitted to the DOH under Chapter 381

The information included in the records that may pertain to trade secrets include financial and proprietary information from applicants and licensees, financial and proprietary information from those requesting permits, and any data software, programs, and/or information submitted or created pursuant to this section for any of the programs overseen by the DOH.

Individuals and entities may be required to submit information that meets the definition of trade secret to the DOH to obtain a license or a permit. For example, s. 381.986, F.S., provides licensing requirements for MMTCs. Under this section, an MMTC provides detailed business plans to prove its ability to safely and efficiently provide medical marijuana to patients. Most of these business plans contain trade secret information. Such information is necessary for the DOH to weigh qualifications and determine the best candidates to receive licensure. However, the disclosure of this information could provide an unfair advantage to competitors and render the competitive application process meaningless.

Records and information may also be submitted to the DOH under ch. 381, F.S., as the DOH seeks to procure services or commodities. A potential vendor may include specific product specifications, financial records, or financial projections as part of its submission and may claim that the information and records are trade secrets.

Financial information that would fall under a trade secret may include calculations for pricing of certain products as the calculations may provide an advantage to a competitor on how to outbid by offering a lower price point. It could also include proprietary information on pricing from the entity's vendors, or wage and/or tax information that may give a competitor knowledge it did not previously possess, as well as bank notes and information regarding financial statuses of private investors. As part of the procurement process, it may be necessary to receive information from the potential vendors such as net worth, business plans, profit and loss statements, balance sheets, cash on hand, and other information which would support their ability to perform the

services. If this information is not protected from disclosure, there is a risk that the DOH may not receive the information it needs to make an informed decision.

Submitting Trade Secrets to the DOH

Each person or entity seeking a trade-secret exemption is required to provide documentation asserting the trade secret when the information is submitted. If necessary, the DOH may request both a redacted and unredacted copy of the information to be maintained on file in the case of a public records request. If a public records request is made, the DOH then makes a determination as to whether the information fits the statutory definition of "trade secret," as that term is defined in s. 812.081(1)(c), F.S.[31]

If the information is not determined to be a trade secret, the DOH allows the person or entity to provide additional information.[32] The person or entity is also put on notice that they can challenge that determination through a court proceeding.

If the information is determined to be a trade secret, the DOH will review the unredacted copy to ensure that only exempted trade secret information has been redacted. If the information should not have been redacted, the person or entity is notified and given the opportunity to correct the redactions or provide additional information prior to its release.[33]

Staff Survey Regarding Exemption under Review

Legislative staff received a response from the DOH to a joint survey of the House Oversight, Transparency & Public Management Subcommittee and the Senate Committee on Health Policy regarding the public record exemption for trade secrets contained in records, reports, or information submitted to the DOH under ch. 381, F.S. The DOH recommends retaining the exemption in its current form.[34]

III. Effect of Proposed Changes:

The bill saves from repeal the public records exemption in s. 381.83, F.S., for trade secrets contained in records, reports, or information submitted to the DOH under ch. 381, F.S. The information will continue to be confidential and exempt from public disclosure beyond October 2, 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

[31] Section 381.83(1), F.S.
[32] *Id.* at 31.
[33] *Id.* at 31.
[34] *Id.* at 31.

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:

Voting 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 newly created or expanded public record exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is not required.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Thus, the bill does not require a public necessity statement.

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 bill exempts trade secret information "upon a showing satisfactory to the Department"[35] that the information meets the statutory definition in s. 812.081(1)(c), F.S. Whether information constitutes a trade secret is subject to interpretation by the Department. Specific applications of the exemption could be challenged. However, "exemptions from disclosure are to be narrowly construed,"[36] and the agency having custody of the records "bears the burden of proving its right to the claimed exemption."[37]

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

[35] Section 381.83(1), F.S.
[36] *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004) (citations omitted), *rev. den*., 892 So.2d 1015 (Fla. 2004).
[37] *Id.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with the DOH making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The DOH will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.83 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 Health Policy

588-01420-21 20217002__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 381.83, F.S., which provides an exemption from public records requirements for certain trade secrets contained in records, reports, or information submitted to the Department of Health; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 381.83, Florida Statutes, is amended to read:

381.83 Trade secrets; confidentiality.—

~~(1)~~ Records, reports, or information obtained from any person under this chapter, unless otherwise provided by law, must be available to the public, except upon a showing satisfactory to the department by the person from whom the records, reports, or information is obtained that such records, reports, or information, or a particular part thereof, contains trade secrets as defined in s. 812.081. Such trade secrets are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The person submitting such trade secret information to the department must request that it be kept confidential and must inform the department of the basis for the claim of trade secret. The department shall, subject to notice and opportunity for hearing, determine whether the information, or portions thereof, claimed to be a trade secret is or is not a trade secret. Such trade secrets may be

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588-01420-21 20217002__

disclosed, however, to authorized representatives of the department or, pursuant to request, to other governmental entities in order for them to properly perform their duties, or when relevant in any proceeding under this chapter. Authorized representatives and other governmental entities receiving such trade secret information shall retain its confidentiality. Those involved in any proceeding under this chapter, including a hearing officer or judge or justice, shall retain the confidentiality of any trade secret information revealed at such proceeding.

~~(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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

Futch, Cynthia

From: Ruiz, Judith
Sent: Wednesday, March 31, 2021 12:47 PM
To: Phelps, John; Futch, Cynthia; Passidomo, Kathleen
Subject: SB 7002 Open Government Sunset Review Request to be Placed on Agenda Letter

Follow Up Flag: Follow up
Flag Status: Completed

March 30, 2021

Honorable Senator Kathleen Passidomo
Chair
Committee on Rules

Honorable Chair Passidomo,

I respectfully request SB 7002 Open Government Sunset Review 381.83 be placed on the next committee agenda.

SB 7002 saves from repeal the public record exemption for trade secrets contained in records, reports, or information submitted to the Department of Health (DOH) under ch. 381, F.S. People or entities may be required to submit trade secrets to the DOH under ch. 381, F.S., to obtain a license or permit, such as with Medical Marijuana Treatment Centers, or to provide the DOH with the person's or entity's qualifications as the DOH seeks to procure services or commodities. The public records exemption stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act. This bill removes the scheduled repeal of the exemption to continue the confidential and exempt status of the information.



Senator Manny Diaz, Jr.
Florida Senate, District 36

CC: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7006
INTRODUCER:	Environment and Natural Resources Committee
SUBJECT:	OGSR/Trade Secrets/Department of Environmental Protection
DATE:	April 19, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Anderson	Rogers		**EN Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Anderson	Phelps	RC	**Favorable**

I. Summary:

SB 7006 saves from repeal the public records exemption relating to trade secret information contained in records, reports, or information submitted to the Department of Environmental Protection (DEP) under part IV of ch. 403, F.S., which regulates solid waste management, including the storage, collection, transport, separation, processing, recycling, and disposal of solid waste.

The bill continues to maintain this trade secret information as confidential and exempt from public inspection and copying. These confidential records may be disclosed to authorized representatives of DEP or, pursuant to request, to other governmental entities in order for them to properly perform their duties, when relevant to a proceeding involving the regulation of solid waste management and recycling, provided the authorized representative or governmental entity retains confidentiality.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The exemption contained in s. 403.73, F.S., is scheduled to repeal on October 2, 2021. This bill removes the scheduled repeal to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 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]

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*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (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).

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 Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended[17] 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]

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[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).
[11] *Id*. *See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[16] Section 119.15, F.S.
[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[18] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[19] Section 119.15(3), F.S.
[20] Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

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]

Confidentiality of Trade Secrets Contained in Information Submitted to DEP Under Part IV of Ch. 403, F.S.

Part IV of ch. 403, F.S., governs solid waste management, including the storage, collection, transport, separation, processing, recycling, and disposal of solid waste. Section 403.73, F.S., provides a public record exemption for trade secrets[27] contained in records, reports, or information submitted to the Department of Environmental Protection (DEP) under part IV of ch. 403, F.S. The exemption also requires persons submitting trade secret information to the DEP to request that such information be kept confidential and inform the DEP of the basis for the

[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] Section 812.081, F.S. defines "trade secret" to mean the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it.

claim of trade secret.[28] The DEP then is required to, subject to notice and an opportunity for hearing, determine whether the information, or any portion thereof, is or is not a trade secret.[29]

The DEP may disclose information made confidential and exempt to authorized representatives of the DEP or, pursuant to request, to another state or federal government entity if disclosure is necessary for the receiving entity to perform its duties or responsibilities or when relevant to any proceeding in ch. 403, F.S.[30] Those involved in a proceeding may include an administrative law judge, a hearing officer, or a judge or justice.

Section 403.73, F.S., provides for future review and repeal of the public records exemption on October 2, 2021.

In 2016, the definition of "trade secret" in s. 812.081, F.S., was expanded to include financial information. As a result, the public record exemption in s. 403.73, F.S., was reenacted to include the new definition of "trade secret" and is subject to the Act.[31]

Chapter 2016-6, Laws of Florida, reenacted the exemption for public record disclosure requirements for trade secret information contained in records, reports, or information submitted to the DEP under part IV of ch. 403, F.S. Chapter 2016-6, Laws of Florida, included a public necessity statement that provided a rationale for the exemption, which recognized that, in many instances, businesses are required to provide financial information for regulatory or other purposes to public entities and that disclosure of such information to competitors of those businesses would be detrimental to the businesses.[32] The Legislature stated its intent to protect trade secret information of a confidential nature which includes, but is not limited to, a formula, a pattern, a device, a combination of devices, or a compilation of information used to protect or further a business advantage over those who do not know or use the information, the disclosure of which would injure the affected business in the marketplace.[33]

Open Government Sunset Review Findings and Recommendations

In July 2020, the Senate Environment and Natural Resources Committee and the House Oversight, Transparency & Public Management Subcommittee sent an Open Government Sunset Review Questionnaire to the DEP regarding the exemption for trade secrets contained in records, reports, or information submitted to the DEP under part IV of ch. 403, F.S.

The DEP responded to the questionnaire but did not take a position on whether the exemption should remain in effect to protect the trade secret information it obtains. The DEP estimates that under five percent of the records and reports it receives are affected by the exemption for trade

[28] Section 403.73(1), F.S.
[29] *Id*.
[30] *Id*.
[31] Section 119.15, F.S.
[32] Ch. 2016-6, Laws of Fla.
[33] Ch. 2016-6, Laws of Fla.

secrets under s. 403.73, F.S., and under one percent of the records and reports contain financial information claimed to be trade secrets.[34]

The DEP stated that the information typically contained in records and reports it receives includes, "[p]ermit application[s], engineering report[s], foundation and stability calculations, site plans, hydrogeological and geotechnical reports, design and construction drawings, groundwater monitoring plan[s], operation plan[s] including details on operating procedures, processes and contingency plans, gas monitoring, landfill/facility design and construction details, technical specifications, Construction Quality Assurance plans, cost estimates for closure and long-term care, financial mechanisms, and groundwater and landfill gas monitoring results."[35]

III. Effect of Proposed Changes:

The bill saves from repeal the current public records exemption relating to trade secret information contained in records, reports, or information submitted to the Department of Environmental Protection under part IV of ch. 403, F.S., which regulates solid waste management, including the storage, collection, transport, separation, processing, recycling, and disposal of solid waste. The information will continue to be confidential and exempt from public disclosure beyond October 2, 2021.

The bill takes effect October 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.

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 continues a current public records exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require 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

[34] Email, Department of Environmental Protection (Aug. 12, 2020), *Open Government Sunset Review Questionnaire (Trade Secrets contained in records, reports, or information submitted to the Department of Environmental Protection under part IV of ch. 403)* (Aug. 12, 2020)(on file with the Senate Committee on Environment and Natural Resources).
[35] *Id*.

justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

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 trade secret information contained in records, reports, or information submitted to the Department of Environmental Protection under part IV of ch. 403, F.S. This bill exempts only trade secret information from the public records requirements. 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 continue to be subject to the cost, to the extent imposed, associated with the DEP making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The DEP will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.73 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 Environment and Natural Resources

592-01946-21 20217006__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 403.73, F.S., relating to an exemption from public records requirements for trade secrets contained in information obtained by the Department of Environmental Protection; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 403.73, Florida Statutes, is amended to read:

403.73 Trade secrets; confidentiality.—

~~(1)~~ Records, reports, or information obtained from any person under this part, unless otherwise provided by law, must be available to the public, except upon a showing satisfactory to the department by the person from whom the records, reports, or information is obtained that such records, reports, or information, or a particular part thereof, contains trade secrets as defined in s. 812.081. Such trade secrets are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The person submitting such trade secret information to the department must request that it be kept confidential and must inform the department of the basis for the claim of trade secret. The department shall, subject to notice and opportunity for hearing, determine whether the information, or portions thereof, claimed to be a trade secret is or is not a trade secret. Such trade secrets may be

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

592-01946-21 20217006__

disclosed, however, to authorized representatives of the department or, pursuant to request, to other governmental entities in order for them to properly perform their duties, or when relevant in any proceeding under this part. Authorized representatives and other governmental entities receiving such trade secret information shall retain its confidentiality. Those involved in any proceeding under this part, including an administrative law judge, a hearing officer, or a judge or justice, shall retain the confidentiality of any trade secret information revealed at such proceeding.

~~(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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 31, 2021

I respectfully request that **Senate Bill 7006**, relating to a **Review Under the Open Government Sunset Review Act**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Jason Brodeur

Senator Jason Brodeur
Florida Senate, District 9

File signed original with committee office

S-009 (01/2021)

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 7008
INTRODUCER:	Governmental Oversight and Accountability Committee and Environment and Natural Resources Committee
SUBJECT:	OGSR/Trade Secrets/Department of Environmental Protection
DATE:	April 19, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Schreiber	Rogers		**EN Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Fav/CS**
2.	Schreiber	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7008 amends s. 403.7046, F.S., to save from repeal the public records exemptions for trade secret information reported under s. 403.7046, F.S., which involves information on recovered materials reported to the Department of Environmental Protection (DEP) or local governments by recovered materials dealers or pyrolysis facilities. The bill also removes a duplicative exemption that applies only to similar information reported to local governments.

The bill continues to maintain information reported on recovered materials as confidential and exempt. The DEP may continue to provide information covered by the exemption in such form that the names of the persons reporting the information and the specific information reported are not revealed.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The two exemptions contained in s. 403.7046 F.S., are scheduled to repeal on October 2, 2021. This bill removes the scheduled repeal of the exemption for information reported under s. 403.7046, F.S., to continue the confidential and exempt status of such information. The duplicative exemption for only information to local governments is deleted.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 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* (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S.; s. 119.011(2), F.S. "Agency" is defined 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. "Public record" is defined as "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 Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions, with specified exceptions.[17] 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.[18] Under the Act, substantially amending an exemption means expanding the scope of the exemption to include more records or information or to include meetings, but narrowing the scope of an exemption is not substantially amending the exemption.[19]

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[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, 53 (Fla. 5th DCA 2004).
[16] Section 119.15, F.S.
[17] 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.
[18] Section 119.15(3), F.S.
[19] Section 119.15(4)(b), 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 otherwise provided by law.[26]

Information Reported Under s. 403.7046, F.S.

The Department of Environmental Protection (DEP) regulates resource recovery and management under part IV of ch. 403, F.S. "Recovered materials" are defined in part IV to mean materials with known recycling potential, that can be feasibly recycled, that have been diverted and separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials.[27]

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[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.
[27] Section 403.703(28), F.S. "Recovered materials" is defined as "metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed

Section 403.7046, F.S., requires persons dealing in recovered materials (or post-use polymers[28]) to follow specified procedures.[29] Any person who handles, purchases, receives, recovers, sells, or is an end user of 600 tons or more of recovered materials must annually apply to the DEP for certification by April 1.[30] Such persons must report by February 1st of each year to the DEP, and to all counties from which they received materials, certain information for the preceding year.[31] Such reporting is submitted through a specified form of the DEP,[32] incorporated into rule by reference.[33] Information reported on the form includes the total tons of recovered materials for a given year, organized by types of materials: paper, plastic, metals, glass, rubber, and textiles.

Section 403.7046, F.S., contains a public records exemption that applies to any information reported pursuant to the section or any rule adopted pursuant thereto.[34] The exemption states that reported information which, if disclosed, would reveal a trade secret, as defined in s. 812.081, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.[35] The exemption provides that, for reporting or information purposes, the DEP may provide this information "in such form that the names of the persons reporting such information and the specific information reported are not revealed."[36] The DEP publishes various reports and data on statewide recycling efforts and solid waste management.[37]

Section 403.7046(3)(b), F.S., authorizes local governments to establish an additional registration process for recovered materials dealers and pyrolysis facilities doing business within their jurisdiction. Local governments whose population exceeds 35,000 may establish an additional reporting process, limited to the requirements established for reporting to the DEP, which must include the types and approximate amounts of recovered materials collected, recycled, or reused during the reporting period.[38] Section 403.7046(3)(b)2., F.S., contains a separate public records

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from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal. Recovered materials as described in this subsection are not solid waste."

[28] Chapter 2017-167, Laws of Fla. In 2017, the Legislature amended pt. IV, ch. 403, F.S., to include emerging technologies involving post-use polymers, and these are included in the reporting requirements under s. 403.7046, F.S.; s. 403.703(10), (24), and (26), F.S. Post-use polymer means a plastic polymer that is converted to raw materials using gasification or pyrolysis. Gasification means heating post-use polymers and converting them to synthetic gas in an oxygen-deficient atmosphere. Pyrolysis means heating post-use polymers in the absence of oxygen until they are melted and converted to raw materials or products.

[29] DEP, *Recovered Materials Certification and Reporting Program*, https://floridadep.gov/waste/waste-reduction/content/recovered-materials-certification-and-reporting-program (last visited Jan. 22, 2021).

[30] Section 403.7046(1), F.S.; Fla. Admin. Code. R. 62-722.400.

[31] Section 403.7046(1), F.S.; Fla. Admin. Code. R. 62-722.400.

[32] DEP, *Form # 62-722.400(9)(b), F.A.C.* (2013), *available at* https://floridadep.gov/sites/default/files/62-722_400_9b.pdf (last visited Jan. 22, 2021).

[33] Fla. Admin. Code. R. 62-722.400(2).

[34] Section 403.7046(2), F.S.

[35] *Id*.

[36] *Id*.

[37] DEP, *Recycling*, https://floridadep.gov/waste/waste-reduction/content/recycling (last visited Jan. 22, 2021); Section 403.706(7), F.S. Counties are required to provide the DEP with recycling and solid waste information so that the DEP can assess progress towards the state's recycling goals; Fla. Admin. Code R. 62-716.450.

[38] Section 403.7046(3)(b)1., F.S.

exemption, similar to the public records exemption in s. 403.7046(2), F.S., but which only applies to information reported under subsection (3).[39]

In 2016, the definition of "trade secret" in s. 812.081, F.S., was expanded to include financial information.[40] As a result, the two public records exemptions in s. 403.7046, F.S., were reenacted to include the expanded definition of "trade secret," and, thus, became subject to the Open Government Sunset Review Act.[41] Chapter 2016-6, L.O.F., included a broad public necessity statement that provided a rationale for the exemption, recognizing that, in many instances, businesses are required to provide financial information to public entities and that disclosure of such information to competitors of those businesses would be detrimental to the businesses.[42] The Legislature stated its intent to protect trade secret information of a confidential nature.[43]

Open Government Sunset Review Findings and Recommendations

In July of 2020, the Senate Environment and Natural Resources Committee and the House Oversight, Transparency, and Public Management Subcommittee sent an Open Government Sunset Review Questionnaire to the DEP regarding the trade secret exemption in s. 403.7046(2), F.S., for information submitted to the DEP under s. 403.7046, F.S.

The DEP responded to the questionnaire, but did not take a position on whether the exemption in s. 403.7046(2), F.S., should remain in effect.[44] The questionnaire asked DEP what types of information reported to DEP under s. 403.7046, F.S., would reveal a trade secret if disclosed. The DEP's response was the tonnage information reported by the recovered materials dealers. The DEP explained that disclosing such information could provide confidential information regarding tonnage to the competitors of recovered materials dealers, allowing the competitors to evaluate market share.[45]

III. Effect of Proposed Changes:

Section 1 amends s. 403.7046, F.S., which requires persons dealing in recovered materials or post-use polymers to report to the Department of Environmental Protection (DEP) and certain local government's information on recovered materials. The section includes two public records exemptions.

For the exemption in s. 403.7046(2), F.S., the bill saves the exemption from repeal by deleting the repeal date of October 2, 2021. As a result, this information will continue to maintain its confidential and exempt status beyond October 2, 2021. This exemption applies to any information reported pursuant to s. 403.7046, F.S., or any rule adopted pursuant thereto.

[39] Section 403.7046(3)(b)2., F.S.
[40] Chapter 2016-5, Laws of Fla.
[41] Section 119.15, F.S.; *see* s. 403.7046(2), (3)(b)2., F.S.
[42] Chapter 2016-6, s. 21, Laws of Fla.
[43] *Id*.
[44] Open Government Sunset Review Questionnaire, DEP's Responses, *Information Reported to DEP by Certified Recovered Materials Dealers*, 5 (Aug. 12, 2020)(on file with the Florida Senate Environment and Natural Resources Committee).
[45] *Id*. at 3.

The bill deletes the current exemption granted in s. 403.7046(3), F.S. Information reported to local governments pursuant to s. 403.7046(3)(b), F.S., will continue to be covered under the exemption in s. 403.7046(2), F.S., since that exemption applies to any information reported pursuant to s. 403.7046, F.S., relating to the types or amounts of recovered materials or post-use polymers reported to a recovered material dealer or pyrolysis facility.

Section 2 states that the bill takes effect October 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.

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 continues one current public records exemption beyond its current date of repeal and narrows the scope of that exemption, and also deletes one current exemption. The bill does not create or expand the scope of an exemption. Thus, the bill does not require a two-thirds vote for passage.

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. The bill does not create or expand the scope of an exemption. Thus, a statement of public necessity is not required.

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 information that must be reported to the DEP and local governments under s. 403.7046, F.S. This bill narrows the scope of the exemption to apply to such reported information only as broadly as necessary. Thus, the bill revises the exemption so it is no 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 continue to be subject to the cost, to the extent imposed, associated with the DEP or local governments making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The DEP and local governments will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 403.7046 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 language that narrowed the exemption under review. With the CS, the exemption will apply to all trade secret material reported to DEP or local governments on recycled materials.

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 Committees on Governmental Oversight and Accountability; and Environment and Natural Resources

585-03622-21 20217008c1

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 403.7046, F.S., which provides exemptions from public records requirements for trade secrets contained in information obtained by the Department of Environmental Protection; removing the scheduled repeal of an exemption; deleting an exemption; providing an effective date.

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

Section 1. Subsection (2) and paragraph (b) of subsection (3) of section 403.7046, Florida Statutes, are amended to read:

403.7046 Regulation of recovered materials.—

(2) Information reported pursuant to this section or any rule adopted pursuant to this section which, if disclosed, would reveal a trade secret, as defined in s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For reporting or information purposes, however, the department may provide this information in such form that the names of the persons reporting such information and the specific information reported are not revealed. ~~This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(3) Except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial

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

585-03622-21 20217008c1

establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government, nor may the local government restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

(b)~~1.~~ Before engaging in business within the jurisdiction of the local government, a recovered materials dealer or pyrolysis facility must provide the local government with a copy of the certification provided for in this section. In addition, the local government may establish a registration process whereby a recovered materials dealer or pyrolysis facility must register with the local government before engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer or pyrolysis facility to register its name, including the owner or operator of the dealer or pyrolysis facility, and, if the dealer or pyrolysis facility is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its certification under this section, and a certification that the recovered materials or post-use polymers will be processed at a recovered materials processing facility or pyrolysis facility satisfying the requirements of this section. The local government may not use

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

the information provided in the registration application to compete unfairly with the recovered materials dealer until 90 days after receipt of the application. All counties, and municipalities whose population exceeds 35,000 according to the population estimates determined pursuant to s. 186.901, may establish a reporting process that must be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which must, at a minimum, include requiring the dealer or pyrolysis facility to identify the types and approximate amount of recovered materials or post-use polymers collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials or post-use polymers reused, stored, or delivered to a recovered materials processing facility or pyrolysis facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials or post-use polymers were disposed of as solid waste. The local government may charge the dealer or pyrolysis facility a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program. Registration program costs are limited to those costs associated with the activities described in this paragraph ~~subparagraph~~. Any reporting or registration process established by a local government with regard to recovered materials or post-use polymers is governed by this section and department rules adopted pursuant thereto.

~~2. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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 31, 2021

I respectfully request that **Senate Bill 7008**, relating to a **Review Under the Open Government Sunset Review Act**, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Jason Brodeur

Senator Jason Brodeur
Florida Senate, District 9

File signed original with committee office

S-009 (01/2021)

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:	SB 7010
INTRODUCER:	Military and Veterans Affairs, Space, and Domestic Security Committee
SUBJECT:	OGSR/Space Florida
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Stallard	Caldwell		**MS Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Stallard	Phelps	RC	**Favorable**

I. Summary:

SB 7010 saves from repeal a public records exemption and a public meetings exemption for trade secrets. Section 331.326, F.S., provides that any information held by Space Florida, which is a trade secret, as defined in s. 812.081, F.S., is confidential and exempt from public records disclosure requirements and may not be disclosed. The section also provides that any meeting or portion of a meeting of Space Florida's board is exempt from open meetings and public records disclosure requirements if the board is discussing trade secrets. Any public records generated as a result of the closed portions of such meetings are also confidential and exempt from public records disclosure requirements.

Section 331.326, F.S., is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment. This bill removes the scheduled repeal of the exemptions.

The original public necessity statement provides that it is a public necessity that financial information comprising a trade secret as defined in s. 812.081, F.S., be made exempt or confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the Florida Constitution. The statement also provides that it is a public necessity that any portion of a meeting in which a trade secret as defined in s. 812.081, F.S., is discussed be made exempt from s. 286.011, F.S., and s. 24(b), Article I of the Florida Constitution. Justification for the public records exemptions has not changed. Because the bill does not expand the public records exemption or the open meetings exemptions, the bill does not require a two-thirds vote of each house in order to pass.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 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 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]

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.[5] Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

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 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."[7]

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

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Public records laws are found throughout the Florida Statutes.
[4] Section 119.01(1), F.S.
[5] *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).
[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." 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."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).

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]

Only the Legislature may create an exemption to public records requirements.[10] An exemption must be created by general law and must state with specificity the public necessity justifying the exemption.[11] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[12] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[13]

When creating or expanding a public records exemption, the Legislature may provide that a record is 'confidential and exempt' or 'exempt.'[14] Records designated as 'confidential and exempt' may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as 'exempt' may be released at the discretion of the records custodian under certain circumstances.[15]

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,[16] with specified exceptions.[17] The Act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.[18] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

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.[19] 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:

[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.*
[12] The bill may, however, contain multiple exemptions that relate to one subject.
[13] FLA. CONST., art. I, s. 24(c).
[14] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[16] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.
[17] 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.
[18] Section 119.15(3), F.S.
[19] Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[20]
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[21] or
- It protects trade or business secrets.[22]

The Act also requires specified questions to be considered during the review process.[23] In examining an exemption, the Act directs the Legislature to question carefully the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[24] If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[25]

Space Florida

Space Florida was created as an independent special district,[26] a body politic and corporate, and a subdivision of the state, to foster the growth and development of a sustainable and world-leading aerospace industry in this state. The purpose of Space Florida is to promote aerospace business development by facilitating business financing, spaceport operations, research and development, workforce development, and innovative education programs.[27] To accomplish its purpose, Space Florida advises, coordinates, cooperates, and, when necessary, enters into memoranda of agreement with municipalities, counties, regional authorities, state agencies and organizations, appropriate federal agencies and organizations, and other interested persons and groups.[28] Space Florida may purchase or construct facilities; set rates, fees, and charges for the use of facilities; and undertake joint financing with municipalities or private sector entities for any project.[29]

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[20] Section 119.15(6)(b)1., F.S.
[21] Section 119.15(6)(b)2., F.S.
[22] Section 119.15(6)(b)3., F.S.
[23] 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?

[24] FLA. CONST. art. I, s. 24(c).
[25] Section 119.15(7), F.S.
[26] Part III, Chapter 189, F.S.
[27] Section 331.302(1), F.S.
[28] Section 331.302(2), F.S. Space Florida is not an agency as defined in ss. 216.011 and 287.012, F.S. Space Florida is subject to applicable provisions of the Uniform Special District Accountability Act. Section 331.302(4) and (5), F.S.
[29] Section 331.305, F.S.

Space Florida is governed by a 13-member independent board of directors that consists of members appointed by the Governor, the President of the Senate, the Speaker of the House of Representatives, and members of the board of directors of Enterprise Florida, Inc.[30] The Governor serves as the chair and a voting member of the board.[31]

Public Records Exemptions for Trade Secrets

The records of Space Florida are public records subject to ch. 119, F.S., the Public Records Act,[32] and, as such, are generally open for personal inspection and copying by any person.[33] However, similar to many government offices that maintain confidential business information records resulting from interactions with private entities, Space Florida's records contain trade secrets that are exempt from public disclosure. Florida law contains a variety of provisions making trade secret information exempt or confidential and exempt from public records requirements. Space Florida relies on ss. 288.075 and 331.326, F.S., for exemptions from public records requirements for trade secrets. Both sections provide exemptions, but each uses a different definition of "trade secret." As well, s. 331.326, F.S., provides an exemption from open meetings requirements[34] when Space Florida's board is discussing trade secrets.

Section 288.075, F.S., addresses generally the confidentiality of records maintained by government economic development agencies. The section defines Space Florida as an economic development agency[35] and provides that trade secrets held by an economic development agency are confidential and exempt from s. 119.07(1), F.S., and section 24(a), Article I of the Florida Constitution (public records requirements).[36] Section 288.075, F.S., defines a trade secret as having the same meaning as provided in the Uniform Trade Secrets Act in s. 688.002(4), F.S.[37] An employee of an economic development agency who violates the confidentiality and exemption requirements for trade secrets commits a misdemeanor of the second degree.[38]

Section 331.326, F.S., is in part II of ch. 331, which creates and governs Space Florida. The section provides that any information held by Space Florida which is a trade secret, as defined in the chapter on theft crimes in s. 812.081(1)(c), F.S., including trade secrets of Space Florida, any spaceport user, or the space industry business, is confidential and exempt from the requirements of s. 119.07(1), F.S., and section 24(a), Article I of the Florida Constitution and may not be

[30] Section 331.3081, F.S.
[31] According to the Space Florida website, the following are members of the board: Lieutenant Governor Jeanette Nunez; Jay Beyrouti, President, Monicarla, Ltd..; Jesse Biter, President and CEO, Biter Enterprises, LLC; Dean Cannon, President and CEO, Gray Robinson; Gregory Celestan, Chairman and CEO, Celestar Corporation; Daniel Davis, President and CEO, Jax Chamber; Sonya Deen, Vice President of Government Relations, JM Family Enterprises, Inc.; Barbara Essenwine, Above and Beyond Group; Mori Hosseini, Chairman and CEO, ICI Homes; Kenneth Kahn, President, LRP Media; Belinda Keiser, Vice Chancellor of Community Relations and Student Advancement, Keiser University; and Katherine San Pedro, Partner, Ballard Partners, Inc. Available at https://www.spaceflorida.gov/about/board-of-directors/ (Last visited on December 3, 2020.)
[32] Section 331.326, F.S.
[33] Section 119.01(1), F.S.
[34] FLA. CONST., art. I, s. 24(b); s. 286.011, F.S.
[35] Section 288.075(1)(a)3., F.S.
[36] Section 288.075(3), F.S.
[37] Section 288.075(1)(c), F.S.
[38] Section 288.075(7), F.S.

disclosed.[39] The section further provides that any meeting or portion of a meeting of Space Florida's board is exempt from the open meetings requirements of s. 286.011, F.S., and section 24(b), Article I of the Florida Constitution if the board is discussing trade secrets. As well, any public record generated during the closed portions of the meetings, such as minutes, tape recordings, and notes, is confidential and exempt from s. 119.07(1) and section 24(a), Article I of the Florida Constitution.[40]

In 2016, the definition of trade secret in s. 812.081, F.S., was expanded to include financial information.[41] Because of the cross-reference in s. 331.326, F.S., to s. 812.081, F.S., the Legislature also reenacted s. 331.326, F.S., that same year in order to conform the section's public records and open meetings exemptions to the newly expanded definition of "trade secret" in s. 812.081, F.S. The reenactment of the section expanded the public records and public meetings exemptions for Space Florida because the trade secret exemptions in the section were expanded by adding financial information to the definition of trade secret.[42] The reenactment of s. 331.326, F.S., with the added language to the section subjected it to the Act[43] and repeal of the section on October 2, 2021, unless it is reviewed and saved from repeal through reenactment by the Legislature. The bill[44] reenacting s. 331.326, F.S., (among other sections) also provided a public necessity statement as required by the Florida Constitution.

The public necessity statement articulates as justification for the exemptions that the disclosure of businesses' financial information comprising a trade secret as defined in s. 812.081, F.S., would be detrimental to those businesses. Specifically, the public necessity statement provided:

> [t]he Legislature recognizes that, in many instances, businesses are required to provide financial information for regulatory or other purposes to public entities and that disclosure of such information to competitors of those businesses would be detrimental to the businesses. The Legislature's intent is to protect trade secret information of a confidential nature which includes, but is not limited to, a formula, a pattern, a device, a combination of devices, or a compilation of information used to protect or further a business advantage over those who do not know or use the information, the disclosure of which would injure the affected business in the marketplace. Therefore, the Legislature finds that the need to protect trade secret financial information is sufficiently compelling to override this state's public policy of open government and that the protection of such information cannot be accomplished without these exemptions.[45]

[39] Section 331.326, F.S.
[40] *Id*.
[41] Section 1, ch. 2016-5, Laws of Florida; CS/SB 180 (2016).
[42] Section 286.011, F.S. and FLA. CONST. art. 1, s. 24(b).
[43] Section 119.15, F.S.
[44] CS/CS/SB 182 (2016).
[45] Section 21, ch. 2016-6, Laws of Florida.

Trade Secrets

Section 288.075, F.S., providing for the confidentiality of trade secrets, relies on the definition of "trade secret" found in the Uniform Trade Secrets Act in s. 688.002(4), F.S., which defines the term as:

> information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> - Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> - Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[46]

This definition of "trade secret" does not expressly include financial information.

Section 331.326, F.S., providing for the confidentiality of trade secrets, relies on the definition of "trade secret" found in s. 812.081, F.S. This definition was amended in 2016 to include financial information, which because of the cross-reference in s. 331.326, F.S., necessitated the reenactment of s. 331.326, F.S., to conform it to the newly amended definition of trade secret in s. 812.081, F.S.

"Trade secret," as defined in s. 812.081(1)(c), F.S., of Chapter 812, F.S., pertaining to theft crimes, means:

> the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:
> - Secret;
> - Of value;
> - For use or in use by the business; and
> - Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.
>
> when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.[47]

[46] Section 688.002(4), F.S.
[47] Section 812.081(1)(c), F.S.

Courts have used this last factor to determine whether a document is a trade secret subject to protection from public records disclosure laws. In *Sepro v. Department of Environmental Protection*,[48] the court held that a document was subject to disclosure because the business had failed to actively protect or hold out the document as a trade secret.

Open Government Sunset Review

Review of Public Records and Open Meetings Exemptions in Section 331.326, F.S.

During the 2020 interim, Senate and House staff met with staff of Space Florida to discuss the experience the agency has had with trade secret information exemptions in s. 331.326, F.S.[49] As reported by Space Florida staff, although a small number of public requests for information are regularly received by the agency, only one or two requests a year have required Space Florida to redact or otherwise remove trade secret information in making records available. In addition, staff reported that there have been no challenges of trade secret exemption decisions made by Space Florida, nor have meetings of Space Florida's board necessitated closure because of the discussion of trade secret information.

Space Florida does not have rules or an internal procedure or process for identifying exempted trade secret information or for removing that information from records it makes available to the public. The agency follows statutory language to ensure trade secret information it holds remains exempt from public disclosure. Staff of Space Florida made no report of having received any complaints regarding public record or open meetings exemptions for trade secret information.[50]

Other Exemptions

Part of an Open Government Sunset Review requires a review of other exemptions that may protect the same public records or meeting, and consideration of whether multiple exemptions may be merged. The repeal of s. 331.326, F.S., will eliminate the specific trade secret exemption from part II of ch. 331, which governs Space Florida. The remaining trade secret exemption applicable to records held by Space Florida, s. 288.075, F.S., uses the definition of trade secret in s. 688.002, F.S. Although there are similarities between that definition and the definition of trade secret in s. 812.081, F.S. (which contains the definition of trade secret that s. 331.326, F.S., incorporates), there are differences between the two that are not insignificant.

Section 688.002, F.S., limits the term's applicability to information from which independent economic value is derived. Section 812.081, F.S., on the other hand, couches the definition in terms of the operation of a business, defining trade secret as "… information … which provides the business an advantage …." As defined in s. 812.081, F.S., the term also specifically includes financial information, which is not part of the definition in s. 688.002, F.S.

Repeal of s. 331.326, F.S., will eliminate the open meeting exemption if the board were discussing trade secrets. This exemption is not provided for elsewhere in statute. While it can be argued that financial information, independent of its inclusion in a definition of trade secret, is

[48] 839 So. 2d 781 (Fla. 1st DCA 2003).
[49] A meeting took place on August 6, 2020 with follow-up emails on August 21 and August 25, 2020 (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).
[50] *Id*.

confidential and exempt pursuant to s. 288.075, F.S., if held by Space Florida, such confidentiality and exemption may depend on a request in writing by the owner of the information and may expire one year after the request.[51]

Section 288.075, F.S., governs not just Space Florida, but other economic development agencies, as well, so consideration is not given to its amendment or merger to eliminate duplication of exemptions. Because of the distinction in the definitions of trade secret between s. 812.081, F.S., and s. 688.002, F.S., and because a repeal of s. 331.326, F.S., would remove the open meeting exemption for trade secrets, the information in and application of the public records and open meetings exemptions in s. 331.326, F.S., are not duplicated elsewhere in law, nor can they be merged with another exemption.

Recommendation on Exemptions

Legislative staff sought the input of Space Florida regarding the repeal of s. 331.326, F.S. Representatives of the agency responded that they would prefer that the statute not be repealed. They asserted that, given the competitiveness of the space industry, the ability to close a portion of a public meeting when the board is discussing trade secrets is a very important tool.[52]

Space Florida would like to continue to use public records and open meetings exemptions that are informed by the definitions of trade secret in both s. 812.081, F.S., and s. 688.002, F.S. Representatives of the agency expressed the need for Space Florida to be able to provide assurances to potential and existing space industry customers that their trade secrets are protected to the greatest extent possible in the event of misappropriation. In addition, although a cross-reference to a definition does not create a cause of action, representatives of Space Florida assert that it is important for the agency to be able to use the definitions, penalties, and remedies afforded under both definitional sections.[53]

III. Effect of Proposed Changes:

The bill amends s. 331.326, F.S., to save from repeal the current public records exemption and open meetings exemption. This allows the affected information to continue to be confidential and exempt and the portion of meetings relating to the Space Florida board discussing trade secrets to continue to be exempt.

Section 331.326, F.S., provides that any information held by Space Florida which is a trade secret, as defined in s. 812.081, F.S., is confidential and exempt from public records requirements and may not be disclosed. The section also provides that any meeting or portion of a meeting of Space Florida's board is exempt from open meetings and public records requirements when the board is discussing trade secrets and that any public record generated during the closed portions of such meetings is also confidential and exempt from public records requirements.

[51] Sections 288.075(2) and (4), F.S. Attorney General Opinion 2004-19 states "[d]evelopment plans, financial records, financial commitment letters and draft memoranda of understanding between the city and a developer regarding a redevelopment project appear to come within the scope of this exemption."
[52] Emails on August 21 and August 25, 2020 from Space Florida to legislative staff (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).
[53] *Id*.

Section 331.326, F.S., is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment or reenactment and removal of the sunset provisions by the Legislature.

The original public necessity statement provided that it is a public necessity that financial information comprising a trade secret as defined in s. 812.081, F.S., be made exempt or confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the Florida Constitution. The statement also provides that it is a public necessity that any portion of a meeting in which a trade secret as defined in s. 812.081, F.S., is discussed, be made exempt from s. 286.011, F.S., and s. 24(b), Article I of the Florida Constitution. Justification for the public records bill has not changed.

Because the bill does not expand the public records exemption or the open meetings exemption, the bill does not require a two-thirds vote of each house in order to pass.

The bill takes effect October 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.

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 continues a current public records exemption beyond its current date of repeal; thus, the bill does not require 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 continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

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 trade secret information of a confidential nature. This bill exempts only information held by Space Florida which is a trade secret, as defined in s. 812.081, F.S., from the public records requirements. 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 identified.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with Space Florida making redactions in response to a public record request.

Businesses who submit trade secret information that falls within the definition contained in s. 812.081, F.S., to Space Florida will continue to receive protection of that information from disclosure to competing businesses. This may result in encouraging more private sector businesses to compete for contracts with Space Florida.

C. Government Sector Impact:

Space Florida will continue to incur costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 331.326 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 Military and Veterans Affairs, Space, and Domestic Security

583-01965-21 20217010__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 331.326, F.S., which provides an exemption from public records requirements for records of Space Florida regarding information relating to trade secrets; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 331.326, Florida Statutes, is amended to read:

331.326 Information relating to trade secrets confidential.—The records of Space Florida regarding matters encompassed by this act are public records subject to chapter 119. Any information held by Space Florida which is a trade secret, as defined in s. 812.081, including trade secrets of Space Florida, any spaceport user, or the space industry business, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may not be disclosed. If Space Florida determines that any information requested by the public will reveal a trade secret, it shall, in writing, inform the person making the request of that determination. The determination is a final order as defined in s. 120.52. Any meeting or portion of a meeting of Space Florida's board is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution when the board is discussing trade secrets. Any public record generated during the closed portions of the meetings, such as minutes, tape recordings, and notes, is

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

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confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Commerce and Tourism, *Vice Chair*
Appropriations Subcommittee on Education
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Children, Families, and Elder Affairs
Finance and Tax
Transportation

SENATOR TOM A. WRIGHT
14th District

April 2, 2021

The Honorable Kathleen Passidomo
400, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 7010 – OGSR/Space Florida

Dear Chair Passidomo:

Senate Bill 7010, relating to OGSR/Space Florida has been referred to the Committee on Rules. I am requesting your consideration on placing SB 7010 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Tom A. Wright, District 14

cc: John Phelps, Staff Director of the Committee on Rules
Tom Yeatman, Deputy Staff Director of the Committee on Rules
Cynthia Futch, Administrative Assistant of the Committee on Rules

REPLY TO:
❒ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
❒ 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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 7020
INTRODUCER:	Commerce and Tourism Committee
SUBJECT:	OGSR/County Tourism Promotion Agencies/Florida Tourism Industry Marketing Corporation
DATE:	April 19, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Reeve	McKay		**CM Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Reeve	Phelps	RC	**Favorable**

I. Summary:

SB 7020 saves from repeal the public records exemption relating to trade secrets held by a county tourism promotion agency. The bill also saves from repeal the public records exemption for the identity of any person who responds to a marketing or advertising research project conducted by the Florida Tourism Industry Marketing Corporation, doing business as VISIT FLORIDA, or trade secrets obtained pursuant to such activities.

Unless saved from repeal by the Legislature, both exemptions are scheduled to sunset on October 2, 2021. This bill removes the scheduled repeals to continue the exempt status of the information.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 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]

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

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 with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

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[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).

[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

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 Act[16] (the Act) prescribes a legislative review process for newly created or substantially amended[17] 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 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

(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.

[22] Section 119.15(6)(b)2., F.S.

- 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]

Trade Secrets

Section 812.081, F.S., defines a "trade secret" as information used in the operation of a business which provides the business an advantage or an opportunity to obtain an advantage over those who do not know it. The term includes scientific, technical, commercial, and financial information.[27] Irrespective of the field to which the trade secret pertains, a trade secret is considered to be secret; of value; for use or in use by the business; and of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know it or use it.[28]

Florida law contains a variety of provisions that make trade secret information exempt or confidential and exempt from public records requirements. Some exemptions only protect trade secrets, while others protect "proprietary business information" and define that term to specifically include trade secrets.

Public Records Exemption for Trade Secrets Held by a County Tourism Promotion Agency

Section 125.0104(9)(d)3., F.S., provides a public records exemption for trade secrets, as defined in s. 812.081, F.S., held by a county tourism promotion agency. In 2016, the Legislature expanded the definition of a trade secret in s. 812.081, F.S., to include financial information.[29]

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[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] Section 812.081(1)(c), F.S.

[28] *Id.*

[29] Chapter 2016-6, s. 21, Laws of Fla., provides a public necessity statement with a rationale for expanding the public records exemption for trade secrets. The statement recognized that businesses are often required to provide financial information to

Thus, all public records exemptions for trade secrets were considered to have been substantially amended and subject to the Open Government Sunset Review Act. The public records exemption for trade secrets in s. 125.0104(9)(d)3., F.S., is scheduled to be repealed on October 2, 2021, unless it is reviewed and saved from repeal by the Legislature.

Open Government Sunset Review of s. 125.0104, F.S.

In September 2020, the Senate Committee on Commerce and Tourism and the House Oversight, Transparency, & Public Management Subcommittee sent an Open Government Sunset Review questionnaire to the county tourism promotion agencies operating within the state regarding the scheduled repeal of the public records exemption and the need to maintain said exemption. Agencies were asked about the types of records held, how records that contain trade secrets are reviewed, public records requests, and various other questions related to how agencies work with public records that contain trade secrets. The surveyed agencies reported holding public records containing trade secrets that include contracts, financial and budget information, consumer trend data, marketing initiatives and research, visitor center and convention center data, business leads, industry partner contacts, consumer databases, administrative records, funding requests, purchased data, and paid research. Agencies cited the need to remain competitive and effectively market their counties as the general purposes of using trade secret information. Of the agencies that responded to the questionnaire, 13 reported receiving a public records request for a records containing trade secrets within the last 4 years. The questionnaire also asked agencies whether they recommend that the Legislature repeal or reenact the public record exemption, the majority of which recommended reenacting the exemption as it is written.

Public Records Exemption for VISIT FLORIDA

Section 288.1226(9), F.S., provides a public records exemption for the identity of any person who responds to a marketing or advertising research project conducted by VISIT FLORIDA, or trade secrets as defined by s. 812.081, F.S., obtained through such activities. In 2016, the Legislature expanded the definition of a trade secret in s. 812.081, F.S., to include financial information.[30] Thus, all public records exemptions for trade secrets were considered to have been substantially amended and subject to the Open Government Sunset Review Act. The public records exemption for information and trade secrets in s. 288.1226(9), F.S., is scheduled to be repealed on October 2, 2021, unless it is reviewed and saved from repeal by the Legislature.

Open Government Sunset Review of s. 288.1226, F.S.

In August 2020, the Senate Committee on Commerce and Tourism and the House Oversight, Transparency, & Public Management Subcommittee held a meeting with a representative from VISIT FLORIDA to discuss marketing projects or advertising research projects and how records associated with those projects are handled, the types of records that include trade secret information, and how VISIT FLORIDA addresses public record requests for such records.

Representatives from VISIT FLORIDA stated that they rely on the ability to protect trade secrets gathered from marketing projects in order to remain competitive. Specifically, VISIT FLORIDA

public entities for regulatory or other purposes and that the disclosure of such information to competitors would be detrimental to businesses.

[30] *Id.*

tends to apply the exemption to data gathered from marketing projects and research that will be used to further develop other marketing strategies. Because VISIT FLORIDA is subject to several reporting and transparency requirements necessitating making contracts and other documents available to the public, VISIT FLORIDA relies on the exemption found in s. 288.1226(9), F.S., to protect information found in the publicly available contracts and documents, such as the timing and distribution locations of marketing activities before the activities take place and financial information relating to the marketing activities, from use by competing destinations.

VISIT FLORIDA recommended the Legislature reenact the exemption as written in order to remain at a competitive advantage.

III. Effect of Proposed Changes:

SB 7020 amends s. 125.0104, F.S., to remove the scheduled repeal of the public records exemption for trade secrets held by a county tourism promotion agency. The bill also amends s. 288.1226, F.S., to remove the scheduled repeal of the public records exemption for the identity of any person who responds to a marketing or advertising research project conducted by the Florida Tourism Industry Marketing Corporation, doing business as VISIT FLORIDA, or trade secrets obtained through such activities.

Under the bill, trade secrets held by a county tourism promotion agency, as well as information and trade secrets obtained by VISIT FLORIDA, will continue to be exempt from public disclosure beyond October 2, 2021.

The bill takes effect October 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.

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. The bill continues current public records exemptions beyond their scheduled repeal dates. Thus, the bill does not require 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 continues current public records exemptions without substantial amendment. Thus, a statement of public necessity is not required.

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 the identity of any person who responds to a marketing or advertising research project conducted by VISIT FLORIDA, or trade secrets as defined by s. 812.081, F.S., obtained through such activities, and to protect trade secrets, as defined in s. 812.081, F.S., held by a county tourism promotion agency. This bill continues the public records exemption for information and trade secrets held by VISIT FLORIDA and for trade secrets held by a county tourism promotion agency. 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:

None.

C. Government Sector Impact:

VISIT FLORIDA and the county tourism promotion agencies will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.0104 and 288.1226.

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

577-02139-21 20217020__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 125.0104, F.S., which provides an exemption from public records requirements for trade secrets held by county tourism promotion agencies; removing the scheduled repeal of the exemption; amending s. 288.1226, F.S., which provides an exemption from public records requirements for the identity of a person who responds to a marketing or advertising research project conducted by the Florida Tourism Industry Marketing Corporation and for certain trade secrets; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (d) of subsection (9) of section 125.0104, Florida Statutes, is amended to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(9) COUNTY TOURISM PROMOTION AGENCIES.—In addition to any other powers and duties provided for agencies created for the purpose of tourism promotion by a county levying the tourist development tax, such agencies are authorized and empowered to:

(d) Undertake marketing research and advertising research studies and provide reservations services and convention and meetings booking services consistent with the authorized uses of revenue as set forth in subsection (5).

1. Information given to a county tourism promotion agency

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

577-02139-21 20217020__

which, if released, would reveal the identity of persons or entities who provide data or other information as a response to a sales promotion effort, an advertisement, or a research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. The following information, when held by a county tourism promotion agency, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Booking business records, as defined in s. 255.047.

b. Trade secrets and commercial or financial information gathered from a person and privileged or confidential, as defined and interpreted under 5 U.S.C. s. 552(b)(4), or any amendments thereto.

3. A trade secret, as defined in s. 812.081, held by a county tourism promotion agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Subsection (9) of section 288.1226, Florida Statutes, is amended to read:

288.1226 Florida Tourism Industry Marketing Corporation; use of property; board of directors; duties; audit.—

(9) PUBLIC RECORDS EXEMPTION.—The identity of any person who responds to a marketing project or advertising research project conducted by the corporation in the performance of its

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

duties on behalf of Enterprise Florida, Inc., or trade secrets as defined by s. 812.081 obtained pursuant to such activities, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 3. This act shall take effect October 1, 2021.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7022
INTRODUCER:	Regulated Industries Committee
SUBJECT:	OGSR/Proprietary Confidential Business Information
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Sharon	Imhof		**RI Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Sharon	Phelps	RC	**Favorable**

I. Summary:

SB 7022 saves from repeal the public records exemption for proprietary confidential business information submitted by voice communications services providers (providers) to the E911 Board, the Division of Telecommunications (division) within the Department of Management Services (DMS), or the Department of Revenue (DOR) as an agent of the E911 Board.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill removes the scheduled repeal to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 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.,

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the 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]

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[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*, (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).
[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).

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 Act[16] (the act) prescribes a legislative review process for newly created or substantially amended[17] 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 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

[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.
[22] Section 119.15(6)(b)2., F.S.

- 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]

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.[27]

Section 812.081(1)(c), F.S., defines a "trade secret" to mean:

> …the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill

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

> in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:
> 1. Secret;
> 2. Of value;
> 3. For use or in use by the business; and
> 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it
>
> when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.[28]
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.

[28] Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S, makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,[29] and the right to recover damages for the misappropriation of a trade secret.[30] Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.[31]

Section 688.002(4), F.S., defines the term "trade secret" to mean:

> …information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do

[29] Section 688.003, F.S.
[30] Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*
[31] *See* Section 688.008, F.S.

not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

The following sections of the Florida Statutes make the specified records confidential and exempt from public disclosure. These provisions exempt "trade secrets" as defined in s. 688.002(4), F.S., or include "trade secrets" as defined in s. 688.002(4), F.S., within the meaning of the term "proprietary confidential information" or "proprietary business information" when exempting such records from disclosure:

- Section 73.0155, F.S., exempts business information containing a trade secret provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., confidential and exempt.
- Section 119.0713, F.S., exempts proprietary confidential information held by a public utility.
- Section 215.4401, F.S., exempts proprietary confidential information held by the State Board of Administration to administer the real estate investment program.
- Section 288.075, F.S., exempts a trade secret held by an economic development agency.
- Section 288.9626, exempts proprietary confidential information held by the Florida Opportunity Fund, as defined in s. 288.9623, F.S.
- Section 288.9627(2), F.S., exempts a trade secret held by the Institute for Commercialization of Florida Technology established by s. 288.9625, F.S.
- Section 334.049, F.S., exempts any information containing a trade secret obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture.
- Section 395.3035(2)(c), F.S., exempts a trade secret held by a public hospital, including reimbursement, methodologies, and notes.
- Section 408.185, F.S., exempts specified information containing a trade secret held by the Office of the Attorney General, which is submitted by a member of the health care community pursuant to a request for an antitrust no-action letter.
- Section 408.910(14), F.S., exempts proprietary confidential information containing a trade secret held by Florida Health Choices Program.
- Section 409.91196(1), F.S. exempts a trade secret held by the Agency for Health Care Administration has identified for negotiation of supplemental rebate agreements.
- Section 440.108(1), F.S., exempts a trade secret related to an investigation by the Division of Workers' Compensation of the Department of Financial Services after an investigation is completed or ceases to be active.
- Section 494.00125(1)(c), F.S., exempts consumer complaints and other information containing a trade secret in an investigation or examination by the Office of Financial Regulation.
- Section 497.172(4), F.S., exempts a trade secret held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.
- Section 501.171(11), F.S., exempts information that would reveal a trade secret held pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency.

- Section 517.2015(1)(b), F.S., exempts information containing a trade secret held pursuant to an investigation or examination by the Office of Financial Regulation.
- Section 520.9965(1)(b), F.S., exempts a trade secret held by the Department of Financial Services after an investigation or examination related to the regulation of sales and finance is completed or ceases to be active.
- Section 556.113(2), F.S., exempts a trade secret held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.
- Section 559.5558(2)(b), F.S., exempts information that would reveal a trade secret held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination related to consumer collection practices regulated under part VI of ch. 559, F.S.
- Section 560.129, F.S., exempts information that would reveal a trade secret held by the Department of Financial Services pursuant to an investigation or examination related to the money service businesses regulated under ch. 560, F.S.
- Section 569.215, F.S., exempts proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement.
- Section 607.0505(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements under s. 607.0505, F.S.
- Section 617.0503(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements for corporations not for profit under s. 617.0503, F.S.
- Section 624.4212, F.S., exempts proprietary confidential information held by the Office of Insurance Regulation of the Financial Services Commission pursuant to the Insurance Code in ch. 624, F.S.
- Section 626.84195, F.S., exempts proprietary business information which concerns trade secrets provided to the Office of Insurance Regulation by a title insurance agency or insurer.
- Section 626.884(2), F.S., exempts any trade secret in the book and records of an insurance administrator accessed by the Office of Insurance Regulation for the purpose of examination, audit, or inspection.
- Section 627.0628(3)(g), F.S., exempts any trade secret used in designing and constructing a hurricane or flood loss model provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or consumer advocate appointed pursuant to s. 627.0613, F.S.
- Section 627.3518(11), F.S., exempts proprietary business information provided to the Citizens Property Insurance Corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.
- Section 655.057, F.S., exempts a trade secret contained in any record or information held by the Office of Financial Regulation during an investigation or after an investigation relating to an enforcement action is completed or ceases to be active.

- Section 1004.30(2), F.S., exempts trade secrets held by a university health services support organization.
- Section 1004.43(7), F.S., exempts a trade secret in proprietary confidential business information contained in the records of a Florida not-for-profit corporation, or its subsidiaries, organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute.
- Section 1004.4472, F.S., exempts a trade secret held by Florida Institute for Human and Machine Cognition, Inc., or its subsidiary.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.[32] In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.[33]

Proprietary Confidential Business Information and Trade Secrets

Under s. 365.174(1), F.S., proprietary confidential business information submitted by a voice communications services[34] provider[35] includes:

- Customer lists;
- Customer numbers;
- Individual or aggregate customer data by location;
- Usage and capacity data;
- Network facilities used to serve subscribers;
- Technology descriptions;
- Technical information, or trade secrets, including trade secrets as defined in s. 812.081; and
- Actual or developmental costs of E911 systems that are developed, produced, or received internally by a provider or by a provider's employees, directors, officers, or agents.

"Trade secrets," as defined in s. 812.081(1)(c), F.S., means information, the owner of which has taken measures to prevent such information from becoming available to persons other than those that the owner has intended to have access for a limited purpose. Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or an opportunity to obtain an advantage over those that do not have that information.[36]

[32] *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[33] *Id.*
[34] "Voice communication services" is defined as two-way voice service through the use of any technology including voice-over Internet protocol service. See s. 365.172(3)(cc), F.S.
[35] "Voice communications services providers" is defined as "any person or entity providing voice communications services except for a resale supplier. See s. 365.172(3)(dd), F.S.
[36] Section 812.081(1)(c), F.S.

Section 812.081(1)(c), F.S., states that "trade secrets" include "any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof."

In 2016, the term "trade secret" was expanded to include "financial information."[37] Accordingly, s. 365.174, F.S., was revised to incorporate the expanded definition. [38] As a result of this expansion, s. 365.174, F.S. was made subject to repeal on October 2, 2021, unless saved through reenactment by the Legislature.[39]

General Overview of E911 Provisions within Chapter 365

The Emergency Communications Number E911 Act (E911 Act) was established to create a statewide emergency telecommunications number system, providing users of voice communications service rapid and direct access to public safety and emergency agencies.[40] The Communications Number E911 System Fund (the fund),[41] reimburses counties and wireless providers for certain costs incurred in complying with the E911 Act.[42] The fund is administered by the E911 Board (board).[43] The fund is comprised of fees levied on subscribers pursuant to the E911 Fee[44] and the Prepaid Wireless E911 Fee.[45]

Providers must deliver the collected E911 fees to the E911 Board within 60 days of billing subscribers, along with a monthly report that includes data as to the number of subscribers within each county.[46] This section expressly makes the information provided in the report exempt from public records pursuant to s. 365.174, F.S.[47] The fee must then be paid by the board into the State Treasury and accounted for in the fund on a monthly basis. [48]

As to the Prepaid Wireless E911 Fee, the provider collects the amount of the fee from the customers on each transaction performed within the state. [49] The provider must then remit the fees collected in the previous month along with a fee return to the Department of Revenue (DOR).[50] The DOR then transfers the fees to the fund on a monthly basis.[51]

Both the E911 Fee report and the return filed for the Prepaid Wireless E911 Fees contain information considered to be proprietary confidential business information, falling within the

[37] Ch. 2016-5, Laws of Fla.
[38] Ch. 2016-6, s. 5, Laws of Fla.
[39] *Id*.
[40] Section 365.172, F.S.
[41] Section 365.173, F.S.
[42] Section 365.172(2)(b), F.S.
[43] Section 365.172(2)(d) F.S. The E911 Board is overseen by the Division of Telecommunications within the Department of Management Services.
[44] Section 365.172(8), F.S.
[45] Section 365.172(9), F.S.
[46] Section 365.172(8)(e), F.S.
[47] *Id*.
[48] Section 365.173(1)(a), F.S.
[49] Section 365.172(9)(c), F.S.
[50] Section 365.172(9)(g), F.S.
[51] Section 365.173(1)(b), F.S.

exemption in s. 365.174, F.S.[52] According to CTIA, the trade association for the wireless communications industry:

> The E911 fee submission reports to the E911 Board contain E911 fee collections from customers separated by local county jurisdiction, which is "aggregate customer data by location," and financial data from which aggregate customer data by location can be derived. Prepaid wireless E911 fee collections may contain vendor specific information. In addition, cost and technical information may have been submitted by one or more Members in support of affidavits seeking reimbursement from the E911 Board for implementation of E911 service.[53]

CTIA explains that the information remitted is internal and cannot be obtained by any other means.[54] They assert that the information submitted is competitively sensitive and disclosure could result in harm to the providers.[55]

Moreover, Florida Internet and Television contends that because the information remitted includes the total number of subscribers by county and the amount of fees paid, it is considered sensitive proprietary information that reflects market share data for the entire telecommunications industry.[56] They also assert that disclosure of this information in such a competitive market could result in economic harm.[57]

III. Effect of Proposed Changes:

The bill retains the exemption for proprietary confidential business information submitted by voice communications services providers to the E911 Board, the division, or the DOR as an agent of the board by removing the repeal date of October 2, 2021 in current law.

The bill is effective October 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.

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[52] Section 365.172(8)(e), F.S.
[53] *See* Response by CTIA to Open Government Sunset Review Questionnaire (Oct. 8, 2020) (on file with the Senate Committee on Regulated Industries).
[54] *Id*.
[55] *See* Response by ATT to Open Government Sunset Review Questionnaire (Sep. 29, 2020) (on file with the Senate Committee on Regulated Industries).
[56] *See* Supplemental Response by Florida Internet and Television to Open Government Sunset Review Questionnaire (Oct. 14, 2020) (on file with the Senate Committee on Regulated Industries).
[57] *Id*.

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 does not create or expand an exemption, thus, the bill does not require 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. Thus, a statement of public necessity is not required.

Breadth of Exemption
Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with the E911 Board, the Department of Management Services, or the Department of Revenue making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The E911 Board, the Department of Management Services, and the Department of Revenue will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 365.174 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 Regulated Industries

580-02165-21 20217022__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 365.174, F.S., which provides an exemption from public records requirements for proprietary confidential business information submitted by a voice communications services provider to the E911 Board, the Division of Telecommunications within the Department of Management Services, or the Department of Revenue; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 365.174, Florida Statutes, is amended to read:

365.174 Proprietary confidential business information.—

(1)(a) All proprietary confidential business information submitted by a provider to the board or the office is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Statistical abstracts of information collected by the board or the office may be released or published, but only in a manner that does not identify or allow identification of subscribers or their service numbers or of revenues attributable to any provider.

(2)(a) All proprietary confidential business information submitted by a provider to the Department of Revenue, as an agent of the board, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

580-02165-21 20217022__

(b) The Department of Revenue may provide information relative to s. 365.172(9) to the Secretary of Management Services, or his or her authorized agent, or to the E911 Board established in s. 365.172(5) for use in the conduct of the official business of the Department of Management Services or the E911 Board.

(3) As used in this section, the term "proprietary confidential business information" means customer lists, customer numbers, individual or aggregate customer data by location, usage and capacity data, network facilities used to serve subscribers, technology descriptions, technical information, or trade secrets, including trade secrets as defined in s. 812.081, and the actual or developmental costs of E911 systems that are developed, produced, or received internally by a provider or by a provider's employees, directors, officers, or agents.

~~(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, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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: April 2, 2021

I respectfully request that **Senate Bill #7022**, relating to OGSR/Proprietary Confidential Business Information, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7024
INTRODUCER:	Regulated Industries Committee
SUBJECT:	OGSR/Agency Trade Secrets
DATE:	April 19, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Oxamendi	Imhof		**RI Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Oxamendi	Phelps	RC	**Favorable**

I. Summary:

SB 7024 saves from repeal the public records exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device.

This public record exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. Under the bill, qualified trade secrets remain confidential and exempt from public disclosure.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 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.,

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

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 with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

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[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*, (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).
[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).

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 Act[16] (the act) prescribes a legislative review process for newly created or substantially amended[17] 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 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

[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.
[22] Section 119.15(6)(b)2., F.S.

- 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]

Trade Secrets Public Records Exemptions

Criminal Prohibitions

Offenses Against Intellectual Property

Section 815.04(3), F.S., makes data, programs, or supporting documentation that are a trade secret, as defined in s. 812.081, F.S., reside or exist internal or external to a computer, computer system, or computer network, and are held by an agency as defined in chapter 119, confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. A person who willfully, knowingly, and without authorization discloses or takes such information commits an offense against intellectual property.[27] Section 815.04(5), F.S., provides that a violation is a felony of the third degree.[28]

Section 815.02, F.S., expresses the legislative intent for the computer-related crimes provided in ch. 815, F.S., including the concern that such crimes are a growing concern, and affect financial institutions, government programs, government records, and other business enterprises.[29]

[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] Section 815.04(4), F.S.
[28] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.
[29] *See* s. 815.02, F.S.

In 2016, the definition of "trade secret" in s. 812.081, F.S., was expanded to include financial information. As a result, this public record exemption in s. 815.04(3), F.S., was reenacted in 2016 to incorporate the new definition of "trade secret."[30] The public records exemption in s. 815.04(3), F.S., stands repealed on October 2, 2021, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.[31]

Theft, Embezzlement, and Unlawful Copying

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.[32]

Section 812.081(1)(c), F.S., defines a "trade secret" to mean:

> …the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:
> 1. Secret;
> 2. Of value;
> 3. For use or in use by the business; and
> 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it
>
> when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets as defined by s. 812.081(1)(c), F.S.:

- Section 119.071(1)(f), F.S., exempts data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is a trade secret and agency-produced data processing software that is sensitive.
- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.

[30] *See* ch 2016-5, s. 20, Laws of Fla.
[31] *Id.*
[32] *See* s. 812.081(2), F.S.

- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.[33]
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.

[33] Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,[34] and the right to recover damages for the misappropriation of a trade secret.[35] Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.[36]

Section 688.002(4), F.S., defines the term "trade secret" to mean:

> …information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

The following sections of the Florida Statutes make the specified records confidential and exempt from public disclosure. These provisions exempt "trade secrets" as defined in s. 688.002(4), F.S., or include "trade secrets" as defined in s. 688.002(4), F.S., within the meaning of the term "proprietary confidential information" or "proprietary business information" when exempting such records from disclosure:

- Section 73.0155, F.S., exempts business information containing a trade secret provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., confidential and exempt.
- Section 119.0713, F.S., exempts proprietary confidential information held by a public utility.
- Section 215.4401, F.S., exempts proprietary confidential information held by the State Board of Administration to administer the real estate investment program.
- Section 288.075, F.S., exempts a trade secret held by an economic development agency.

[34] Section 688.003, F.S.
[35] Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*
[36] *See* s. 688.008, F.S.

- Section 288.9626, exempts proprietary confidential information held by the Florida Opportunity Fund, as defined in s. 288.9623, F.S.
- Section 288.9627(2), F.S., exempts a trade secret held by the Institute for Commercialization of Florida Technology established by s. 288.9625, F.S.
- Section 334.049, F.S., exempts any information containing a trade secret obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture.
- Section 395.3035(2)(c), F.S., exempts a trade secret held by a public hospital, including reimbursement, methodologies, and notes.
- Section 408.185, F.S., exempts specified information containing a trade secret held by the Office of the Attorney General, which is submitted by a member of the health care community pursuant to a request for an antitrust no-action letter.
- Section 408.910(14), F.S., exempts proprietary confidential information containing a trade secret held by Florida Health Choices Program.
- Section 409.91196(1), F.S. exempts a trade secret held by the Agency for Health Care Administration has identified for negotiation of supplemental rebate agreements.
- Section 440.108(1), F.S., exempts a trade secret related to an investigation by the Division of Workers' Compensation of the Department of Financial Services after an investigation is completed or ceases to be active.
- Section 494.00125(1)(c), F.S., exempts consumer complaints and other information containing a trade secret in an investigation or examination by the Office of Financial Regulation.
- Section 497.172(4), F.S., exempts a trade secret held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.
- Section 501.171(11), F.S., exempts information that would reveal a trade secret held pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency.
- Section 517.2015(1)(b), F.S., exempts information containing a trade secret held pursuant to an investigation or examination by the Office of Financial Regulation.
- Section 520.9965(1)(b), F.S., exempts a trade secret held by the Department of Financial Services after an investigation or examination related to the regulation of sales and finance is completed or ceases to be active.
- Section 556.113(2), F.S., exempts a trade secret held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.
- Section 559.5558(2)(b), F.S., exempts information that would reveal a trade secret held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination related to consumer collection practices regulated under part VI of ch. 559, F.S.
- Section 560.129, F.S., exempts information that would reveal a trade secret held by the Department of Financial Services pursuant to an investigation or examination related to the money service businesses regulated under ch. 560, F.S.
- Section 569.215, F.S., exempts proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, or

received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement.

- Section 607.0505(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements under s. 607.0505, F.S.
- Section 617.0503(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements for corporations not for profit under s. 617.0503, F.S.
- Section 624.4212, F.S., exempts proprietary confidential information held by the Office of Insurance Regulation of the Financial Services Commission pursuant to the Insurance Code in ch. 624, F.S.
- Section 626.84195, F.S., exempts proprietary business information which concerns trade secrets provided to the Office of Insurance Regulation by a title insurance agency or insurer.
- Section 626.884(2), F.S., exempts any trade secret in the book and records of an insurance administrator accessed by the Office of Insurance Regulation for the purpose of examination, audit, or inspection.
- Section 627.0628(3)(g), F.S., exempts any trade secret used in designing and constructing a hurricane or flood loss model provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or consumer advocate appointed pursuant to s. 627.0613, F.S.
- Section 627.3518(11), F.S., exempts proprietary business information provided to the Citizens Property Insurance Corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.
- Section 655.057, F.S., exempts a trade secret contained in any record or information held by the Office of Financial Regulation during an investigation or after an investigation relating to an enforcement action is completed or ceases to be active.
- Section 1004.30(2), F.S., exempts trade secrets held by a university health services support organization.
- Section 1004.43(7), F.S., exempts a trade secret in proprietary confidential business information contained in the records of a Florida not-for-profit corporation, or its subsidiaries, organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute.
- Section 1004.4472, F.S., exempts a trade secret held by Florida Institute for Human and Machine Cognition, Inc., or its subsidiary.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.[37] In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.[38]

[37] *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[38] *Id.*

Open Government Sunset Review Questionnaires

In September 2020, the Professional Staff of the Senate Regulated Industries Committee sent an Open Government Sunset Review Questionnaire (questionnaire) to several state agencies and to the Florida League of Cities and the Florida Association of Counties for transmittal to those association's member-agencies. Twenty-two state and local agencies responded to the questionnaires, representing 15 state agencies, five city governments, and two school boards. Staff reviewed the responses to the questions to be considered by the Legislature in accordance with s. 119.15(6)(a), F.S.

The majority of responding agencies stated that they have records that are affected by the exemption. The types of records vary by agency. Examples of the types of affected records include bids or competitive contract proposals submitted by prospective vendors, contracts, financial information and personal identifying and financial information of employees, and records received from the Seminole Tribe of Florida under the state's Indian gaming compact.[39]

The questionnaire asked the agencies if it would be more appropriate for the public record exemption under review to use the definition of "trade secret" provided for in s. 688.002(4), F.S., as opposed to the definition in s. 812.081(1)(c), F.S. Of the agencies that responded to this question, most stated that the exemption should not be changed, two respondents recommended that the definitions should be revised to be identical or merged into a single definition, one respondent stated that either definition was appropriate, and two agencies stated that the definition in s. 688.002(4), F.S., was the more appropriate definition.

Advising that the exemption should continue to use the definition in s. 812.081(1)(c), F.S., the Department of Corrections (DOC) stated that changing the definition would "upend years of case law." The definition of a "trade secret" in s. 812.081, F.S., has been referenced by Chapter 119 since the exemption was created in 1985." The DOC noted that such a change "would be detrimental to records custodians as their guidance would have to be altered. The elements for each test differ and adopting the elements in s. 688.002(4), F.S., would require a determination of "reasonableness" that is often hard to define and easy to litigate. Section 688.002(4), F.S., doesn't encompass the same level of specificity as s. 812.081, F.S., and this would create confusion for both custodians and the public."[40]

Agencies also noted that the public records exemption in s. 119.071(1)(f), F.S., relating to data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is trade secret and agency-produced data processing software that is sensitive is similar to the public records exemption in s. 815.04(3), F.S.

Some agencies noted other public record exemptions are applicable to the types of records in their possession. For example, the Office of Insurance Regulation noted that it receives data that is identified as "trade secret" pursuant to s. 624.4213, F.S. Those "trade secrets" are considered

[39] *See Open Government Sunset Review Questionnaire* response from the Florida Department of Business and Professional Regulation, dated Nov. 16, 2020, and on file with the Senate Committee on Regulated Industries.
[40] *See Open Government Sunset Review Questionnaire* response from the Florida Department of Corrections, dated Oct. 22, 2020, and on file with the Senate Committee on Regulated Industries.

"proprietary business information" as defined by s. 624.4212, F.S., which references the definition of "trade secret" in s. 688.002, F.S.[41]

None of the agencies surveyed recommended that the exemption in s. 815.04(3), F.S., should not be reenacted. Two respondents made recommendations to amend the exemption that did not relate to the definition of the term trade secret in ss. 688.002(4) and 812.081(1)(c), F.S.

The City of Clearwater recommended that s. 119.071(1)(f), F.S., should be reenacted and amended to "include language applicable to Remote Software Service Providers and/or "Cloud" provided software and services."[42]

The Department of Highway Safety and Motor Vehicles noted that the 2016 amendment to s. 812.081(1)(c), F.S., which added financial information to the definition of the term "trade secret," has led to vendors submitting bids, proposals, or replies claiming that their pricing is a trade secret. The agency noted that "when pricing for competitive solicitations, as "financial information," is deemed a trade secret, both government watchdogs and vendors who submit unsuccessful responses are restricted in their review of the procurement process, which thereby diminishes the transparency of government contracting. It would greatly assist agencies if the Legislature clarified whether a vendor's pricing constitutes a trade secret."[43]

III. Effect of Proposed Changes:

The bill amends s. 815.04(3), F.S., to remove the scheduled repeal of a public records exemption for data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, F.S., that is held by an agency as defined in ch. 119, F.S., and that resides or exists internal or external to a computer, computer system, computer network, or electronic device.

This public record exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. Under the bill, qualified trade secrets remain confidential and exempt from public disclosure.

The bill takes effect October 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.

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[41] *See Open Government Sunset Review Questionnaire* response from the Office of Insurance Regulation, dated Oct. 23, 2020, and on file with the Senate Committee on Regulated Industries.
[42] *See Open Government Sunset Review Questionnaire* response from the City of Clearwater, dated Oct. 22, 2020, and on file with the Senate Committee on Regulated Industries.
[43] *See Open Government Sunset Review Questionnaire* response from the Department of Highway Safety and Motor Vehicles, dated Oct. 20, 2020, and on file with the Senate Committee on Regulated Industries.

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 does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with agencies making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

Agencies will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 815.04 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 Regulated Industries

580-02168-21 20217024__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 815.04, F.S.; abrogating the scheduled repeal of a public records exemption for data, programs, or supporting documentation that is a trade secret held by an agency and which resides or exists internal or external to a computer, a computer system, a computer network, or an electronic device; providing an effective date.

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

Section 1. Subsection (3) of section 815.04, Florida Statutes, is amended to read:

815.04 Offenses against intellectual property; public records exemption.—

(3) Data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, that is held by an agency as defined in chapter 119, and that resides or exists internal or external to a computer, computer system, computer network, or electronic device is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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: April 4, 2021

I respectfully request that **Senate Bill #7024**, relating to OGSR/Agency Trade Secrets, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7028
INTRODUCER:	Regulated Industries Committee
SUBJECT:	OGSR/Data Processing Software
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Oxamendi	Imhof		**RI Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Oxamendi	Phelps	RC	**Favorable**

I. Summary:

SB 7028 saves from repeal the public records exemption for data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, F.S., and agency-produced data processing software that is sensitive.

This public record exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill removes the scheduled repeal to continue the exempt status of the qualified trade secrets and sensitive information.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 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.,

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

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 with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

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[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*, (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).
[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).

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 Act[16] (the act) prescribes a legislative review process for newly created or substantially amended[17] 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 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

[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.
[22] Section 119.15(6)(b)2., F.S.

- 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]

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.[27]

Section 812.081(1)(c), F.S., defines a "trade secret" to mean:

> …the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

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

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.[28]
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.

[28] Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S, makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,[29] and the right to recover damages for the misappropriation of a trade secret.[30] Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.[31]

Section 688.002(4), F.S., defines the term "trade secret" to mean:

> …information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information

[29] Section 688.003, F.S.
[30] Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*
[31] *See* Section 688.008, F.S.

or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

The following sections of the Florida Statutes make the specified records confidential and exempt from public disclosure. These provisions exempt "trade secrets" as defined in s. 688.002(4), F.S., or include "trade secrets" as defined in s. 688.002(4), F.S., within the meaning of the term "proprietary confidential information" or "proprietary business information" when exempting such records from disclosure:

- Section 73.0155, F.S., exempts business information containing a trade secret provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., confidential and exempt.
- Section 119.0713, F.S., exempts proprietary confidential information held by a public utility.
- Section 215.4401, F.S., exempts proprietary confidential information held by the State Board of Administration to administer the real estate investment program.
- Section 288.075, F.S., exempts a trade secret held by an economic development agency.
- Section 288.9626, exempts proprietary confidential information held by the Florida Opportunity Fund, as defined in s. 288.9623, F.S.
- Section 288.9627(2), F.S., exempts a trade secret held by the Institute for Commercialization of Florida Technology established by s. 288.9625, F.S.
- Section 334.049, F.S., exempts any information containing a trade secret obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture.
- Section 395.3035(2)(c), F.S., exempts a trade secret held by a public hospital, including reimbursement, methodologies, and notes.
- Section 408.185, F.S., exempts specified information containing a trade secret held by the Office of the Attorney General, which is submitted by a member of the health care community pursuant to a request for an antitrust no-action letter.
- Section 408.910(14), F.S., exempts proprietary confidential information containing a trade secret held by Florida Health Choices Program.
- Section 409.91196(1), F.S. exempts a trade secret held by the Agency for Health Care Administration has identified for negotiation of supplemental rebate agreements.
- Section 440.108(1), F.S., exempts a trade secret related to an investigation by the Division of Workers' Compensation of the Department of Financial Services after an investigation is completed or ceases to be active.
- Section 494.00125(1)(c), F.S., exempts consumer complaints and other information containing a trade secret in an investigation or examination by the Office of Financial Regulation.
- Section 497.172(4), F.S., exempts a trade secret held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.
- Section 501.171(11), F.S., exempts information that would reveal a trade secret held pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency.

- Section 517.2015(1)(b), F.S., exempts information containing a trade secret held pursuant to an investigation or examination by the Office of Financial Regulation.
- Section 520.9965(1)(b), F.S., exempts a trade secret held by the Department of Financial Services after an investigation or examination related to the regulation of sales and finance is completed or ceases to be active.
- Section 556.113(2), F.S., exempts a trade secret held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.
- Section 559.5558(2)(b), F.S., exempts information that would reveal a trade secret held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination related to consumer collection practices regulated under part VI of ch. 559, F.S.
- Section 560.129, F.S., exempts information that would reveal a trade secret held by the Department of Financial Services pursuant to an investigation or examination related to the money service businesses regulated under ch. 560, F.S.
- Section 569.215, F.S., exempts proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement.
- Section 607.0505(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements under s. 607.0505, F.S.
- Section 617.0503(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements for corporations not for profit under s. 617.0503, F.S.
- Section 624.4212, F.S., exempts proprietary confidential information held by the Office of Insurance Regulation of the Financial Services Commission pursuant to the Insurance Code in ch. 624, F.S.
- Section 626.84195, F.S., exempts proprietary business information which concerns trade secrets provided to the Office of Insurance Regulation by a title insurance agency or insurer.
- Section 626.884(2), F.S., exempts any trade secret in the book and records of an insurance administrator accessed by the Office of Insurance Regulation for the purpose of examination, audit, or inspection.
- Section 627.0628(3)(g), F.S., exempts any trade secret used in designing and constructing a hurricane or flood loss model provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or consumer advocate appointed pursuant to s. 627.0613, F.S.
- Section 627.3518(11), F.S., exempts proprietary business information provided to the Citizens Property Insurance Corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.
- Section 655.057, F.S., exempts a trade secret contained in any record or information held by the Office of Financial Regulation during an investigation or after an investigation relating to an enforcement action is completed or ceases to be active.

- Section 1004.30(2), F.S., exempts trade secrets held by a university health services support organization.
- Section 1004.43(7), F.S., exempts a trade secret in proprietary confidential business information contained in the records of a Florida not-for-profit corporation, or its subsidiaries, organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute.
- Section 1004.4472, F.S., exempts a trade secret held by Florida Institute for Human and Machine Cognition, Inc., or its subsidiary.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.[32] In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.[33]

Trade Secrets Exemption for Data Processing Software

Section 119.071(1)(f), F.S., exempts from public records copying and inspection requirements data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is trade secret, as defined in s. 812.081, F.S., and agency-produced data processing software that is sensitive.[34]

In 2016, the definition of "trade secret" in s. 812.081, F.S., was expanded to include financial information. As a result, this public record exemption in s. 119.07(1)(f), F.S., was also reenacted in 2016 to incorporate the new definition of "trade secret."[35] This exemption is subject to the Act in accordance with s. 119.15, F.S., and will be repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.[36]

Section 119.10(1), F.S., provides that any public officer who violates any provision of ch. 119, F.S., commits a noncriminal infraction punishable by fine not exceeding $500. If the public officer violated the provisions of s. 119.07(1), F.S., the person is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree.[37]

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[32] *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[33] *Id.*
[34] Section 119.011(14), F.S., defines the term "sensitive" for the purposes of defining agency-produced software, to mean:
…only those portions of data processing software, including the specifications and documentation, which are used to:
(a) Collect, process, store, and retrieve information that is exempt from s. 119.07(1), F.S.;
(b) Collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or
(c) Control and direct access authorizations and security measures for automated systems.
[35] Chapter 2016-5, Laws of Fla.
[36] *Id.*
[37] Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides that a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.

Section 119.10(2), F.S., provides that any person who willfully and knowingly violates any of the provisions of this chapter commits a misdemeanor of the first degree.[38]

Open Government Sunset Review Questionnaires

In September 2020, the Professional Staff of the Senate Regulated Industries Committee sent an Open Government Sunset Review Questionnaire (questionnaire) to several state agencies and to the Florida League of Cities and the Florida Association of Counties for transmittal to those associations' member-agencies. Twenty-three state and local agencies responded to the questionnaires, representing 15 state agencies, five city governments, one county government, and two school boards. Staff reviewed the responses to the questions to be considered by the Legislature in accordance with s. 119.15(6)(a), F.S.

The majority of responding agencies stated that they have data processing software licensing agreements in place that require the software to be kept confidential as a trade secret. The number of such agreements for an agency ranged from one licensing agreement to more than 4,000 agreements. Section 119.071, F.S., does not require a licensing agreement for the exemption to apply, but such an agreement may evidence the labeling of a trade secret as such or the trade secret owner's written notice to the agency that the information provided to the agency is a trade secret. As noted by the Department of Highway Safety and Motor Vehicles, most commercial off-the-self software is typically subject to a licensing agreement which restricts the duplication, copying, or other disclosure.[39]

The questionnaire asked the agencies if it would be more appropriate for the public record exemption under review to use the definition of "trade secret" provided for in s. 688.002(4), F.S., as opposed to the definition in s. 812.081(1)(c), F.S. Of the agencies that responded to this question, 11 stated that the exemption should not be changed, three respondents recommended that the definitions should be revised to be identical or merged into a single definition, one respondent stated that either definition was appropriate, and one agency stated that the definition in s. 688.002(4), F.S., was the more appropriate definition. Eight respondents did not offer an opinion.

Advising that the exemption should continue to use the current definition in s. 812.081(1)(c), F.S., the Department of Corrections (DOC) stated that changing the definition would "upend years of case law. The definition of a "trade secret" in section 812.081, F.S., has been referenced by Chapter 119 since the exemption was created in 1985." The DOC noted that such a change "would be detrimental to records custodians as their guidance would have to be altered. The elements for each test differ and adopting the elements in section 688.002(4), F.S., would require a determination of "reasonableness" that is often hard to define and easy to litigate. Section 688.002(4), F.S., does not encompass the same level of specificity as section 812.081, F.S., and this would create confusion for both custodians and the public."[40]

[38] *Id.*
[39] *See Open Government Sunset Review Questionnaire* response from the Florida Department of Highway Safety and Motor Vehicles, dated Oct. 20, 2020, and on file with the Senate Committee on Regulated Industries.
[40] *See Open Government Sunset Review Questionnaire* response from the Florida Department of Corrections, dated Oct. 22, 2020, and on file with the Senate Committee on Regulated Industries.

Several of the agencies also noted that the public records exemption in s. 815.04(3), F.S., relating to trade secret data, programs, and supporting documentation that is a trade secret, as defined in s. 812.081(1)(c), F.S., and held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device, is similar the public records exemption in s. 119.071(1)(f), F.S.

None of the agencies surveyed recommended that the exemption in s. 119.071(1)(f), F.S., should not be reenacted.

Only one respondent made a recommendation to amend the exemption that did not relate to the definition of the term trade secret in ss. 688.002(4) and 812.081(1)(c), F.S. The City of Clearwater recommended that s. 119.071(1)(f), F.S., should be reenacted and amended to "include language applicable to Remote Software Service Providers and/or "Cloud" provided software and services."[41]

III. Effect of Proposed Changes:

The bill amends s. 119.071(1)(f), F.S., to remove the scheduled repeal of the public records exemption for data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, F.S., and agency-produced data processing software that is sensitive.

This public record exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill removes the scheduled repeal of the exemption. Thus, the qualified trade secrets and sensitive information remain exempt from public disclosure.

The bill takes effect October 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.

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

[41] *See Open Government Sunset Review Questionnaire* response from the City of Clearwater, dated Oct. 22, 2020, and on file with the Senate Committee on Regulated Industries.

public records requirements. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with an agency making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

Agencies will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 119.071 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By the Committee on Regulated Industries

580-02167-21 20217028__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., relating to an exemption from public records requirements for certain data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret and agency-produced data processing software that is sensitive; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (f) of subsection (1) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(1) AGENCY ADMINISTRATION.—

(f) Data processing software obtained by an agency under a licensing agreement that prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced data processing software that is sensitive are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The designation of agency-produced software as sensitive does not prohibit an agency head from sharing or exchanging such software with another public agency. ~~This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment~~

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

580-02167-21 20217028__

~~by the Legislature.~~

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

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: April 2, 2021

I respectfully request that **Senate Bill #7028**, relating to OGSR/Data Processing Software, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7030
INTRODUCER:	Regulated Industries Committee
SUBJECT:	OGSR/Trade Secrets/Department of Business and Professional Regulation
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Kraemer	Imhof		**RI Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Kraemer	Phelps	RC	**Favorable**

I. Summary:

SB 7030 saves from repeal the public records exemption for information required to be submitted to the Department of Business and Professional Regulation (DBPR) that is designated by a distributor of medical gas as a trade secret. Medical gas is a liquid or vaporized gas that is a prescription drug. Affected parties are medical gas wholesale distributors, medical gas manufacturers, and medical oxygen retail establishments, including applicants for such licensing.

This public record exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. This bill removes the scheduled repeal to continue the confidential and exempt status of the trade secret information.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 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]

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the 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]

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[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*, (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).
[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

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 Act[16] (the act) prescribes a legislative review process for newly created or substantially amended[17] 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 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

(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.

[22] Section 119.15(6)(b)2., F.S.

- 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]

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.[27]

Section 812.081(1)(c), F.S., defines a "trade secret" to mean:

> …the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the

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

> state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:
> 1. Secret;
> 2. Of value;
> 3. For use or in use by the business; and
> 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it
>
> when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.[28]
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.

[28] Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S, makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,[29] and the right to recover damages for the misappropriation of a trade secret.[30] Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.[31]

Section 688.002(4), F.S., defines the term "trade secret" to mean:

> …information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of

[29] Section 688.003, F.S.
[30] Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*
[31] *See* Section 688.008, F.S.

advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

The following sections of the Florida Statutes make the specified records confidential and exempt from public disclosure. These provisions exempt "trade secrets" as defined in s. 688.002(4), F.S., or include "trade secrets" as defined in s. 688.002(4), F.S., within the meaning of the term "proprietary confidential information" or "proprietary business information" when exempting such records from disclosure:

- Section 73.0155, F.S., exempts business information containing a trade secret provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., confidential and exempt.
- Section 119.0713, F.S., exempts proprietary confidential information held by a public utility.
- Section 215.4401, F.S., exempts proprietary confidential information held by the State Board of Administration to administer the real estate investment program.
- Section 288.075, F.S., exempts a trade secret held by an economic development agency.
- Section 288.9626, exempts proprietary confidential information held by the Florida Opportunity Fund, as defined in s. 288.9623, F.S.
- Section 288.9627(2), F.S., exempts a trade secret held by the Institute for Commercialization of Florida Technology established by s. 288.9625, F.S.
- Section 334.049, F.S., exempts any information containing a trade secret obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture.
- Section 395.3035(2)(c), F.S., exempts a trade secret held by a public hospital, including reimbursement, methodologies, and notes.
- Section 408.185, F.S., exempts specified information containing a trade secret held by the Office of the Attorney General, which is submitted by a member of the health care community pursuant to a request for an antitrust no-action letter.
- Section 408.910(14), F.S., exempts proprietary confidential information containing a trade secret held by Florida Health Choices Program.
- Section 409.91196(1), F.S. exempts a trade secret held by the Agency for Health Care Administration has identified for negotiation of supplemental rebate agreements.
- Section 440.108(1), F.S., exempts a trade secret related to an investigation by the Division of Workers' Compensation of the Department of Financial Services after an investigation is completed or ceases to be active.
- Section 494.00125(1)(c), F.S., exempts consumer complaints and other information containing a trade secret in an investigation or examination by the Office of Financial Regulation.
- Section 497.172(4), F.S., exempts a trade secret held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.

- Section 501.171(11), F.S., exempts information that would reveal a trade secret held pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency.
- Section 517.2015(1)(b), F.S., exempts information containing a trade secret held pursuant to an investigation or examination by the Office of Financial Regulation.
- Section 520.9965(1)(b), F.S., exempts a trade secret held by the Department of Financial Services after an investigation or examination related to the regulation of sales and finance is completed or ceases to be active.
- Section 556.113(2), F.S., exempts a trade secret held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.
- Section 559.5558(2)(b), F.S., exempts information that would reveal a trade secret held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination related to consumer collection practices regulated under part VI of ch. 559, F.S.
- Section 560.129, F.S., exempts information that would reveal a trade secret held by the Department of Financial Services pursuant to an investigation or examination related to the money service businesses regulated under ch. 560, F.S.
- Section 569.215, F.S., exempts proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement.
- Section 607.0505(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements under s. 607.0505, F.S.
- Section 617.0503(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements for corporations not for profit under s. 617.0503, F.S.
- Section 624.4212, F.S., exempts proprietary confidential information held by the Office of Insurance Regulation of the Financial Services Commission pursuant to the Insurance Code in ch. 624, F.S.
- Section 626.84195, F.S., exempts proprietary business information which concerns trade secrets provided to the Office of Insurance Regulation by a title insurance agency or insurer.
- Section 626.884(2), F.S., exempts any trade secret in the book and records of an insurance administrator accessed by the Office of Insurance Regulation for the purpose of examination, audit, or inspection.
- Section 627.0628(3)(g), F.S., exempts any trade secret used in designing and constructing a hurricane or flood loss model provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or consumer advocate appointed pursuant to s. 627.0613, F.S.
- Section 627.3518(11), F.S., exempts proprietary business information provided to the Citizens Property Insurance Corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.

- Section 655.057, F.S., exempts a trade secret contained in any record or information held by the Office of Financial Regulation during an investigation or after an investigation relating to an enforcement action is completed or ceases to be active.
- Section 1004.30(2), F.S., exempts trade secrets held by a university health services support organization.
- Section 1004.43(7), F.S., exempts a trade secret in proprietary confidential business information contained in the records of a Florida not-for-profit corporation, or its subsidiaries, organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute.
- Section 1004.4472, F.S., exempts a trade secret held by Florida Institute for Human and Machine Cognition, Inc., or its subsidiary.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.[32] In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.[33]

Select Trade Secrets held by the Department of Business and Professional Regulation

Section 499.931, F.S., requires trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder to be maintained as required under s. 499.051, F.S. Section 499.051, F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt. As a result, trade secrets are deemed to be confidential and exempt under s. 499.931, F.S. This exemption to the public records disclosure requirements is scheduled to repeal on October 1, 2021.

Open Government Sunset Review Questionnaires

In November 2020, the Professional Staff of the Senate Regulated Industries Committee sent an Open Government Sunset Review Questionnaire (questionnaire) to various entities identified by the Department of Business and Professional Regulation as permitted medical gas manufacturers and medical gas wholesale distributors. Representatives of the Compressed Gas Association,[34] and the Gases and Welding Distributors Association,[35] (the associations) responded to the

[32] *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[33] *Id.*
[34] The Compressed Gas Association (CGA) is an accredited standards-developing organization dedicated to the development and promotion of safety standards and safe practices in the industrial, medical, and food gases industry, representing over 130 member companies — manufacturers, distributors, suppliers, and transporters of gases, cryogenic liquids, and related products and services. CGA develops technical specifications, safety standards, and training and educational materials, and works with government agencies to formulate responsible regulations and standards and to promote compliance with these regulations and standards. *See* About Us - Compressed Gas Association (cganet.com) (last visited Feb. 11, 2021).
[35] The CGA's sister organization is the Gases and Welding Distributors Association (GAWDA), formerly the National Welding Supply Association. GAWDA represents over 500 small to very large welding equipment and industrial gas

questionnaire on behalf of their members, and staff reviewed the responses to the questions to be considered by the Legislature in accordance with s. 119.15(6)(a), F.S.

According to the associations, which represent manufacturers, distributors, suppliers and transporters of gases in the industrial, medical, and food gases industry, as well as the welding equipment and industrial gas industry, the exemption allows applicants and permit holders to share important information with the state in a manner that does not cause irreparable financial harm.[36]

The associations noted the following trade secret information is required to be submitted to DBPR by their members, as applicants or as permit holders inspected by DBPR:

- List of medical gas customers;
- Medical gas customer shipping documents that may contain pricing and volume information;
- Medical gas receipt documents;
- Medical gas pricing information;
- Documents associated with specific customer names and addresses;
- Billing documents; and
- The name, position/title, social security number, date of birth and address of each owner, partner, member, manager, officer, director, chief executive, or other person who directly or indirectly controls the operation of the business entity, as applicable.[37]

The questionnaire asked if the exemption in s. 499.931, F.S., should be repealed, and the associations strongly recommended the exemption be reenacted, without the need to reenact the protection of the above trade secret information every five years.[38]

III. Effect of Proposed Changes:

The bill saves from repeal the exemption for qualified trade secrets from public disclosure in s. 499.931, F.S., for a trade secret required to be submitted as part of the permitting or renewal process for medical gas wholesale distributors, medical gas manufacturers, and medical oxygen retail establishments.

The bill saves the exemption from repeal by removing the scheduled repeal date of October 2, 2021 in current law.

The bill is effective October 1, 2021.

distributors as well as several hundred manufacturers, suppliers, and service providers to the welding and industrial gas industry. GAWDA's mission is to promote the safe operation and economic vitality of distributors of industrial gases and related welding equipment and supplies. *See* Frequently Asked Questions - GAWDA (last visited Feb. 11, 2021).

[36] *See* Response by CGA and GAWDA to Open Government Sunset Review Questionnaire, at p. 3 (Dec. 9, 2020) (on file with the Senate Committee on Regulated Industries).

[37] *Id*.

[38] *Id*. at p. 4.

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.

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 does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with DBPR making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

DBPR will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 499.931 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 Regulated Industries

580-02163-21 20217030__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 499.931, F.S., which relates to an exemption from public records requirements for trade secrets contained in certain information submitted to the Department of Business and Professional Regulation as required by specified provisions relating to medical gas; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 499.931, Florida Statutes, is amended to read:

499.931 Trade secret information.—Information required to be submitted under this part which is a trade secret as defined in s. 812.081 and designated as a trade secret by an applicant or permitholder must be maintained as required under s. 499.051. ~~This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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: April 2, 2021

I respectfully request that **Senate Bill #7030**, relating to OGSR/Trade Secrets/Department of Business and Professional Regulation, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7032
INTRODUCER:	Regulated Industries Committee
SUBJECT:	OGSR/Prescription Drug Purchase Lists
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Kraemer	Imhof		**RI Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Kraemer	Phelps	RC	**Favorable**

I. Summary:

SB 7032 saves from repeal the public records exemption for a trade secret related to prescription drug purchase lists submitted to the Department of Business and Professional Regulation (DBPR) by certain wholesale distributors of prescription drugs in Florida.

This public record exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. This bill removes the scheduled repeal to continue the confidential and exempt status of the trade secret information.

The bill is not expected to impact state and local revenues and expenditures.

The bill is effective October 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

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the 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]

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[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*, (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).
[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).

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 Act[16] (the act) prescribes a legislative review process for newly created or substantially amended[17] 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 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

[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.
[22] Section 119.15(6)(b)2., F.S.

- 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]

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.[27]

Section 812.081(1)(c), F.S., defines a "trade secret" to mean:

> …the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the

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

> state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:
> 1. Secret;
> 2. Of value;
> 3. For use or in use by the business; and
> 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it
>
> when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.[28]
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.

[28] Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S, makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,[29] and the right to recover damages for the misappropriation of a trade secret.[30] Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.[31]

Section 688.002(4), F.S., defines the term "trade secret" to mean:

> …information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of

[29] Section 688.003, F.S.
[30] Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*
[31] *See* Section 688.008, F.S.

advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

The following sections of the Florida Statutes make the specified records confidential and exempt from public disclosure. These provisions exempt "trade secrets" as defined in s. 688.002(4), F.S., or include "trade secrets" as defined in s. 688.002(4), F.S., within the meaning of the term "proprietary confidential information" or "proprietary business information" when exempting such records from disclosure:

- Section 73.0155, F.S., exempts business information containing a trade secret provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., confidential and exempt.
- Section 119.0713, F.S., exempts proprietary confidential information held by a public utility.
- Section 215.4401, F.S., exempts proprietary confidential information held by the State Board of Administration to administer the real estate investment program.
- Section 288.075, F.S., exempts a trade secret held by an economic development agency.
- Section 288.9626, exempts proprietary confidential information held by the Florida Opportunity Fund, as defined in s. 288.9623, F.S.
- Section 288.9627(2), F.S., exempts a trade secret held by the Institute for Commercialization of Florida Technology established by s. 288.9625, F.S.
- Section 334.049, F.S., exempts any information containing a trade secret obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture.
- Section 395.3035(2)(c), F.S., exempts a trade secret held by a public hospital, including reimbursement, methodologies, and notes.
- Section 408.185, F.S., exempts specified information containing a trade secret held by the Office of the Attorney General, which is submitted by a member of the health care community pursuant to a request for an antitrust no-action letter.
- Section 408.910(14), F.S., exempts proprietary confidential information containing a trade secret held by Florida Health Choices Program.
- Section 409.91196(1), F.S. exempts a trade secret held by the Agency for Health Care Administration has identified for negotiation of supplemental rebate agreements.
- Section 440.108(1), F.S., exempts a trade secret related to an investigation by the Division of Workers' Compensation of the Department of Financial Services after an investigation is completed or ceases to be active.
- Section 494.00125(1)(c), F.S., exempts consumer complaints and other information containing a trade secret in an investigation or examination by the Office of Financial Regulation.
- Section 497.172(4), F.S., exempts a trade secret held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.

- Section 501.171(11), F.S., exempts information that would reveal a trade secret held pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency.
- Section 517.2015(1)(b), F.S., exempts information containing a trade secret held pursuant to an investigation or examination by the Office of Financial Regulation.
- Section 520.9965(1)(b), F.S., exempts a trade secret held by the Department of Financial Services after an investigation or examination related to the regulation of sales and finance is completed or ceases to be active.
- Section 556.113(2), F.S., exempts a trade secret held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.
- Section 559.5558(2)(b), F.S., exempts information that would reveal a trade secret held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination related to consumer collection practices regulated under part VI of ch. 559, F.S.
- Section 560.129, F.S., exempts information that would reveal a trade secret held by the Department of Financial Services pursuant to an investigation or examination related to the money service businesses regulated under ch. 560, F.S.
- Section 569.215, F.S., exempts proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement.
- Section 607.0505(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements under s. 607.0505, F.S.
- Section 617.0503(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements for corporations not for profit under s. 617.0503, F.S.
- Section 624.4212, F.S., exempts proprietary confidential information held by the Office of Insurance Regulation of the Financial Services Commission pursuant to the Insurance Code in ch. 624, F.S.
- Section 626.84195, F.S., exempts proprietary business information which concerns trade secrets provided to the Office of Insurance Regulation by a title insurance agency or insurer.
- Section 626.884(2), F.S., exempts any trade secret in the book and records of an insurance administrator accessed by the Office of Insurance Regulation for the purpose of examination, audit, or inspection.
- Section 627.0628(3)(g), F.S., exempts any trade secret used in designing and constructing a hurricane or flood loss model provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or consumer advocate appointed pursuant to s. 627.0613, F.S.
- Section 627.3518(11), F.S., exempts proprietary business information provided to the Citizens Property Insurance Corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.

- Section 655.057, F.S., exempts a trade secret contained in any record or information held by the Office of Financial Regulation during an investigation or after an investigation relating to an enforcement action is completed or ceases to be active.
- Section 1004.30(2), F.S., exempts trade secrets held by a university health services support organization.
- Section 1004.43(7), F.S., exempts a trade secret in proprietary confidential business information contained in the records of a Florida not-for-profit corporation, or its subsidiaries, organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute.
- Section 1004.4472, F.S., exempts a trade secret held by Florida Institute for Human and Machine Cognition, Inc., or its subsidiary.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.[32] In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.[33]

Trade Secrets relating to Prescription Drug Purchase List

Section 499.0121, F.S., requires trade secrets related to written lists of wholesale distributors and manufacturers submitted to DBPR to be maintained as required under s. 499.051, F.S. Section 499.051, F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt. As a result, trade secrets are deemed to be confidential and exempt under s. 499.0121, F.S. This exemption to the public records disclosure requirements is scheduled to repeal on October 1, 2021.

Open Government Sunset Review Questionnaires

In September 2020, the Professional Staff of the Senate Regulated Industries Committee sent an Open Government Sunset Review Questionnaire (questionnaire) to the Department of Business and Professional Regulation, Division of Drugs, Devices, and Cosmetics (DDC), and to the Pharmaceutical Research and Manufacturers of America (PhRMA) for consideration. Both parties responded to the questionnaires, and staff reviewed the responses to the questions to be considered by the Legislature in accordance with s. 119.15(6)(a), F.S.

According to the DDC, prescription drug purchase lists are a key element in protecting the prescription drug supply, as part of verifying only authorized parties supply prescription drugs in Florida, and only authentic, and not counterfeit, prescription drugs are supplied. These lists allow verification by DDC that the listed suppliers are authorized to sell prescription drugs in the United

[32] *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[33] *Id.*

States and are properly registered as manufacturers with the Federal Food and Drug Administration, or with the DDC as wholesalers.[34]

The DDC notes that in-person inspections of the business records of each prescription drug wholesale distributor would be a significant cost to the state, and for that reason, continued submission of the purchase lists with trade secret protection is preferable. [35]

According to a trade association for pharmaceutical and biotechnology companies and manufacturers, while manufacturers are not required to provide prescription drug purchase lists, the disclosure of trade secret information, i.e., the lists, is also prohibited by federal constitutional and recent statutory law.[36] Further, the trade secret exemption in s. 499.0121(7), F.S. helps "to ensure that the State's public records statutes do not conflict with federal statutory law," and "are better safeguards from a public policy perspective because they provide both manufacturers and the State with more certainty about what information may be subject to public disclosure." [37]

The questionnaire asked if the exemption should be repealed or merged with other exemptions, and neither respondent favored such action, as the various exemptions in ch. 499, F.S., do not have overlapping subject matter. The DDC recommended reenactment of the exemption as a fair protection of business interest and the public's right to know.[38] The DDC noted drug purchase lists are a powerful and cost-effective tool for regulation of prescription drugs in Florida.[39]

PhRMA suggested it would be preferable to adopt a broad exemption covering all confidential and proprietary business information held by the state, but that if such comprehensive changes are not made, the exemption should be reenacted.[40]

III. Effect of Proposed Changes:

The bill reenacts the exemption for qualified trade secrets from public disclosure in s. 499.0121, F.S., for a trade secret contained in prescription drug purchase lists required to be submitted annually by certain wholesale distributors of prescription drugs to the DBPR pursuant to s. 499.0121(7)(a), F.S. Such purchase lists must be submitted by all wholesale distributors, other

[34] *See* Response by the DDC to Open Government Sunset Review Questionnaire (Sep. 25, 2020) (on file with the Senate Committee on Regulated Industries).
[35] *Id*.
[36] *See* Response by Pharmaceutical Research and Manufacturers of America (PhRMA) to Open Government Sunset Review Questionnaire (Nov. 12, 2020) (on file with the Senate Committee on Regulated Industries). *See also Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984), and the Defend Trade Secrets Act, 18 U.S.C. s. 1836 *et seq.*, enacted in 2016, available at 18 USC 1836 - Civil proceedings (govregs.com) (last visited Feb. 11, 2021).
[37] *Id*.
[38] *See* Response by the DDC to Open Government Sunset Review Questionnaire, p. 5, (Sep. 25, 2020) (on file with the Senate Committee on Regulated Industries).
[39] *Id*.
[40] *See* Response by Pharmaceutical Research and Manufacturers of America (PhRMA) to Open Government Sunset Review Questionnaire, at pp. 4-5, (Nov. 12, 2020) (on file with the Senate Committee on Regulated Industries).

than manufacturers.[41] The list must identify all wholesale distributors and manufacturers from whom the wholesale distributor purchases prescription drugs.[42]

The bill reenacts the exemption by removing the repeal date of October 2, 2021 in current law.

The bill is effective October 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.

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 does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

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[41] Under s. 499.003(49), F.S., the term "wholesale distributor" means "a person, other than a manufacturer, a manufacturer's co-licensed partner, a third-party logistics provider, or a repackager, who is engaged in wholesale distribution. The term "wholesale distribution" means the "distribution of a prescription drug to a person other than a consumer or patient, or the receipt of a prescription drug by a person other than the consumer or patient," but does not include numerous exceptions described in ss. 499.003(48)(a) through (x), F.S.

[42] Section 499.0121(7)(a), 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:

The private sector will continue to be subject to the cost, to the extent imposed, associated with DBPR making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

DBPR will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 499.0121 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 the Committee on Regulated Industries

580-02150-21 20217032__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 499.0121, F.S., which provides an exemption from public records requirements for trade secrets contained in certain prescription drug purchase lists submitted to the Department of Business and Professional Regulation; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (7) of section 499.0121, Florida Statutes, is amended to read:

499.0121 Storage and handling of prescription drugs; recordkeeping.—The department shall adopt rules to implement this section as necessary to protect the public health, safety, and welfare. Such rules shall include, but not be limited to, requirements for the storage and handling of prescription drugs and for the establishment and maintenance of prescription drug distribution records.

(7) PRESCRIPTION DRUG PURCHASE LIST.—

(a) Each wholesale distributor, except for a manufacturer, shall annually provide the department with a written list of all wholesale distributors and manufacturers from whom the wholesale distributor purchases prescription drugs. A wholesale distributor, except a manufacturer, shall notify the department not later than 10 days after any change to either list.

(b) Such portions of the information required pursuant to

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

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this subsection which are a trade secret, as defined in s. 812.081, shall be maintained by the department as trade secret information is required to be maintained under s. 499.051. ~~This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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: April 2, 2021

I respectfully request that **Senate Bill #7032**, relating to OGSR/Prescription Drug Purchase Lists, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7034
INTRODUCER:	Regulated Industries Committee
SUBJECT:	OGSR/Trade Secrets/Department of Business and Professional Regulation
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Kraemer	Imhof		**RI Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Kraemer	Phelps	RC	**Favorable**

I. Summary:

SB 7034 amends s. 499.051, F.S., to remove the scheduled repeal of a public records exemption for a trade secret related to a complaint filed against a licensed prescription drug manufacturer, repackager, or distributor, or a trade secret obtained by the Department of Business and Professional Regulation (DBPR) pursuant to inspections and investigations of licensees as authorized under s. 499.051, F.S. Affected licensees include prescription and over-the-counter drug manufacturers, drug distributors, repackagers, and wholesalers; manufacturers of drugs, devices, or cosmetics; and certain health care clinics, veterinary drug retail establishments, freight forwarders, and logistics providers.

This public record exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. Under the bill, qualified trade secrets remain exempt from public disclosure.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 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]

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*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (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).

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 Act[16] (the act) prescribes a legislative review process for newly created or substantially amended[17] 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]

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[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).
[11] *Id*. *See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).
[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[16] Section 119.15, F.S.
[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[18] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[19] Section 119.15(3), F.S.
[20] Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:[24]

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[26]

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority

[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.

making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.[27]

Section 812.081(1)(c), F.S., defines a "trade secret" to mean:

> …the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:
> 1. Secret;
> 2. Of value;
> 3. For use or in use by the business; and
> 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it
>
> when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.[28]
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.

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

[28] Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S, makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,[29] and the right to recover damages for the misappropriation of a trade secret.[30] Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.[31]

[29] Section 688.003, F.S.
[30] Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*
[31] *See* s. 688.008, F.S.

Section 688.002(4), F.S., defines the term "trade secret" to mean:

> …information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

The following sections of the Florida Statutes make the specified records confidential and exempt from public disclosure. These provisions exempt "trade secrets" as defined in s. 688.002(4), F.S., or include "trade secrets" as defined in s. 688.002(4), F.S., within the meaning of the term "proprietary confidential information" or "proprietary business information" when exempting such records from disclosure:

- Section 73.0155, F.S., exempts business information containing a trade secret provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., specified business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages under s. 73.015, F.S., confidential and exempt.
- Section 119.0713, F.S., exempts proprietary confidential information held by a public utility.
- Section 215.4401, F.S., exempts proprietary confidential information held by the State Board of Administration to administer the real estate investment program.
- Section 288.075, F.S., exempts a trade secret held by an economic development agency.
- Section 288.9626, exempts proprietary confidential information held by the Florida Opportunity Fund, as defined in s. 288.9623, F.S.
- Section 288.9627(2), F.S., exempts a trade secret held by the Institute for Commercialization of Florida Technology established by s. 288.9625, F.S.
- Section 334.049, F.S., exempts any information containing a trade secret obtained by the Department of Transportation as a result of research and development projects and revealing a method of process, production, or manufacture.
- Section 395.3035(2)(c), F.S., exempts a trade secret held by a public hospital, including reimbursement, methodologies, and notes.

- Section 408.185, F.S., exempts specified information containing a trade secret held by the Office of the Attorney General, which is submitted by a member of the health care community pursuant to a request for an antitrust no-action letter.
- Section 408.910(14), F.S., exempts proprietary confidential information containing a trade secret held by Florida Health Choices Program.
- Section 409.91196(1), F.S. exempts a trade secret held by the Agency for Health Care Administration has identified for negotiation of supplemental rebate agreements.
- Section 440.108(1), F.S., exempts a trade secret related to an investigation by the Division of Workers' Compensation of the Department of Financial Services after an investigation is completed or ceases to be active.
- Section 494.00125(1)(c), F.S., exempts consumer complaints and other information containing a trade secret in an investigation or examination by the Office of Financial Regulation.
- Section 497.172(4), F.S., exempts a trade secret held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services.
- Section 501.171(11), F.S., exempts information that would reveal a trade secret held pursuant to an investigation by the Department of Legal Affairs or a law enforcement agency.
- Section 517.2015(1)(b), F.S., exempts information containing a trade secret held pursuant to an investigation or examination by the Office of Financial Regulation.
- Section 520.9965(1)(b), F.S., exempts a trade secret held by the Department of Financial Services after an investigation or examination related to the regulation of sales and finance is completed or ceases to be active.
- Section 556.113(2), F.S., exempts a trade secret held by Sunshine State One-Call of Florida, Inc., for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.
- Section 559.5558(2)(b), F.S., exempts information that would reveal a trade secret held by the Office of Financial Regulation of the Financial Services Commission pursuant to an investigation or examination related to consumer collection practices regulated under part VI of ch. 559, F.S.
- Section 560.129, F.S., exempts information that would reveal a trade secret held by the Department of Financial Services pursuant to an investigation or examination related to the money service businesses regulated under ch. 560, F.S.
- Section 569.215, F.S., exempts proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement, as amended, in the case of *State of Florida et al. v. American Tobacco Company et al.*, or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement.
- Section 607.0505(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements under s. 607.0505, F.S.
- Section 617.0503(6), F.S., exempts information containing a trade secret provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to the registered agent requirements for corporations not for profit under s. 617.0503, F.S.

- Section 624.4212, F.S., exempts proprietary confidential information held by the Office of Insurance Regulation of the Financial Services Commission pursuant to the Insurance Code in ch. 624, F.S.
- Section 626.84195, F.S., exempts proprietary business information which concerns trade secrets provided to the Office of Insurance Regulation by a title insurance agency or insurer.
- Section 626.884(2), F.S., exempts any trade secret in the book and records of an insurance administrator accessed by the Office of Insurance Regulation for the purpose of examination, audit, or inspection.
- Section 627.0628(3)(g), F.S., exempts any trade secret used in designing and constructing a hurricane or flood loss model provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or consumer advocate appointed pursuant to s. 627.0613, F.S.
- Section 627.3518(11), F.S., exempts proprietary business information provided to the Citizens Property Insurance Corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.
- Section 655.057, F.S., exempts a trade secret contained in any record or information held by the Office of Financial Regulation during an investigation or after an investigation relating to an enforcement action is completed or ceases to be active.
- Section 1004.30(2), F.S., exempts trade secrets held by a university health services support organization.
- Section 1004.43(7), F.S., exempts a trade secret in proprietary confidential business information contained in the records of a Florida not-for-profit corporation, or its subsidiaries, organized solely for the purpose of governing and operating the H. Lee Moffitt Cancer Center and Research Institute.
- Section 1004.4472, F.S., exempts a trade secret held by Florida Institute for Human and Machine Cognition, Inc., or its subsidiary.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.[32] In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.[33]

Open Government Sunset Review Questionnaires

In September 2020, the Professional Staff of the Senate Regulated Industries Committee sent an Open Government Sunset Review Questionnaire (questionnaire) to the Department of Business and Professional Regulation, Division of Drugs, Devices, and Cosmetics (DDC), and to the Pharmaceutical Research and Manufacturers of America (PhRMA) for consideration. Both parties responded to the questionnaires, and staff reviewed the responses to the questions to be considered by the Legislature in accordance with s. 119.15(6)(a), F.S.

[32] *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[33] *Id.*

According to the DDC, when an allegation of failing to meet current good manufacturing practices is investigated, the information collected typically includes a firm's formula and ingredients for the product, the design for the product, the development and manufacturing process, and other procedures related to the product.[34] When an inspection or investigation of a firm is conducted to determine if the firm is selling products to authorized recipients, the information collected may include financial documents and customer lists.[35] When prescription drugs are manufactured and there is a potential manufacturing issue, immediate access to a firm's records protects public health and safety; firms provide immediate access with the knowledge its records will be protected from public disclosure pursuant to the trade secret exemptions in Florida law.[36]

According to a trade association for pharmaceutical and biotechnology companies and manufacturers, pharmaceutical manufacturers invest substantially each year investigating and developing new life-saving and life-enhancing drugs for patients, including vaccines.[37] Such investment relies on strong legal protections for intellectual property, including trade secrets, which allow manufacturers to compete based on quality, price, and market access. If trade secrets were subject to public inspection during or following an investigation, a manufacturer's ability to innovate or compete could be hindered.[38] The association further notes that an investigation may not uncover any violations, and that a manufacturer should not be penalized for cooperating with an investigation by risking exposure of valuable trade secrets.[39]

The questionnaire asked if the exemption should be repealed or merged with other exemptions, and neither respondent favored such action, as the various exemptions in ch. 499, F.S., do not have overlapping subject matter. The DDC recommended reenactment of the exemption as a fair protection of business interest and the public's right to know.[40] PhRMA suggested it would be preferable for the Legislature to adopt a broad exemption covering all confidential and proprietary business information held by the state, with safeguards that will help ensure that manufacturers' sensitive information is not disseminated, including (but not limited to):

- Providing manufacturers with notice within 30 days of receipt of a public records request that information sought under section 119.07(1), Florida Statutes, or section 24(a) of Article I of the Florida Constitution may contain trade secrets;
- Providing manufacturers with an opportunity to file written objections to any such requests for information and to explain why the information sought should be protected;
- If the authority determines that information labeled a trade secret by the manufacturer is not subject to an exemption, providing manufacturers with at least a 30-day grace period to seek

[34] *See* Response by the DDC to Open Government Sunset Review Questionnaire (Sep. 25, 2020) (on file with the Senate Committee on Regulated Industries).
[35] *Id*.
[36] *Id*.
[37] *See* Response by Pharmaceutical Research and Manufacturers of America (PhRMA) to Open Government Sunset Review Questionnaire (Nov. 12, 2020) (on file with the Senate Committee on Regulated Industries).
[38] *Id*.
[39] *Id*.
[40] *See* Response by the DDC to Open Government Sunset Review Questionnaire, at p. 5, (Sep. 25, 2020) (on file with the Senate Committee on Regulated Industries).

judicial relief before releasing the contested materials in response to the public records act request.[41]

If such comprehensive changes are not made, PhRMA recommended the exemption in s. 499.051, F.S., should be reenacted.[42]

Trade Secrets

For purposes of the exemption in s. 499.051, F.S., the term "trade secrets," as defined in s. 812.081(1)(c), F.S., means information for which an owner "takes measures to prevent the information from becoming available to persons other than those selected by the owner to have access for limited purposes." Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or the opportunity to do so, over those who do not know or use such information.[43]
Under Section 812.081(1)(c), F.S., the term "trade secret" includes:

- Any scientific, technical, or commercial information, including financial information; and
- Any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

In 2016, when the term "trade secret" was expanded to include the term "financial information,"[44] s. 499.051, F.S., was revised to incorporate that expanded meaning, and made subject to repeal on October 2, 2021 unless saved through reenactment by the Legislature.[45]

III. Effect of Proposed Changes:

The bill saves from repeal the exemption for qualified trade secrets from public disclosure in s. 499.051, F.S., for a trade secret:

- Submitted as part of the permitting or renewal process related to the manufacture, repackaging, or distribution of a drug or for a permit or product registration; or
- Contained in a complaint investigated by the DBPR or a trade secret obtained by the DBPR pursuant to any investigation of a licensee conducted to enforce public health and safety rules or the requirements of ch. 499, F.S., (Florida Drug and Cosmetic Act), ch. 465, F.S., (Pharmacy), ch. 501, F.S., (Consumer Protection), and ch. 893, F.S., (Drug Abuse Prevention and Control).

Affected licensees include prescription and over-the-counter drug manufacturers, drug distributors, repackagers, and wholesalers; manufacturers of drugs, devices, or cosmetics; and certain health care clinics, veterinary drug retail establishments, freight forwarders, and logistics providers.

[41] *See* Response by Pharmaceutical Research and Manufacturers of America (PhRMA) to Open Government Sunset Review Questionnaire, at p. 5, (Nov. 12, 2020) (on file with the Senate Committee on Regulated Industries).
[42] *Id*.
[43] Section 812.081(1)(c), F.S.
[44] Ch. 2016-5, Laws of Fla.
[45] *See* Ch. 2016-6, s. 11, Laws of Fla.

The bill saves the exemption from repeal by removing the repeal date of October 2, 2021, in current law.

The bill takes effect October 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.

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 does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with the DBPR making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The DBPR will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 499.051 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 Regulated Industries

580-02164-21 20217034__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 499.051, F.S., which relates to an exemption from public records requirements for trade secrets contained within complaints or pursuant to an investigation of such complaints obtained by the Department of Business and Professional Regulation, which are submitted by permittees relating to the manufacture, repackaging, or distribution of a drug or for a permit or product registration or for the renewal of such permit or product registration; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 499.051, Florida Statutes, is amended to read:

499.051 Inspections and investigations.—

(1) The agents of the department and of the Department of Law Enforcement, after they present proper identification, may inspect, monitor, and investigate any establishment permitted pursuant to this chapter during business hours for the purpose of enforcing this chapter, chapters 465, 501, and 893, and the rules of the department that protect the public health, safety, and welfare.

(2) In addition to the authority set forth in subsection (1), the department and any duly designated officer or employee of the department may enter and inspect any other establishment

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for the purpose of determining compliance with this chapter and rules adopted under this chapter regarding any drug, device, or cosmetic.

(3) Any application for a permit or product registration or for renewal of such permit or registration made pursuant to this chapter and rules adopted under this chapter constitutes permission for any entry or inspection of the premises in order to verify compliance with this chapter and rules; to discover, investigate, and determine the existence of compliance; or to elicit, receive, respond to, and resolve complaints and violations.

(4) Any application for a permit made pursuant to s. 499.012 or s. 499.831 and rules adopted under those sections constitutes permission for agents of the department and the Department of Law Enforcement, after presenting proper identification, to inspect, review, and copy any financial document or record related to the manufacture, repackaging, or distribution of a drug as is necessary to verify compliance with this chapter and the rules adopted by the department to administer this chapter, in order to discover, investigate, and determine the existence of compliance, or to elicit, receive, respond to, and resolve complaints and violations.

(5) The authority to inspect under this section includes the authority to access, review, and copy any and all financial documents related to the activity of manufacturing, repackaging, or distributing prescription drugs.

(6) The authority to inspect under this section includes the authority to secure:

(a) Samples or specimens of any drug, device, or cosmetic;

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or

(b) Such other evidence as is needed for any action to enforce this part and the rules adopted under this part.

(7)(a) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation and the enforcement action are completed.

(b) Information that constitutes a trade secret, as defined in s. 812.081, contained in the complaint or obtained by the department pursuant to the investigation must remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution as long as the information is held by the department. ~~This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(c) This subsection does not prohibit the department from using such information for regulatory or enforcement proceedings under this chapter or from providing such information to any law enforcement agency or any other regulatory agency. However, the receiving agency shall keep such records confidential and exempt as provided in this subsection.

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

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The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 2, 2021

I respectfully request that **Senate Bill #7034**, relating to OGSR/Trade Secrets/Department of Business and Professional Regulation, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7038
INTRODUCER:	Agriculture Committee
SUBJECT:	OGSR/Division of Fruit and Vegetables/Trade Secrets
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Becker	Becker		**AG Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Becker	Phelps	RC	**Favorable**

I. Summary:

SB 7038 saves from repeal the public records exemption for trade secrets held by the Department of Agriculture and Consumer Services Division of Fruit and Vegetables under s. 570.48(3), F.S.

The public records exemption stands repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill removes the scheduled repeal of the exemption to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 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

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

legislature.3 Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the 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]

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[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*, (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).
[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).

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 Act[16] (the act) prescribes a legislative review process for newly created or substantially amended[17] 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 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

[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.
[22] Section 119.15(6)(b)2., F.S.

- 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]

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.[27]

Section 812.081(1)(c), F.S., defines a "trade secret" to mean:

> …the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

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

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.[28]
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.

[28] Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S, makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,[29] and the right to recover damages for the misappropriation of a trade secret.[30] Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.[31]

Section 688.002(4), F.S., defines the term "trade secret" to mean:

> …information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has

[29] Section 688.003, F.S.
[30] Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*
[31] *See* s. 688.008, F.S.

"independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.[32] In Sepro v. Department of Environmental Protection, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.[33]

Department of Agriculture and Consumer Services Division of Fruit and Vegetables

The Department of Agriculture and Consumer Services (department) Division of Fruit and Vegetables (division) inspects and certifies all fresh shipments of vegetables, fruit, and nuts covered by state and federal marketing orders.[34]

The duties of the division include, but are not limited to:

- Performing duties relating to the inspection and certification of fresh citrus fruit shipments for maturity and grade required by rules promulgated under the Florida Citrus Code;
- Performing the inspection and certification duties assigned in connection with regulations issued under federal or state marketing agreements or orders; and
- Performing the other inspection and certification assignments requested by and agreed upon with the applicant.[35]

Marketing Orders and Agreements

Marketing agreements and orders are initiated by industry to help provide stable markets for dairy products, fruits, vegetables and specialty crops. Each order and agreement is tailored to the individual industry's needs. Marketing Orders are a binding regulation for the entire industry in the specified geographical area, once it is approved by the producers and the Secretary of Agriculture. Marketing Agreements are only binding for those handlers that sign the agreement.[36]

Public Records Exemption for the Division of Fruit and Vegetables

The Legislature enacted a public records exemption for the division to include information which would separately disclose the business transactions of any person, trade secrets, names of customers, plant production, or other individual commercial information. The records of the division are public records; however, trade secrets as defined in s. 812.081, F.S., are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.
The exemption should not be construed to prohibit:

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[32] *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[33] *Id.*
[34] *See* https://www.fdacs.gov/Divisions-Offices/Fruit-and-Vegetables, (last visited March 3, 2021).
[35] S. 570.48(1), F.S.
[36] *See* https://www.ams.usda.gov/rules-regulations/moa (last visited March 3, 2021).

- A disclosure necessary to enforcement procedures;
- The department from releasing information to other governmental agencies. Other governmental agencies that receive confidential information from the department under this subsection shall maintain the confidentiality of that information; and
- The department or other agencies from compiling and publishing appropriate data regarding procedures, yield, recovery, quality, and related matters, provided such released data do not reveal by whom the activity to which the data relate was conducted.

Open Government Sunset Review Findings and Recommendations

In February 2021, the Professional Staff of the Senate Committee on Agriculture sent an Open Government Sunset Review Questionnaire to the department. The department reported that it rarely receives a public record request for the information exempt under s. 570.48(3), F.S., as the exemption is well known within the industry and producers rely on it to protect their trade secret information provided to the department during its regulatory inspections.[37]

The department recommended that the exemption in s 570.48(3), F.S., should be reenacted.[38]

III. Effect of Proposed Changes:

SB 7038 amends s. 570.48(3), F.S., to remove the scheduled repeal of a public records exemption for records of the Department of Agriculture and Consumer Services Division of Fruit and Vegetables that are considered trade secrets as defined in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 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.

[37] *See Open Government Sunset Review Questionnaire* response from the Florida Department of Agriculture and Consumer Services on file with the Senate Committee on Agriculture.
[38] *Id.*

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 does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with the department making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The department will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 570.48 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 Agriculture

575-02383-21 20217038__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 570.48, F.S., which provides an exemption from public records requirements for information related to trade secrets held by the Division of Fruit and Vegetables of the Department of Agriculture and Consumer Services; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (3) of section 570.48, Florida Statutes, is amended to read:

570.48 Division of Fruit and Vegetables; powers and duties; records.—The duties of the Division of Fruit and Vegetables include, but are not limited to:

(3) Maintaining the records of the division. The records of the division are public records; however, trade secrets as defined in s. 812.081 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~ This section may not be construed to prohibit:

(a) A disclosure necessary to enforcement procedures.

(b) The department from releasing information to other governmental agencies. Other governmental agencies that receive

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

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confidential information from the department under this subsection shall maintain the confidentiality of that information.

(c) The department or other agencies from compiling and publishing appropriate data regarding procedures, yield, recovery, quality, and related matters, provided such released data do not reveal by whom the activity to which the data relate was conducted.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7040
INTRODUCER:	Agriculture Committee
SUBJECT:	OGSR/Department of Agriculture and Consumer Services
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Becker	Becker		**AG Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Becker	Phelps	RC	**Favorable**

I. Summary:

SB 7040 amends s. 573.123(3), F.S., to remove the scheduled repeal of a public records exemption for information held by the Department of Agriculture and Consumer Services that, if disclosed, would reveal a trade secret as defined in Section 812.081, F.S., of any person subject to a marketing order.

The public records exemption stands repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. This bill saves the exemption from repeal to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local government revenues and expenditures.

The bill takes effect October 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.,

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the 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]

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[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*, (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).
[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).

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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]

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The Open Government Sunset Review Act[16] (the act) prescribes a legislative review process for newly created or substantially amended[17] 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 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

[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.
[22] Section 119.15(6)(b)2., F.S.

- 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]

Trade Secrets Public Records Exemptions

Trade Secrets

The term "trade secrets," as defined in Section 812.081(1)(c), F.S., means information for which an owner "takes measures to prevent the information from becoming available to persons other than those selected by the owner to have access for limited purposes." Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or the opportunity to do so, over those who do not know or use such information.[27]

Under Section 812.081(1)(c), F.S., the term "trade secret" includes:

- Any scientific, technical, or commercial information, including financial information; and
- Any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority

[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] Section 812.081(1)(c), F.S.

making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.[28]

Section 812.081(1)(c), F.S., defines a "trade secret" to mean:

> …the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:
> 1. Secret;
> 2. Of value;
> 3. For use or in use by the business; and
> 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it
>
> when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.[29]
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.

[28] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.
[29] Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S, makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,[30] and the right to recover damages for the misappropriation of a trade secret.[31] Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.[32]

[30] Section 688.003, F.S.
[31] Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*
[32] *See* Section 688.008, F.S.

Section 688.002(4), F.S., defines the term "trade secret" to mean:

> …information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.[33] In Sepro v. Department of Environmental Protection, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.[34]

Department of Agriculture and Consumer Services Division of Fruit and Vegetables

The Department of Agriculture and Consumer Services (department) Division of Fruit and Vegetables (division) inspects and certifies all fresh shipments of vegetables, fruit, and nuts covered by state and federal marketing orders.[35]

The duties of the division include, but are not limited to:

- Performing duties relating to the inspection and certification of fresh citrus fruit shipments for maturity and grade required by rules promulgated under the Florida Citrus Code;
- Performing the inspection and certification duties assigned in connection with regulations issued under federal or state marketing agreements or orders; and
- Performing the other inspection and certification assignments requested by and agreed upon with the applicant.[36]

[33] *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[34] *Id.*
[35] *See* https://www.fdacs.gov/Divisions-Offices/Fruit-and-Vegetables, (last visited March 1, 2021).
[36] Section 570.48(1), F.S.

Marketing Orders and Agreements

At the federal level, marketing agreements and orders are initiated by industry to help provide stable markets for dairy products, fruits, vegetables and specialty crops. Each order and agreement is tailored to the individual industry's needs. Marketing orders are a binding regulation for the entire industry in the specified geographical area, once it is approved by the producers and the United States Secretary of Agriculture. Marketing agreements are only binding for those handlers that sign the agreement.[37]
At the state level, marketing agreements are agreements between the department and distributors, producers, handlers, and others engaged in the handling of agricultural commodities which regulate the handling of the commodities.[38] Marketing orders are orders issued by the department that prescribe rules governing the distributing, or handling in any manner, of agricultural commodities in the primary channel of trade during any specified period or periods.[39]

The department may require anyone directly affected by and subject to the provisions of any marketing order to maintain books and records reflecting their operations under the marketing order, to furnish to the department any information related to operations under the marketing order, and to inspect the portions of books and records that relate to operations under the marketing order.[40] Such information that, if disclosed, would reveal a trade secret as defined in Section 812.081, F.S., is confidential and exempt from public disclosure requirements. This information may be provided to an attorney who provides legal advice to the division about enforcing a marketing order or by court order.[41]

Open Government Sunset Review Findings and Recommendations

In February 2021, the Professional Staff of the Senate Committee on Agriculture sent an Open Government Sunset Review Questionnaire to the department. The department reported that it rarely receives a public record request for the information exempt under s 573.123(2), F.S., as the exemption is well known within the industry and producers rely on it to protect their trade secret information provided to the department to administer various marketing orders. The department indicated that such information is minimally requested.[42]

The department recommended that the exemption in s 573.123(3), F.S., should be reenacted.[43]

III. Effect of Proposed Changes:

The bill amends s. 573.123(3), F.S., to remove the scheduled repeal of a public records exemption for information held by the Department of Agriculture and Consumer Services that, if disclosed, would reveal a trade secret as defined in Section 812.081, F.S., of any person subject to a marketing order.

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[37] *See* https://www.ams.usda.gov/rules-regulations/moa (last visited March 1, 2021).
[38] Section 570.103(8), F.S.
[39] Section 570.103(9), F.S.
[40] Section 570.123(1), F.S.
[41] Section 570.123(2), F.S.
[42] *See Open Government Sunset Review Questionnaire* response from the Florida Department of Agriculture and Consumer Services on file with the Senate Committee on Agriculture.
[43] *Id.*

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. This bill saves the exemption from repeal to continue the confidential and exempt status of the information.

The bill takes effect October 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.

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 does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with the department making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The department will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 573.123 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 the Committee on Agriculture

575-02384-21 20217040__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 573.123, F.S., which provides an exemption from public records requirements for trade secret information of a person subject to a marketing order held by the Department of Agriculture and Consumer Services; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 573.123, Florida Statutes, is amended to read:

573.123 Maintenance and production of records.—

(1) The department may require any and all persons directly affected by and subject to the provisions of any marketing order to maintain books and records reflecting their operations under the marketing order, to furnish to the department or its duly authorized or designated representative or representatives any information as may be from time to time requested by them relating to operations under the marketing order, and to permit the inspection by the department or its duly authorized or designated representative or representatives of such portions of the books and records as relate to operations under the marketing order.

(2) Information that, if disclosed, would reveal a trade secret, as defined in s. 812.081, of any person subject to a marketing order is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may not be

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

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disclosed except to an attorney who provides legal advice to the division about enforcing a marketing order or by court order. A person who receives confidential information under this subsection shall maintain the confidentiality of that information. ~~This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(3) The department or its duly authorized or designated representative or representatives may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents relevant and material to the subject matter of the hearings.

(4) No person shall be excused from attending and testifying or from producing documentary evidence before the department, or its duly authorized or designated representative or representatives, in obedience to the subpoena of the department on the ground or the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate her or him or subject her or him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which she or he may be so required to testify, or to produce evidence, documentary or otherwise, before the department in obedience to a subpoena issued, provided no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7042
INTRODUCER:	Agriculture Committee
SUBJECT:	OGSR/Trade Secret/Department of Citrus
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Becker	Becker		**AG Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Becker	Phelps	RC	**Favorable**

I. Summary:

SB 7042 amends s. 601.10(8)(b), F.S., to remove the scheduled repeal of a public records exemption for information provided to the Department of Citrus that is trade secret as defined in Section 812.081, F.S.

The public records exemption stands repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill saves from repeal the exemption to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local government revenues and expenditures.

The bill takes effect October 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

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.3 Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the 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]

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[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*, (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).
[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).

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 Act[16] (the act) prescribes a legislative review process for newly created or substantially amended[17] 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 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

[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.
[22] Section 119.15(6)(b)2., F.S.

- 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]

Trade Secrets Public Records Exemptions

Trade Secrets

The term "trade secrets," as defined in Section 812.081(1)(c), F.S., means information for which an owner "takes measures to prevent the information from becoming available to persons other than those selected by the owner to have access for limited purposes." Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or the opportunity to do so, over those who do not know or use such information.[27]

Under Section 812.081(1)(c), F.S., the term "trade secret" includes:

- Any scientific, technical, or commercial information, including financial information; and
- Any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority

[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] Section 812.081(1)(c), F.S.

making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.[28]

Section 812.081(1)(c), F.S., defines a "trade secret" to mean:

> …the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:
> 1. Secret;
> 2. Of value;
> 3. For use or in use by the business; and
> 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it
>
> when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

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[29] Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
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- Section 601.152(8)(c), F.S, makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
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Uniform Trade Secrets Act

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[30] Section 688.003, F.S.
[31] Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*
[32] *See* s. 688.008, F.S.

Section 688.002(4), F.S., defines the term "trade secret" to mean:

> …information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.[33] In Sepro v. Department of Environmental Protection, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.[34]

Florida Department of Citrus

The Department of Citrus (department) is an executive agency of Florida government charged with the marketing, research, and regulation of the Florida citrus industry. Activities of the department are funded by an assessment paid by growers on each box of citrus that moves through commercial channels. The industry employs more than 45,000 people, provides an annual economic impact of $8.6 billion to the state, and contributes hundreds of millions of dollars in tax revenues that help support Florida's schools, roads, and health care services. The department also has extensive regulatory responsibilities, covering every aspect of the industry, including research, production, maturity standards, licensing, transportation, labeling, packing, and processing.[35]

The department is required to prepare and disseminate information of importance to citrus growers, handlers, shippers, processors, and industry-related and interested persons and

[33] *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[34] *Id.*
[35] Florida Department of Citrus, *See* https://www.floridacitrus.org/grower/about/florida-department-of-citrus (Last visited March 3, 2021).

organizations, relating to Department of Citrus activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. Any information which consists of a trade secret as defined in s. 812.081(1)(c), F.S., is confidential and exempt from the provisions of s. 119.07(1), F.S., and shall not be disclosed.

Additionally, any nonpublished reports or data related to studies or research conducted, caused to be conducted, or funded by the department under s. 601.13, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

Open Government Sunset Review Findings and Recommendations

In February 2021, the Professional Staff of the Senate Committee on Agriculture sent an Open Government Sunset Review Questionnaire to the department. The department reported that it has never received a request for the information exempt under s. 601.10(8)(b), F.S. The department indicated that should this exemption be repealed it would be difficult, if not impossible, to effectively facilitate the collection of information, which is utilized by their Economic and Market Research Department to analyze data on behalf of, and for the benefit of, the Florida citrus industry.[36]

The department recommended that the exemption in s. 601.10(8)(b), F.S., be reenacted.[37]

III. Effect of Proposed Changes:

The bill amends s. 601.10(8)(b), F.S., to remove the scheduled repeal of a public records exemption for information provided to the Department of Citrus that is trade secret as defined in s. 812.081, F.S.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill saves the exemption from repeal to continue the confidential and exempt status of the information.

The bill takes effect October 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.

[36] *See Open Government Sunset Review Questionnaire* response from the Florida Department of Citrus on file with the Senate Committee on Agriculture.
[37] *Id.*

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 does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with Department of Citrus making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The Department of Citrus will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 601.10 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 Agriculture

575-02389-21 20217042__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 601.10, F.S., which provides a public records exemption for trade secret information provided to the Department of Citrus; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (8) of section 601.10, Florida Statutes, is amended to read:

601.10 Powers of the Department of Citrus.—The department shall have and shall exercise such general and specific powers as are delegated to it by this chapter and other statutes of the state, which powers shall include, but are not limited to, the following:

(8)(a) To prepare and disseminate information of importance to citrus growers, handlers, shippers, processors, and industry-related and interested persons and organizations relating to department activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. For referendum and other notice and informational purposes, the department may prepare and maintain, from the best available sources, a citrus grower mailing list. Such list shall be a public record available as other public records but is not subject to the purging provisions of s. 283.55.

(b) Any information provided to the department which constitutes a trade secret as defined in s. 812.081 is

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

575-02389-21 20217042__

confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(c) Any nonpublished reports or data related to studies or research conducted, caused to be conducted, or funded by the department under s. 601.13 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7044
INTRODUCER:	Agriculture Committee
SUBJECT:	OGSR/Noncommodity Advertising and Promotional Program Participants/Department of Citrus
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Becker	Becker		**AG Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Becker	Phelps	RC	**Favorable**

I. Summary:

SB 7044 amends s. 601.15(7)(d), F.S., to remove the scheduled repeal of a public records exemption for information held by the Department of Citrus that, if disclosed, would reveal a trade secret as defined in s. 812.081, F.S., of any participant in a noncommodity advertising and promotional program.

The public records exemption stands repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill saves the exemption from repeal to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local government revenues and expenditures.

The bill takes effect October 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]

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."7

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the 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]

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[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*, (2020-2022).
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA2018).
[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).
[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

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 Act[16] (the act) prescribes a legislative review process for newly created or substantially amended[17] 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 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

(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.

[22] Section 119.15(6)(b)2., F.S.

- 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]

Trade Secrets Public Records Exemptions

Trade Secrets

The term "trade secrets," as defined in Section 812.081(1)(c), F.S., means information for which an owner "takes measures to prevent the information from becoming available to persons other than those selected by the owner to have access for limited purposes." Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or the opportunity to do so, over those who do not know or use such information.[27]

Under Section 812.081(1)(c), F.S., the term "trade secret" includes:

- Any scientific, technical, or commercial information, including financial information; and
- Any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority

[23] Section 119.15(6)(b)3., F.S.
[24] Section 119.15(6)(a), F.S.
[25] *See generally* s. 19.15, F.S.
[26] Section 119.15(7), F.S.
[27] Section 812.081(1)(c), F.S.

making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.[28]

Section 812.081(1)(c), F.S., defines a "trade secret" to mean:

> …the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:
> 1. Secret;
> 2. Of value;
> 3. For use or in use by the business; and
> 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it
>
> when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.[29]
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.

[28] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.
[29] Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S, makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,[30] and the right to recover damages for the misappropriation of a trade secret.[31] Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.[32]

[30] Section 688.003, F.S.
[31] Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*
[32] *See* s. 688.008, F.S.

Section 688.002(4), F.S., defines the term "trade secret" to mean:

> …information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.[33] In Sepro v. Department of Environmental Protection, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.[34]

Florida Department of Citrus

The Department of Citrus (department) is an executive agency of Florida government charged with the marketing, research, and regulation of the Florida citrus industry. Activities of the department are funded by an assessment paid by growers on each box of citrus that moves through commercial channels. The industry employs more than 45,000 people, provides an annual economic impact of $8.6 billion to the state, and contributes hundreds of millions of dollars in tax revenues that help support Florida's schools, roads, and health care services. The department also has extensive regulatory responsibilities, covering every aspect of the industry, including research, production, maturity standards, licensing, transportation, labeling, packing, and processing.[35]

The department is responsible for planning and conducting campaigns for commodity advertising, publicity, and sales promotion, and may conduct campaigns to encourage

[33] *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[34] *Id.*
[35] Florida Department of Citrus, *See* https://www.floridacitrus.org/grower/about/florida-department-of-citrus (Last visited March 3, 2021).

noncommodity advertising, to increase the consumption of citrus fruits and may contract for any such advertising, publicity, and sales promotion service.[36] The department may require commercial information necessary to determine eligibility for and performance in noncommodity advertising and promotional programs from participants in such programs. Such information that is considered a trade secret as defined in s. 812.081, F.S., is confidential and exempt from public record disclosure.[37]

Open Government Sunset Review Findings and Recommendations

In February 2021, the Professional Staff of the Senate Committee on Agriculture sent an Open Government Sunset Review Questionnaire to the department. The department reported that it has received one request for the information exempt under s. 601.15(7)(d), F.S. An attorney requested the final 3R-Processed and 4R-Import forms on behalf of a processor owned by a foreign entity. The forms were released with the final totals of fruit handled redacted and the firm did not request additional information. The department indicated that if the packers' and producers' information is not kept confidential and exempt it would expose the industry's trade secrets to improper and financially damaging exposure.[38]

The department recommended that the exemption in s. 601.15(7)(d), F.S., should be reenacted.[39]

III. Effect of Proposed Changes:

The bill amends s. 601.15(7)(d), F.S., to remove the scheduled repeal of a public records exemption for information held by the Department of Citrus that, if disclosed, would reveal a trade secret as defined in s. 812.081, F.S., of any participant in a noncommodity advertising and promotional program.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill saves the exemption from repeal to continue the confidential and exempt status of the information.

The bill takes effect October 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.

[36] s. 601.15(2), F.S.
[37] s. 601.15(7)(d)
[38] *See Open Government Sunset Review Questionnaire* response from the Florida Department of Citrus on file with the Senate Committee on Agriculture.
[39] *Id.*

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 does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with the Department of Citrus making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The Department of Citrus will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 601.15 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 Agriculture

575-02386-21 20217044__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 601.15, F.S., which provides an exemption from public records requirements for the trade secret information of noncommodity advertising and promotional program participants held by the Department of Citrus; deleting the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (7) of section 601.15, Florida Statutes, is amended to read:

601.15 Advertising campaign; methods of conducting; assessments; emergency reserve fund; citrus research.—

(7) All assessments levied and collected under this chapter shall be paid into the State Treasury on or before the 15th day of each month. Such moneys shall be accounted for in a special fund to be designated as the Florida Citrus Advertising Trust Fund, and all moneys in such fund are appropriated to the department for the following purposes:

(a) Four percent of all income of a revenue nature deposited in this fund, including transfers from any subsidiary accounts thereof and any interest income, shall be deposited in the General Revenue Fund pursuant to chapter 215.

(b) Moneys in the Florida Citrus Advertising Trust Fund shall be expended for the activities authorized by s. 601.13 and for the cost of those general overhead, research and development, maintenance, salaries, professional fees,

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

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enforcement costs, and other such expenses that are not related to advertising, merchandising, public relations, trade luncheons, publicity, and other associated activities. The cost of general overhead, maintenance, salaries, professional fees, enforcement costs, and other such expenses that are related to advertising, merchandising, public relations, trade luncheons, publicity, and associated activities shall be paid from the balance of the Florida Citrus Advertising Trust Fund.

(c) Moneys in the Florida Citrus Advertising Trust Fund shall also be used by the department for defraying those expenses not included in paragraph (b). After payment of such expenses, the money levied and collected under subsection (3) shall be used exclusively for commodity and noncommodity advertising, merchandising, publicity, or sales promotion of citrus products in both fresh form and processed form, including citrus cattle feed and all other products of citrus fruits, produced in the state, in such equitable manner and proration as the department may determine, but funds expended for commodity advertising thereunder shall be expended through an established advertising agency. A proration of moneys between commodity programs and noncommodity programs and among types of citrus products shall be made on or before November 1 of each shipping season and may not thereafter be modified for that shipping season unless the department finds such action necessary to preserve the economic welfare of the citrus industry.

(d)1. The pro rata portion of moneys allocated to each type of citrus product in noncommodity programs shall be used by the department to encourage substantial increases in the effectiveness, frequency, and volume of noncommodity

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advertising, merchandising, publicity, and sales promotion of such citrus products through rebates and incentive payments to handlers and trade customers for these activities. The department shall adopt rules providing for the use of such moneys. The rules shall establish alternate incentive programs, including at least one incentive program for product sold under advertised brands, one incentive program for product sold under private label brands, and one incentive program for product sold in bulk. For each incentive program, the rules must establish eligibility and performance requirements and must provide appropriate limitations on amounts payable to a handler or trade customer for a particular season. Such limitations may relate to the amount of citrus assessments levied and collected on the citrus product handled by such handler or trade customer during a 12-month representative period.

2. The department may require from participants in noncommodity advertising and promotional programs commercial information necessary to determine eligibility for and performance in such programs. Any information required which constitutes a trade secret as defined in s. 812.081 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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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:	SB 7046
INTRODUCER:	Agriculture Committee
SUBJECT:	OGSR/Trade Secret/Marketing Order/Department of Citrus
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Becker	Becker		**AG Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Becker	Phelps	RC	**Favorable**

I. Summary:

SB 7046 amends s. 601.152(8)(c), F.S., to remove the scheduled repeal of a public records exemption for information held by the Department of Citrus that, if disclosed, would reveal a trade secret as defined in s. 812.081, F.S., of any person subject to a marketing order.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill saves the exemption from repeal to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local government revenues and expenditures.

The bill takes effect October 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

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the 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]

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[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*, (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).
[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).

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 Act[16] (the act) prescribes a legislative review process for newly created or substantially amended[17] 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 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

[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.
[22] Section 119.15(6)(b)2., F.S.

- 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]

Trade Secrets Public Records Exemptions

Trade Secrets

The term "trade secrets," as defined in Section 812.081(1)(c), F.S., means information for which an owner "takes measures to prevent the information from becoming available to persons other than those selected by the owner to have access for limited purposes." Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or the opportunity to do so, over those who do not know or use such information.[27]

Under Section 812.081(1)(c), F.S., the term "trade secret" includes:

- Any scientific, technical, or commercial information, including financial information; and
- Any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority

[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] Section 812.081(1)(c), F.S.

making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.[28]

Section 812.081(1)(c), F.S., defines a "trade secret" to mean:

> …the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:
> 1. Secret;
> 2. Of value;
> 3. For use or in use by the business; and
> 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it
>
> when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.[29]
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.

[28] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.
[29] Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S, makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,[30] and the right to recover damages for the misappropriation of a trade secret.[31] Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.[32]

[30] Section 688.003, F.S.
[31] Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*
[32] *See* s. 688.008, F.S.

Section 688.002(4), F.S., defines the term "trade secret" to mean:

> …information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.[33] In Sepro v. Department of Environmental Protection, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.[34]

Florida Department of Citrus

The Department of Citrus (department) is an executive agency of Florida government charged with the marketing, research, and regulation of the Florida citrus industry. Activities of the department are funded by an assessment paid by growers on each box of citrus that moves through commercial channels. The industry employs more than 45,000 people, provides an annual economic impact of $8.6 billion to the state, and contributes hundreds of millions of dollars in tax revenues that help support Florida's schools, roads, and health care services. The department also has extensive regulatory responsibilities, covering every aspect of the industry, including research, production, maturity standards, licensing, transportation, labeling, packing, and processing.[35]

[33] *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[34] *Id.*
[35] Florida Department of Citrus, *See* https://www.floridacitrus.org/grower/about/florida-department-of-citrus (Last visited March 2, 2021).

The Florida Citrus Commission

The Florida Citrus Commission (commission) governs the department.[36] The commission is a nine-member board appointed by the governor to represent citrus growers, processors, and packers. The department carries out commission policy and acts as the commission's staff by conducting a wide variety of programs, involving regulation; scientific, market, and economic research; advertising; merchandising; public and industry relations; and consumer promotions.[37]

Assessments collected and levied by the department are paid into the State Treasury and accounted for in the Florida Citrus Advertising Trust Fund.[38] All money in the State Treasury, including that deposited into the Florida Citrus Advertising Trust Fund, is subject to the legislative appropriations process.[39]

Marketing Orders and Agreements

At the federal level, marketing agreements and orders are initiated by industry to help provide stable markets for dairy products, fruits, vegetables and specialty crops. Each order and agreement is tailored to the individual industry's needs. Marketing orders are a binding regulation for the entire industry in the specified geographical area, once it is approved by the producers and the United States Secretary of Agriculture. Marketing agreements are only binding for those handlers that sign the agreement.[40]

At the state level, the department shall direct that a proposed marketing order be formulated for a special marketing campaign of advertising and sales promotion, including, but not limited to, brand advertising rebate promotions or the conduct of market and product research and development for such type, variety, or form of citrus fruit or processed citrus product, and shall designate a public hearing to consider adoption and implementation of such proposed marketing order. The department shall direct such orders whenever, upon its own motion or upon petition of any handler or producer or group association of handlers or producers of citrus, when the commission, upon affirmative vote by seven of its members, determines that:

- The conduct of a special advertising and promotional marketing campaign or the conduct of market and product research and development, in addition to the advertising campaign being conducted pursuant to s. 601.15, F.S., and the research being conducted pursuant to the other provisions of the Florida Citrus Code, may substantially further increase the consumer acceptance and consumption of, and strengthen the market for, any type, variety, or form of citrus fruit or processed citrus product by further increasing the number of families buying such citrus fruit or such processed citrus product or by further increasing the quantity of such citrus fruit or processed citrus product purchased by buying families; and
- Such substantial further increase and strengthening may be of substantial benefit to handlers thereof, producers thereof, and to the economy and well-being of the state.[41]

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[36] *See generally* s. 601.04, F.S.
[37] Florida Citrus Commission, *See* https://www.floridacitrus.org/grower/about/florida-citrus-commissiion/ (Last visited March 2, 2021).
[38] Section 601.15(7), F.S.
[39] FLA. CONST. Art. VII, s. 1(d).
[40] *See* https://www.ams.usda.gov/rules-regulations/moa (last visited March 2, 2021).
[41] Section 601.152(1)(a), F.S.

Under current statute, every handler must file with the department a return stating the quantity of the type, variety, and form of citrus fruit or citrus product specified in the marketing order first handled in the primary channels of trade in the state by such handler during the period of time specified in the marketing order. Such returns must contain any further information deemed by the department to be reasonably necessary to properly administer or enforce s. 601.52(8)(c), F.S., or any marketing order implemented under s. 601.52(8)(c), F.S. Information that, if disclosed, would reveal a trade secret, as defined in s. 812.081, F.S., of any person subject to a marketing order is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

Open Government Sunset Review Findings and Recommendations

In February 2021, the Professional Staff of the Senate Committee on Agriculture sent an Open Government Sunset Review Questionnaire to the department. The department reported that it has never received a request for the information exempt under s. 601.15(8)(c), F.S. The department indicated that should the commission enact a marketing order, this exemption would be vital to protect the industry's trade secrets.[42]

The department recommended that the exemption in s. 601.15(8)(c), F.S., should be reenacted.[43]

III. Effect of Proposed Changes:

The bill amends s. 601.152(8)(c), F.S., to remove the scheduled repeal of a public records exemption for information held by the Department of Citrus that, if disclosed, would reveal a trade secret as defined in s. 812.081, F.S., of any person subject to a marketing order.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill saves the exemption from repeal to continue the confidential and exempt status of the information.

The bill takes effect October 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.

[42] *See Open Government Sunset Review Questionnaire* response from the Florida Department of Citrus on file with the Senate Committee on Agriculture.
[43] *Id.*

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 does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with the Department of Citrus making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The Department of Citrus will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 601.152 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 Agriculture

575-02387-21 20217046__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 601.152, F.S., which provides an exemption from public records requirements for the trade secret information of a person subject to a marketing order held by the Department of Citrus; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (8) of section 601.152, Florida Statutes, is amended to read:

601.152 Special marketing orders.—

(8)(a) Each person who, during the period specified in any marketing order implemented under this section, first handles in the primary channel of trade in the state any citrus fruit or processed citrus product of the type, variety, and form specified in such marketing order shall, for the privilege of so handling such citrus fruit or such citrus product, pay to the department such assessments as are levied and imposed thereon by such marketing order, which funds shall be used by the department to defray the necessary expenses incurred in the formation, issuance, administration, and enforcement of such marketing order and in the conduct of the special marketing campaign or market and product research and development provided for in such marketing order. However, such assessments levied and imposed under this section may not exceed 8 cents per standard-packed box on citrus fruits in fresh form, 1.3 cents

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per gallon on single strength citrus juices or sections, or 1.3 cents per pound of soluble citrus solids on concentrated citrus juices.

(b) The department shall prescribe procedures for the assessment and collection of such funds to defray the necessary expenses incurred, or expected to be incurred, by the department in the formation, issuance, administration, and enforcement of any marketing order implemented under this section.

(c)1. Every handler shall, at such times as the department may require, file with the department a return, not under oath, on forms to be prescribed and furnished by the department, certified as true and correct, stating the quantity of the type, variety, and form of citrus fruit or citrus product specified in the marketing order first handled in the primary channels of trade in the state by such handler during the period of time specified in the marketing order. Such returns must contain any further information deemed by the department to be reasonably necessary to properly administer or enforce this section or any marketing order implemented under this section.

2. Information that, if disclosed, would reveal a trade secret, as defined in s. 812.081, of any person subject to a marketing order is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(d) All assessments imposed under this section are due and payable and shall be paid by such handlers at such times and in

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such installments as the commission prescribes in such marketing order, or the amount thereof shall be provided for and guaranteed by giving a surety bond or cash deposit or as the department otherwise prescribes.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7048
INTRODUCER:	Agriculture Committee
SUBJECT:	OGSR/Manufacturer's Formula/Department of Agriculture and Consumer Services
DATE:	April 19, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Becker	Becker		**AG Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Becker	Phelps	RC	**Favorable**

I. Summary:

SB 7048 amends s. 601.176, F.S., to remove the scheduled repeal of a public records exemption for any formula held by the Department of Agriculture and Consumer Services which is required to be filed with the Department of Agriculture that, if disclosed, would reveal a trade secret as defined in s. 812.081, F.S.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill saves the exemption from repeal to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local government revenues and expenditures.

The bill takes effect October 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.,

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the 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]

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[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*, (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).
[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).

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 Act[16] (the act) prescribes a legislative review process for newly created or substantially amended[17] 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 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

[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.
[22] Section 119.15(6)(b)2., F.S.

- 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]

Trade Secrets Public Records Exemptions

Trade Secrets

The term "trade secrets," as defined in Section 812.081(1)(c), F.S., means information for which an owner "takes measures to prevent the information from becoming available to persons other than those selected by the owner to have access for limited purposes." Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or the opportunity to do so, over those who do not know or use such information.[27]

Under Section 812.081(1)(c), F.S., the term "trade secret" includes:

- Any scientific, technical, or commercial information, including financial information; and
- Any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority

[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] Section 812.081(1)(c), F.S.

making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.[28]

Section 812.081(1)(c), F.S., defines a "trade secret" to mean:

> …the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:
> 1. Secret;
> 2. Of value;
> 3. For use or in use by the business; and
> 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it
>
> when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.[29]
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.

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

[29] Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S, makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,[30] and the right to recover damages for the misappropriation of a trade secret.[31] Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.[32]

[30] Section 688.003, F.S.
[31] Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*
[32] *See* s. 688.008, F.S.

Section 688.002(4), F.S., defines the term "trade secret" to mean:

> …information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.[33] In Sepro v. Department of Environmental Protection, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.[34]

Public Records Exemption for formulas held by DACS

Section 601.76, F.S, provides that any formula required to be filed with the Department of Agriculture and Consumer Services (department) shall be deemed a trade secret as defined in s. 812.081, F.S., and is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The formula may be divulged only to the department or to its duly authorized representatives or upon court order when necessary in the enforcement of this law. A person who receives such a formula from the department under s. 601.76, F.S., is required to maintain the confidentiality of the formula.

Open Government Sunset Review Findings and Recommendations

In February 2021, the Professional Staff of the Senate Committee on Agriculture sent an Open Government Sunset Review Questionnaire to the department. The department reported that it has never received a request for the information exempt under s. 601.76, F.S. The department indicated that without an exemption it is likely that companies would be more reluctant to turn

[33] *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[34] *Id.*

over information regarding their formula, as they would have no protection against those trade secrets from being divulged.[35]

The department recommended that the exemption in s. 601.76, F.S., be reenacted.[36]

III. Effect of Proposed Changes:

The bill amends s. 601.176, F.S., to remove the scheduled repeal of a public records exemption for any formula held by the Department of Agriculture and Consumer Services which is required to be filed with the Department of Agriculture that, if disclosed, would reveal a trade secret as defined in s. 812.081, F.S.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill saves the exemption from repeal to continue the confidential and exempt status of the information.

The bill takes effect October 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.

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 does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption. Thus, a statement of public necessity is not required.

[35] *See Open Government Sunset Review Questionnaire* response from the Florida Department of Citrus on file with the Senate Committee on Agriculture.
[36] *Id.*

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with the agency making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 601.76 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 Agriculture

575-02388-21 20217048__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 601.76, F.S., which provides an exemption from public records requirements for a manufacturer's formula filed with the Department of Agriculture and Consumer Services; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 601.76, Florida Statutes, is amended to read:

601.76 Manufacturer to furnish formula and other information.—Any formula required to be filed with the Department of Agriculture shall be deemed a trade secret as defined in s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and may be divulged only to the Department of Agriculture or to its duly authorized representatives or upon court order when necessary in the enforcement of this law. A person who receives such a formula from the Department of Agriculture under this section shall maintain the confidentiality of the formula. ~~This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7058
INTRODUCER:	Agriculture Committee
SUBJECT:	OGSR/Dairy Industry Business' Trade Secrets
DATE:	April 19, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Becker	Becker		**AG Submitted as Comm. Bill/Fav**
1.	McVaney	McVaney	GO	**Favorable**
2.	Becker	Phelps	RC	**Favorable**

I. Summary:

SB 7058 amends s. 502.222, F.S., to remove the scheduled repeal of a public records exemption for records of a dairy business held by the Department of Agriculture and Consumer Services that would reveal a trade secret as defined in s. 812.081, F.S.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act. The bill saves the exemption from repeal to continue the confidential and exempt status of the information.

The bill is not expected to impact state and local government revenues and expenditures.

The bill takes effect October 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

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.3 Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the 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]

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[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*, (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).
[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).

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 Act[16] (the act) prescribes a legislative review process for newly created or substantially amended[17] 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 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

[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.
[22] Section 119.15(6)(b)2., F.S.

- 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]

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.[27]

Section 812.081(1)(c), F.S., defines a "trade secret" to mean:

> …the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill

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

in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.[28]
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.

[28] Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S, makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,[29] and the right to recover damages for the misappropriation of a trade secret.[30] Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.[31]

Section 688.002(4), F.S., defines the term "trade secret" to mean:

> …information, including a formula, pattern, compilation, program, device, method, technique, or process that:
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be

[29] Section 688.003, F.S.
[30] Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*
[31] *See* s. 688.008, F.S.

interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.[32] In Sepro v. Department of Environmental Protection, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.[33]

Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (department) administers and enforces laws governing milk, milk products, and frozen desserts. Specifically, the department regulates:

- The production, processing, and distribution of milk, milk products, frozen dessert, and frozen dessert mix;
- The sanitation and sanitary practices of establishments where food and drink, including milk and milk products, are sold for consumption on the premises, except food service establishments regulated under chapters 381 and 509, including the sanitary and healthful condition of the food and drink sold by such establishments; and
- The laboratory work of testing and analyzing milk, milk products, frozen dessert, and frozen dessert mix.[34]

Section 502.222, F.S., makes any information that would reveal a trade secret, as defined in s. 812.081, F.S., of a dairy industry business is confidential and exempt from s. 119.07(1), F.S., and s. 20 24(a), Art. I of the State Constitution. If the department determines that any information requested by the public will reveal a trade secret, it shall, in writing, inform the person making the request of that determination. The determination is a final order as defined in s. 120.52, F.S.

Open Government Sunset Review Findings and Recommendations

In March 2021, the Professional Staff of the Senate Committee on Agriculture sent an Open Government Sunset Review Questionnaire to the department. The department reported that in the last 10 years it received two requests for the information exempt under s. 502.222, F.S., and that the information was not released as it was determined to be a trade secret and exempt from public records requirements. The department releases this exempt information to the United States Food and Drug Administration.[35]

[32] *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).
[33] *Id.*
[34] Section 502.014(1), F.S.
[35] *See Open Government Sunset Review Questionnaire* response from the Florida Department of Agriculture and Consumer Services on file with the Senate Committee on Agriculture.

The department recommended that the exemption in s 502.222, F.S., be reenacted.[36]

III. Effect of Proposed Changes:

The bill amends s. 502.222, F.S., to remove the scheduled repeal of a public records exemption for records of a dairy business held by the Department of Agriculture and Consumer Services that would reveal a trade secret as defined in s. 812.081, F.S.
The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require municipalities or counties to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of municipalities or counties 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 does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption. Thus, a state of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

[36] *Id.*

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 continue to be subject to the cost, to the extent imposed, associated with the agency making redactions and/or making copies in response to public records requests.

C. Government Sector Impact:

The Department of Agriculture and Consumer Services will continue to incur costs related to the redaction of exempt records and copying associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 502.222 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 the Committee on Agriculture

575-02686-21 20217058__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 502.222, F.S., which provides an exemption from public records requirements for a dairy industry business' trade secrets held by the Department of Agriculture and Consumer Services; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 502.222, Florida Statutes, is amended to read:

502.222 Information relating to trade secrets confidential.—The records of the department regarding matters encompassed by this chapter are public records, subject to chapter 119, except that any information that would reveal a trade secret, as defined in s. 812.081, of a dairy industry business is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. If the department determines that any information requested by the public will reveal a trade secret, it shall, in writing, inform the person making the request of that determination. The determination is a final order as defined in s. 120.52. ~~This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 7070
INTRODUCER:	Rules Committee and Education Committee
SUBJECT:	Impact of COVID-19 on Educational Institutions
DATE:	April 21, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Jahnke	Bouck		**ED Submitted as Comm. Bill/Fav**
1.	Jahnke	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7070 creates liability protections for educational institutions for actions related to the COVID-19 pandemic and requires the Board of Nursing to extend an approved program's probationary status. Specifically, the bill:

- Creates specified liability protections for an educational institution that has taken reasonably necessary actions to diminish the impact or the spread of COVID-19 and provides immunity from any civil damages, equitable relief, or other remedies relating to such actions.
- Provides an additional year of probationary status for an approved nursing program that has not achieved the required passage rate on the national nursing licensing examination in the 2020 calendar year. The Board of Nursing must grant that extension at a regularly scheduled meeting in 2021.

The bill may have a fiscal impact for the private sector. See Section V.

The bill takes effect upon becoming a law.

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, 2,033,179 positive COVID-19

cases have been diagnosed in the state, 84,406 residents have been hospitalized, and 33,116 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 seven times,[2] most recently by Executive Order No. 21-45, issued on February 26, 2021.

Department of Education Emergency Orders

In response to the pandemic, on March 23, 2020, the Commissioner of Education (Commissioner), through his delegated authority under the Governor's Executive Order 20-52, issued his first emergency order (EO), which addressed a comprehensive list of issues, including issues related to Florida College System (FCS) Institutions; K-12 assessments, accountability, and promotion; private schools that accept scholarship money; reallocation of funding; and service of students with IEPs or 504 Plans.[3]

Similar to efforts across the country and the world, this initial EO stated "all school districts are recommended to keep their facilities closed except to staff and teachers, per CDC guidance, through April 15, 2020." The EO then stated "[that] In keeping with their district continuity plan, each district must deliver educational services to students while they remain at home." Districts were encouraged to build out continuity plans to deliver instruction while students were at home, and FCS institutions were strongly recommended to operate virtually.

The Department of Education (DOE) also requested that the United States Department of Education (USDOE) approve Florida's requested waiver[4] of statewide assessment, accountability, and reporting requirements in ESEA for the 2019-2020 school year due to widespread school closures related to COVID-19.

Between March and May 2020, the DOE, local districts, teachers, parents, and all stakeholders worked to try to minimize the negative impacts that school closures and re-opening in a virtual model would have on the students.[5]

On July 6, 2020, the Commissioner issued his sixth EO.[6] The Commissioner stated in the EO that "education is critical to the success of the state and to an individual, and extended school

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[1] Florida Department of Health, Division of Disease Control and Health Protection, *available at* Florida's COVID-19 Data and Surveillance Dashboard (arcgis.com) (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] Florida Department of Education, *Emergency Order No. 2020-EO-01* (March 23, 2020), *available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/DOEORDERNO2020-EO-01.pdf.
[4] Florida Department of Education, *COVID-19 Waiver Response from Assistant Secretary Frank T. Brogan Assistant Secretary for Elementary and Secondary Education* (March 27, 2020), *available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/FLCovid19WaiverResponse.pdf.
[5] Florida Department of Education, *Opening Florida's Schools to Re-Open Florida's Economy* (April 22, 2020), *available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/FDOE-Opening.pdf.
[6] Florida Department of Education, *Emergency Order No. 2020-EO-06* (July 6, 2020), *available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/DOE-2020-EO-06.pdf.

closures can impede educational success of students, [and] impact families' well-being."[7] The order would go on to say that "schools are not just the site of academic learning, schools provide many services to students that are critical to the well-being of students and families, such as nutrition, socialization, counseling, and extracurricular activities." The Commissioner also stressed the need for a comprehensive plan for reopening schools for the 2020 fall semester. Additionally, school districts and charter school governing boards with an approved reopening plan would receive both reporting flexibility and financial continuity.

The EO[8] issued November 30, 2020, found that parents and districts continue to need the educational and financial benefits provided in the previous EO[9] and it further found that the flexibilities provided by emergency orders are necessary "to respond to and mitigate the impact of the emergency and promote the health, safety and welfare of persons connected with Florida's educational system."[10]

State University System Actions

To respond to the potentially serious impacts of COVID-19 on the health and safety of state university students, faculty, and staff, the Board of Governors of the State University System (BOG) issued guidance to the state universities for the academic and operational continuity of the institutions during the virus outbreak.

On March 11, 2020, [11] the BOG directed state universities to make plans to transition to remote instruction as soon as possible. Subsequently, the BOG directed that remote instruction would continue through the end of the Spring 2020 semester at each state university and students who could return home should return home. Universities were also encouraged to consider using remote instruction for the early summer terms.[12]

On June 23, 2020, the BOG approved reopening plans for the state universities that, among other items, included plans to shift back to remote instruction in case of an outbreak, and to continue to provide high-quality educational experiences while utilizing technology and flexibility and prioritizing student and faculty welfare.[13]

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[7] Florida Department of Education, *Emergency Order No. 2020-EO-06* (July 6, 2020), *available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/DOE-2020-EO-06.pdf.
[8] Florida Department of Education, *Emergency Order No. 2020-EO-07* (Nov. 30, 2020), *available at* http://www.fldoe.org/core/fileparse.php/5673/urlt/DOEOrder2020-EO-07.pdf.
[9] Florida Department of Education, *Emergency Order No. 2020-EO-06* (July 6, 2020), *available at* http://www.fldoe.org/core/fileparse.php/19861/urlt/DOE-2020-EO-06.pdf.
[10] Florida Department of Education, *Emergency Order No. 2020-EO-07* (Nov. 30, 2020), *available at* http://www.fldoe.org/core/fileparse.php/5673/urlt/DOEOrder2020-EO-07.pdf.
[11] Board of Governors, *State University System Statement on COVID-19,* https://www.flbog.edu/2020/03/11/state-university-system-statement-on-covid-19/ (last visited Mar. 27, 2021).
[12] Board of Governors, *State University System Extends Remote Learning* (Mar. 17, 2020) https://www.flbog.edu/2020/03/17/state-university-system-extends-remote-learning/(Last visited Mar. 27, 2020)
[13] Board of Governors, *HIGHLIGHTS: Board of Governors' Meeting* (Last visited Mar. 27, 2021).

Liability

Lawsuits Arising from Campus Closures

As universities moved classes online to curtail the spread of COVID-19, students across the country have raised concerns that they were still paying regular tuition prices for what became an online education. Students at several public and private universities in Florida have sued for tuition reimbursements. In one such case, the court explained that the:[14]

> [COVID-19] pandemic has wreaked havoc on the world. In the Spring of 2020, many schools and colleges, both public and private, were forced to move their curriculum from in-person to online instruction out of concern for the health of their students, faculty, and staff, and in response to government-mandated closures and social-distancing measures. This case is novel in the sense that there is no legal precedent involving a pandemic's impact on a school's promise to provide in-person learning when doing so would be unsafe and/or against government mandates. And so, like the ripple in a pond after one throws a stone, the legal system is now feeling COVID-19's havoc with the current wave of class action lawsuits that seek tuition reimbursement related to forced online tutelage.

Breach of Contract

A contract is made under Florida law when three elements are present: offer, acceptance, and consideration.[15] A valid contract arises when the parties' assent is manifested through written or spoken words, or "inferred in whole or in part from the parties' conduct."[16] A contract based on the parties' words is characterized as express, whereas, a contract based on the parties' conduct is said to be implied in fact.[17] A party injured by a breach of contract may recover fair and just compensation for the loss or injury caused by the breach of contract.[18]

Sovereign immunity is the "privilege of the sovereign not to be sued without its consent."[19] A state agency or subdivision of the state waives the protections of sovereign immunity only when it enters into an express contract.[20] When an alleged contract is merely implied, however, these sovereign immunity protections remain in force.[21] Generally, lawsuits relating to the COVID public health emergency, relate to the institution allegedly breaching a contract in the provision of educational services to the students.[22]

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[14] *Salerno v. Florida S. Coll.*, 488 F. Supp. 3d 1211 (M.D. Fla. 2020).
[15] *SCG Harbourwood, LLC v. Hanyan*, 93 So. 3d 1197, 1200 (Fla. 2d DCA 2012) (citing *Pezold Air Charters v. Phoenix Corp.*, 192 F.R.D. 721, 725 (M.D.Fla.2000)).
[16] *Baron v. Osman*, 39 So. 3d 449, 451 (Fla. 5th DCA 2010) (citing *Commerce P'ship v. Equity Contracting Co.*, 695 So.2d 383, 385 (Fla. 4th DCA 1997)).
[17] *Id.*
[18] *MCI Worldcom Network Services, Inc. v. Mastec, Inc.*, 995 So. 2d 221, 223 (Fla. 2008).
[19] *City of Fort Lauderdale v. Israel*, 178 So. 3d 444, 446 (Fla. 4th DCA 2015) (quoting *Va. Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 131 (2011)).
[20] *City of Fort Lauderdale v. Israel*, 178 So. 3d 444, 447–48 (Fla. 4th DCA 2015).
[21] *City of Fort Lauderdale v. Israel*, 178 So. 3d 444, 447–48 (Fla. 4th DCA 2015).
[22] *See, e.g., Fagundez v. Florida Bd. of Governors*, No. 2020 CA 000910, AMCO 22 (Fla. 2d Cir. Sept. 15, 2020); Salerno v. Florida S. Coll., 488 F. Supp. 3d 1211 (M.D. Fla. 2020); *and LaFleur v. Florida Board of Governors*, No. 8:20-cv-01665, ACAC 15 (M.D. Fla. Aug. 24, 2020).

Access to Courts – Kluger v. White

The State Constitution provides in Article 1, s. 21, the "Access to courts" section,

> The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

Case law has demonstrated, however, that this provision is not absolute. In 1973, the Florida Supreme Court issued an opinion, *Kluger v. White*,[23] a case which construed the access to courts provision. In broad terms, the case before the Court involved the abolition of a statute governing a tort action for property damage in an automobile accident case. When the Legislature abolished the remedy, it did not provide an alternative protection to the injured party.

The Court was confronted with the issue of whether the Legislature could abolish a right of access to the courts. The Court determined that the Legislature may not abolish a pre-1968 common law right or a statutory cause of action unless the Legislature provides a reasonable alternative to that action or unless an overpowering public necessity exists for abolishing the right of action. The Court applies a three-part test to determine whether a statute violates the access to courts provision:

- Does the change abolish a preexisting right of access?
- If so, whether a reasonable alternative exists to protect that preexisting right of access.
- If no reasonable alternative exists, whether an overwhelming public necessity exists.[24]

Nursing Education Program Accountability

The Florida Board of Nursing (BON) approves new pre-licensure nursing education programs that meet the application requirements specified in Section 464.019, F.S. This section of Florida law also defines the BON's regulatory authority over established nursing education programs.[25]

Approved programs must have a graduate passage rate not lower than ten percent below the national average for two consecutive years. Programs are placed on probation for low performance with NCLEX[26] scores for two consecutive years and are subject to termination. The program director is required to present a plan for remediation to the BON that includes specific benchmarks to identify progress toward a graduate passage rate goal. The program must remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any one calendar year. If the program does not achieve the required

[23] *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).
[24] *Eller v. Shova*, 630 So. 2d 537 (Fla. 1993).
[25] The Florida Board of Nursing, *Education and Training Programs*, https://floridasnursing.gov/education-and-training-programs/ (last visited Mar. 31, 2021).
[26] The National Council of State Boards of Nursing (NCSBN) is an independent, non-profit organization involved in the regulation of nurses and is a separate entity from the American Nurses Association (ANA) Council on State Boards of Nursing, which represents professional nurses. The NCSBN's membership is now composed of state boards of nursing and other nursing regulatory bodies that are charged with the responsibility of providing regulatory excellence for public health, safety, and welfare. To meet that goal, NCSBN developed a nurse licensure examination consistent with current nursing practice: the Nursing Council Licensure Examination (NCLEX) for registered nurse (RN) and licensed practical nurse (LPN). National Council of State Boards of Nursing, Inc., History, available at https://www.ncsbn.org/history.htm (last visited Mar. 31, 2021).

passage rate in any one calendar year after a program has been placed on probationary status, the BON is authorized to terminate the program or may extend the probation for one additional year, subject to specified conditions.[27]

Florida Nurse Education Program Graduate Passage Rates - 2019[28]

In 2001 the Legislature created The Florida Center for Nursing (FCN) to establishing and maintaining a database on nursing supply and demand and evaluate nursing program-specific data for each approved program and accredited nursing education program to determine each program's student populations and NCLEX passage rates.

The FCN found that Florida's NCLEX passage rates varied by program type, and by the program's classification as public or private. According to the FCN in 2019, "For the third year in a row, Florida's NCLEX passage rates for RN and LPN programs were at or near the bottom of the United States and Territories."[29] RN programs include graduates of bachelor's degree nurse (BSN) programs and associate degree nurse (AARN) programs. As a group, BSN graduates performed the best, followed by LPN graduates. AARN graduates collectively performed at the lowest level.

Florida's performance standard requires each program's passage rate to be no more than 10 percentage points below than national passage rates of comparable degree programs in the same calendar year. Nearly half of all Florida programs scored below the state's performance standard, including 89 AARN (54 percent), 66 LPN (47 percent), and 18 BSN (31 percent) programs.

2019 Florida NCLEX Passage Rates by Program Type

Program	National	Florida Public		Florida Private	
	Passage Rate	Passage Rate	Programs	Passage Rate	Programs
BSN	91.2	92.9	10	86.5	18
AARN	85,2	89.3	31	52.3	92
LPN	85.6	82.8	57	55.9	61

According to the FCN, prior to the COVID-19 pandemic, Florida was already experiencing a critical shortage of RNs and LPNs which was expected to worsen as demand increased.

National NCLEX Passage Rates and COVID-19

In response to the COVID-19 pandemic, the NCSBN introduced several carefully-evaluated and tested modifications to the NCLEX examinations. These modifications expired on Sept. 30, 2020, and, beginning Oct. 1, 2020, both NCLEX-RN and NCLEX-LPN exams will retain some

[27] Section. 464.019(5), F.S.
[28] This is the most recent Florida Center for Nursing report available, as of this writing.
[29] Florida Center for Nursing, *Review of Florida Nurse Education Program Graduate Passage Rates on the National Council of State Boards of Nursing Licensure Examination: Calendar Year 2019*, April 2020, *available at* https://floridasnursing.gov/forms/2019-nclex-pass-rates.pdf (last visited Mar. 28, 2021) (emphasis original).

of the characteristics of the modified exam. The difficulty levels and passing standards of the exams have not changed.[30]

NCLEX pass rates appear to be starting to decrease slightly as the COVID-19 pandemic continues. NCLEX Data shows the following:

- RN: NCSBN data shows that NCLEX test takers for the RN version had been hovering around a pass rate of 89 percent for all of 2019 and into early 2020. However, the first-time passage rate for the RN test had dropped to just under 85 percent.
- LPN: NCLEX first-time test takers for the LPN version had been around 86 percent passage rate in 2019 and early 2020. The passage rate had dropped down to slightly below 83 percent.

III. Effect of Proposed Changes:

Liability

The bill creates s. 768.39, F.S., to provide liability protections for educational institutions for actions related to the COVID-19 pandemic. Specifically, the bill:

- Defines an educational institution as a school, including a preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic. The Board of Governors of the State University System and the State Board of Education are also included within these immunity protections.
- Extends the protections to an educational institution that has taken reasonably necessary actions in compliance with federal, state, or local guidance to diminish the impact or the spread of COVID-19 and provides immunity from any civil damages, equitable relief, or other remedies relating to such actions.
- Defines reasonably necessary actions taken while a state of emergency was declared for this state for the COVID-19 pandemic to include, but not limited to, any of the following:
  - Shifting in-person instruction to online or remote instruction for any period of time.
  - Closing or modifying the provision of facilities, other than housing or dining facilities, on the campus of the educational institution.
  - Pausing or modifying ancillary student activities and services available through the educational institution.
- Deems the provision of in-person or on-campus education and related services to have been impossible for educational institutions during any period of time in which such institutions took reasonably necessary actions described to protect students, staff, and educators in response to the COVID-19 public health emergency.
- Deems the reasonably necessary actions as justified as a result of the various governmental orders and the need for educational institutions to protect their communities.

The bill specifies that in any action against an educational institution, the Board of Governors of the State University System or the State Board of Education for the reimbursement of tuition or fees, invoices, catalogs, and general publications of an educational institution are not evidence of an express or implied contract to provide in-person or on-campus education and related services or access to facilities during the COVID-19 public health emergency.

[30] National Council of State Boards of Nursing, Inc., *COVID-19 Impact to NCLEX Candidates, available at* https://www.ncsbn.org/14428.htm (last visited Mar. 28, 2021).

Additionally, the bill specifies that the provisions do not apply to losses or damages that:

- Resulted solely from a breach of an express contractual provision allocating liability in the event of a pandemic event: or
- Caused by an act or omission of a college or university which was in bad faith or malicious.

The bill provides that if any aspect of the immunity relating to the reasonably necessary actions taken by an educational institutions due to COVID-19 is limited by a court or by operation of law from applying to certain types of claims or causes of action, the immunity must still be provided to the fullest extent authorized by law to any other types of claims or causes of action.

The bill establishes that if an educational institution is required by federal, state, or local order or a directive of the Board of Governors of the State University System or the State Board of Education issued in response to the COVID-19 public health emergency to alter the mode of delivery of instruction and related services or access to facilities, the burden of proof for any plaintiff bringing an action against the educational institution for such change must be by clear and convincing evidence to prevail for damages against the institution.

Nursing Education Program Approval and Accreditation

The bill amends s. 464.019, F.S., to provide an additional year of probationary status for an approved nursing program that has not achieved the required passage rate on the national nursing licensing examination in the 2020 calendar year. The Board of Nursing must grant that extension at a regularly scheduled meeting in 2021.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may provide educational institutions liability protections so that these institutions may avoid costly litigation due to actions related to the COVID-19 virus.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends section 464.019 of the Florida Statutes.

This bill creates section 768.39 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 20, 2021
The committee substitute:

- Removes provisions related to K-12 school accountability and statewide assessments.
- Removes provisions related to early care and education programs.
- Retains provisions allowing an approved nursing program an additional year of probationary status.
- Retains liability protections for educational institutions.
- Clarifies that the Board of Governors and the State Board of Education are also included within the immunity protections.
- Excludes the closing or modifying of "residential housing or dining" as a reasonably necessary action taken by the educational institution to diminish the impact or spread of COVID-19.
- Clarifies in any action against an educational institution, the Board of Governors, or the State Board of Education for tuition or fees, that invoices, catalogs, and general

publications of an educational institution are not evidence of an express or implied contract.
- Removes the provision that liability protections apply retroactively.
- Expands from federal, state, or local orders or directives to include the Board of Governors or the State Board of Education to those that may have required an educational institution to alter instruction in response to COVID-19.
- Adds burden of proof provisions requiring a plaintiff to provide clear and convincing evidence if bringing an action against an educational institution that was required by order or directive to alter instruction in response to the COVID-19 public health emergency.

B. Amendments:

None.

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

502390

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
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The Committee on Rules (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (5) of section 464.019, Florida Statutes, is amended to read:

464.019 Approval of nursing education programs.—

(5) ACCOUNTABILITY.—

(a)1. An approved program must achieve a graduate passage rate for first-time test takers which is not more than 10 percentage points lower than the average passage rate during the

502390

same calendar year for graduates of comparable degree programs who are United States educated, first-time test takers on the National Council of State Boards of Nursing Licensing Examination, as calculated by the contract testing service of the National Council of State Boards of Nursing. For purposes of this subparagraph, an approved program is comparable to all degree programs of the same program type from among the following program types:

a. Professional nursing education programs that terminate in a bachelor's degree.

b. Professional nursing education programs that terminate in an associate degree.

c. Professional nursing education programs that terminate in a diploma.

d. Practical nursing education programs.

2. If an approved program's graduate passage rates do not equal or exceed the required passage rates for 2 consecutive calendar years, the board shall place the program on probationary status pursuant to chapter 120 and the program director shall appear before the board to present a plan for remediation, which shall include specific benchmarks to identify progress toward a graduate passage rate goal. The program must remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any 1 calendar year. The board shall deny a program application for a new prelicensure nursing education program submitted by an educational institution if the institution has an existing program that is already on probationary status.

3. Upon the program's achievement of a graduate passage



rate that equals or exceeds the required passage rate, the board, at its next regularly scheduled meeting following release of the program's graduate passage rate by the National Council of State Boards of Nursing, shall remove the program's probationary status. If the program, during the 2 calendar years following its placement on probationary status, does not achieve the required passage rate for any 1 calendar year, the board may extend the program's probationary status for 1 additional year, provided the program has demonstrated adequate progress toward the graduate passage rate goal by meeting a majority of the benchmarks established in the remediation plan. If the program is not granted the 1-year extension or fails to achieve the required passage rate by the end of such extension, the board shall terminate the program pursuant to chapter 120. If a program on probationary status fails to achieve the required passage rate for the 2020 calendar year, including a program subject to termination during the 2021 calendar year, the board shall extend the program's probationary status for 1 additional year. The board shall grant such extension at a regularly scheduled meeting during the 2021 calendar year.

Section 2. Section 768.39, Florida Statutes, is created to read:

768.39 Immunity for educational institutions for actions related to the COVID-19 pandemic.—

(1) The Legislature finds that during the COVID-19 pandemic, educational institutions had little choice but to close or restrict access to their campuses in an effort to protect the health of their students, educators, staff, and communities. Despite these efforts, more than 120,000 cases of



COVID-19 have been linked to colleges and universities nationwide, and the deaths of more than 100 college students have been attributed to the disease. The Legislature further finds that lawsuits against educational institutions based on their efforts to provide educational services while keeping students, faculty, staff, and communities safe during the COVID-19 public health emergency are without legal precedent. One court has even acknowledged that the "legal system is now feeling COVID-19's havoc with the current wave of class action lawsuits that seek tuition reimbursement related to forced online tutelage." Under these circumstances, the Legislature finds that there is an overpowering public necessity for, and no reasonable alternative to, providing educational institutions with liability protections against lawsuits seeking tuition or fee reimbursements or related damages resulting from the institutions changing the delivery of educational services, limiting access to facilities, or closing campuses during the COVID-19 public health emergency.

(2) For the purposes of this section, the term "educational institution" means a school, including a preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic, and also includes the Board of Governors of the State University System and the State Board of Education.

(3)(a) An educational institution that has taken reasonably necessary actions in compliance with federal, state, or local guidance to diminish the impact or the spread of COVID-19 may not be held liable for, and shall be immune from, any civil damages, equitable relief, or other remedies relating to such



actions. Reasonably necessary actions taken while a state of emergency was declared for this state for the COVID-19 pandemic include, but are not limited to, any of the following:

1. Shifting in-person instruction to online or remote instruction for any period of time.

2. Closing or modifying the provision of facilities, other than housing or dining facilities, on the campus of the educational institution.

3. Pausing or modifying ancillary student activities and services available through the educational institution.

(b) The provision of in-person or on-campus education and related services is deemed to have been impossible for educational institutions during any period of time in which such institutions took reasonably necessary actions described in paragraph (a) to protect students, staff, and educators in response to the COVID-19 public health emergency.

(c) As a result of the various governmental orders and the need for educational institutions to protect their communities, the reasonably necessary actions described in paragraph (a) are deemed justified.

(4) In any action against an educational institution for the reimbursement of tuition or fees, general publications of the institution are not evidence of an implied contract to provide in-person or on-campus education and related services or access to facilities during the COVID-19 public health emergency.

(5)(a) This section does not apply to losses or damages that resulted solely from a breach of an express contractual provision allocating liability in the event of a pandemic event.

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(b) This section does not apply to losses or damages caused by an act or omission of a college or university which was in bad faith or malicious.

(6) If any aspect of the immunity under subsection (3) is limited by a court or by operation of law from applying to certain types of claims or causes of action, the immunity under this section must still be provided to the fullest extent authorized by law to any other types of claims or causes of action.

(7) If an educational institution is required by federal, state, or local order issued in response to the COVID-19 public health emergency to alter instruction, the burden of proof for any plaintiff bringing an action against the educational institution for such change shall be by clear and convincing evidence to prevail for damages against the institution.

Section 3. This act is effective upon becoming a law.

========== 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 the impact of COVID-19 on educational institutions; amending s. 464.019, F.S.; requiring the Board of Nursing to extend an approved program's probationary status under certain circumstances; creating s. 768.39, F.S.; providing legislative findings; defining the term "educational institution"; prohibiting an educational institution that has taken certain reasonably necessary actions to

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diminish the impact or spread of COVID-19 from being civilly liable for such actions; specifying that the provision of certain services by educational institutions was impossible during certain periods of time; providing that certain reasonably necessary actions are deemed justified; providing that general publications of educational institutions are not evidence of an implied contract to provide specified services during the COVID-19 public health emergency; providing exceptions; providing severability; specifying conditions for an action against an educational institution; providing an effective date.

959540

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/21/2021	.	
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The Committee on Rules (Gruters) recommended the following:

Senate Amendment to Amendment (502390) (with title amendment)

Delete lines 92 - 139
and insert:
nonpublic. The Board of Governors of the State University System and the State Board of Education are also included within the immunity protections afforded by this section.

(3)(a) An educational institution that has taken reasonably necessary actions in compliance with federal, state, or local guidance to diminish the impact or the spread of COVID-19 may



not be held liable for, and shall be immune from, any civil damages, equitable relief, or other remedies relating to such actions. Reasonably necessary actions taken while a state of emergency was declared for this state for the COVID-19 pandemic include, but are not limited to, any of the following:

1. Shifting in-person instruction to online or remote instruction for any period of time.

2. Closing or modifying the provision of facilities, other than housing or dining facilities, on the campus of the educational institution.

3. Pausing or modifying ancillary student activities and services available through the educational institution.

(b) The provision of in-person or on-campus education and related services is deemed to have been impossible for educational institutions during any period of time in which such institutions took reasonably necessary actions described in paragraph (a) to protect students, staff, and educators in response to the COVID-19 public health emergency.

(c) As a result of the various governmental orders and the need for educational institutions to protect their communities, the reasonably necessary actions described in paragraph (a) are deemed justified.

(4) In any action against an educational institution, the Board of Governors of the State University System, or the State Board of Education for the reimbursement of tuition or fees, invoices, catalogs, and general publications of an educational institution are not evidence of an express or implied contract to provide in-person or on-campus education and related services or access to facilities during the COVID-19 public health

959540

emergency.

(5)(a) This section does not apply to losses or damages that resulted solely from a breach of an express contractual provision allocating liability in the event of a pandemic event.

(b) This section does not apply to losses or damages caused by an act or omission of a college or university which was in bad faith or malicious.

(6) If any aspect of the immunity under subsection (3) is limited by a court or by operation of law from applying to certain types of claims or causes of action, the immunity under this section must still be provided to the fullest extent authorized by law to any other types of claims or causes of action.

(7) If an educational institution is required by federal, state, or local order or a directive of the Board of Governors of the State University System or the State Board of Education issued in response to the COVID-19 public health emergency to alter the mode of delivery of instruction and related services or access to facilities, the burden of proof for

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

And the title is amended as follows:

Delete lines 162 - 164

and insert:

actions are deemed justified; providing that certain publications of educational institutions are not evidence of an express or implied contract to provide specified

487960

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2021	.	
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The Committee on Rules (Thurston) recommended the following:

Senate Amendment to Amendment (502390) (with title amendment)

Between lines 142 and 143

insert:

Section 3. In recognition of the public health emergency caused by the COVID-19 pandemic, and notwithstanding any other provision in law:

(1) School grades calculated for the 2020-2021 school year may be used for eligibility for the Florida School Recognition Program established under s. 1008.36, Florida Statutes, as



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provided in the General Appropriations Act.

(2) A school currently in turnaround status pursuant to s. 1008.33, Florida Statutes, may exit turnaround status if the school receives a grade of "C" or better.

(3) A school or approved provider under s. 1002.45, Florida Statutes, which receives the same or a lower school grade or school improvement rating for the 2020-2021 school year compared to the 2018-2019 school year is not subject to sanctions or penalties that would otherwise occur as a result of the 2020-2021 school grade or school improvement rating. A charter school system or a school district designated as high-performing may not lose the designation based on the 2020-2021 school grade of any of the schools within the charter school system or school district, as applicable.

(4) Notwithstanding s. 1008.25, Florida Statutes, a parent or guardian may request that his or her K-5 public school student be retained for the 2021-2022 school year in the grade level to which the student was assigned at the beginning of the 2020-2021 school year, provided that such request is made for academic reasons.

(a) A parent or guardian who wishes for his or her student to be retained as provided by this act must submit, in writing, to the school principal a retention request that specifies the academic reasons for the retention. Only requests received by the principal on or before June 30, 2021, must be considered. A principal may consider a request received after that date at his or her discretion.

(b)1. A principal who considers a retention request submitted pursuant to this subsection shall inform the student's



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teachers of the retention request and collaboratively discuss with the parent or guardian any basis for agreement or disagreement with the request. As part of the discussion with the parent or guardian, the principal shall disclose that retention may impact the student's eligibility to participate in high school interscholastic or intrascholastic sports due to the student's age.

2. In lieu of retention, the principal, teachers, and parent or guardian may collaborate to develop a customized 1-year education plan for the student with the intent of helping the student return to grade level readiness by the end of the next academic year. Such plan may include, but need not be limited to, supplemental educational support, services, and interventions; summer education; promotion in some, but not all, courses; and midyear promotion.

3. The parent's or guardian's decision to promote or retain his or her student after discussing the retention request with the principal shall control.

(c) If a student retained under this subsection has an individual education plan (IEP) in effect, the student's IEP team shall convene to review and revise the student's IEP, as appropriate.

(d) By June 30, 2022, school districts shall report to the Department of Education the number of students retained pursuant to this act for all or part of the 2021-2022 school year.

(5) A student who meets all of the requirements for graduation at the end of the 2020-2021 school year except for passing either or both statewide, standardized assessments required pursuant to s. 1003.4282(3)(a) and (b), Florida



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Statutes, will be deemed to have met all of the requirements for graduation.

(6) Student performance results from the 2020-2021 statewide, standardized assessments may not be used for calculating student performance measurement and evaluating personnel pursuant to s. 1012.34, Florida Statutes.

(7) The provision in s. 1002.61(2)(a), Florida Statutes, that requires a summer prekindergarten program delivered by a public school or private prekindergarten provider to consist of at least 300 hours is waived. The 2021 summer prekindergarten program must consist of at least 200 hours. The full-time equivalent calculation for a student in a summer 2021 prekindergarten program delivered by a public school or private prekindergarten provider under s. 1002.71(2)(b), Florida Statutes, shall be prorated for the number of instructional hours reported.

(8) The requirement in s. 1002.89(6), Florida Statutes, that no more than 22 percent of the state, federal, and local matching funds provided to an early learning coalition to implement its approved school readiness program plan be used for any combination of administrative costs, quality activities, and nondirect services is waived for the 2020-2021 and 2021-2022 school years, provided that the funds are used for purposes of emergency recovery and direct support to providers.

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

And the title is amended as follows:

Delete line 168

and insert:



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educational institution; authorizing school grades calculated during a certain school year to be used for eligibility for the Florida School Recognition Program; authorizing a school in turnaround status to exit turnaround status if the school receives a grade of "C" or better; exempting certain schools or approved providers from being subject to sanctions or penalties as a result of school grade or school improvement ratings earned during a certain school year; prohibiting a high-performing charter school system or school district from losing such designation based on school grades earned during a certain school year; authorizing a parent or guardian to request that his or her K-5 student be retained in a grade level for academic reasons for a specified school year; requiring that such a request be submitted in a specified manner; requiring school principals to consider such requests if they are timely received; authorizing school principals to consider requests that are not timely received; requiring a school principal who considers a request for retention to inform the student's teachers of the request and collaboratively discuss with the parent or guardian any basis for agreement or disagreement with the request; requiring such discussion to disclose that retention may impact the student's eligibility to participate in high school interscholastic or intrascholastic sports; authorizing the principal, teachers, and parent or guardian to collaborate to



develop a customized 1-year education plan for the student in lieu of retaining the student; requiring a parent's or guardian's decision regarding retention to control; requiring the individual education plan (IEP) team for a retained student to review and revise the student's IEP, as appropriate; requiring school districts to report certain data to the department by a specified date; authorizing certain students to graduate; prohibiting certain performance results from being used for calculating student performance measurement and for evaluating personnel; waiving a provision requiring summer prekindergarten programs to consist of at least 300 hours; waiving a requirement that no more than 22 percent of certain funds provided to an early learning coalition be used for certain purposes; providing an effective date.

269424

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/21/2021	.	
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The Committee on Rules (Thurston) recommended the following:

Senate Amendment to Amendment (502390) (with title amendment)

Between lines 142 and 143

insert:

Section 3. Notwithstanding s. 1008.25, Florida Statutes, a parent or guardian may request that his or her K-5 public school student be retained for the 2021-2022 school year in the grade level to which the student was assigned at the beginning of the 2020-2021 school year, provided that such request is made for academic reasons.

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(1) A parent or guardian who wishes for his or her student to be retained as provided by this act must submit, in writing, to the school principal a retention request that specifies the academic reasons for the retention. Only requests received by the principal on or before June 30, 2021, must be considered. A principal may consider a request received after that date at his or her discretion.

(2)(a) A principal who considers a retention request submitted pursuant to this subsection shall inform the student's teachers of the retention request and collaboratively discuss with the parent or guardian any basis for agreement or disagreement with the request. As part of the discussion with the parent or guardian, the principal shall disclose that retention may impact the student's eligibility to participate in high school interscholastic or intrascholastic sports due to the student's age.

(b) In lieu of retention, the principal, teachers, and parent or guardian may collaborate to develop a customized 1-year education plan for the student with the intent of helping the student return to grade level readiness by the end of the next academic year. Such plan may include, but need not be limited to, supplemental educational support, services, and interventions; summer education; promotion in some, but not all, courses; and midyear promotion.

(c) The parent's or guardian's decision to promote or retain his or her student after discussing the retention request with the principal shall control.

(3) If a student retained under this subsection has an individual education plan (IEP) in effect, the student's IEP

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team shall convene to review and revise the student's IEP, as appropriate.

(4) By June 30, 2022, school districts shall report to the Department of Education the number of students retained pursuant to this act for all or part of the 2021-2022 school year.

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

And the title is amended as follows:

Delete line 168

and insert:

educational institution; authorizing a parent or guardian to request that his or her K-5 student be retained in a grade level for academic reasons for a specified school year; requiring that such a request be submitted in a specified manner; requiring school principals to consider such requests if they are timely received; authorizing school principals to consider requests that are not timely received; requiring a school principal who considers a request for retention to inform the student's teachers of the request and collaboratively discuss with the parent or guardian any basis for agreement or disagreement with the request; requiring such discussion to disclose that retention may impact the student's eligibility to participate in high school interscholastic or intrascholastic sports; authorizing the principal, teachers, and parent or guardian to collaborate to develop a customized 1-year education plan for the student in lieu of retaining the student; requiring a

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parent's or guardian's decision regarding retention to control; requiring the individual education plan (IEP) team for a retained student to review and revise the student's IEP, as appropriate; requiring school districts to report certain data to the department by a specified date; providing an effective date.

By the Committee on Education

581-03571-21 20217070__

A bill to be entitled

An act relating to the impact of COVID-19 on educational institutions; amending s. 464.019, F.S.; requiring the Board of Nursing to extend an approved program's probationary status under certain circumstances; creating s. 768.39, F.S.; providing legislative findings; defining the term "educational institution"; prohibiting an educational institution that has taken certain reasonably necessary actions to diminish the impact or spread of COVID-19 from being civilly liable for such actions; specifying that the provision of certain services by educational institutions was impossible during certain periods of time; providing that certain reasonably necessary actions are deemed justified; providing that general publications of educational institutions are not evidence of an implied contract to provide specified services during the COVID-19 public health emergency; providing exceptions; providing severability; providing for retroactive applicability; authorizing school grades calculated during a certain school year to be used for eligibility for the Florida School Recognition Program; authorizing a school in turnaround status to exit turnaround status if the school receives a grade of "C" or better; exempting certain schools or approved providers from being subject to sanctions or penalties as a result of school grade or school improvement ratings earned during a certain school year; prohibiting a high-

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

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performing charter school system or school district from losing such designation based on school grades earned during a certain school year; authorizing a parent or guardian to request that his or her K-5 student be retained in a grade level for academic reasons for a specified school year; requiring that such a request be submitted in a specified manner; requiring school principals to consider such requests if they are timely received; authorizing school principals to consider requests that are not timely received; requiring a school principal who considers a request for retention to inform the student's teachers of the request and collaboratively discuss with the parent or guardian any basis for agreement or disagreement with the request; requiring such discussion to disclose that retention may impact the student's eligibility to participate in high school interscholastic or intrascholastic sports; authorizing the principal, teachers, and parent or guardian to collaborate to develop a customized 1-year education plan for the student in lieu of retaining the student; requiring a parent's or guardian's decision regarding retention to control; requiring the individual education plan (IEP) team for a retained student to review and revise the student's IEP, as appropriate; requiring school districts to report certain data to the Department of Education by a specified date; authorizing certain students to graduate; prohibiting certain performance results from being used for

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calculating student performance measurement and for evaluating personnel; waiving a provision requiring summer prekindergarten programs to consist of at least 300 hours; waiving a requirement that no more than 22 percent of certain funds provided to an early learning coalition be used for certain purposes; providing an effective date.

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

Section 1. Paragraph (a) of subsection (5) of section 464.019, Florida Statutes, is amended to read:

464.019 Approval of nursing education programs.—

(5) ACCOUNTABILITY.—

(a)1. An approved program must achieve a graduate passage rate for first-time test takers which is not more than 10 percentage points lower than the average passage rate during the same calendar year for graduates of comparable degree programs who are United States educated, first-time test takers on the National Council of State Boards of Nursing Licensing Examination, as calculated by the contract testing service of the National Council of State Boards of Nursing. For purposes of this subparagraph, an approved program is comparable to all degree programs of the same program type from among the following program types:

a. Professional nursing education programs that terminate in a bachelor's degree.

b. Professional nursing education programs that terminate in an associate degree.

c. Professional nursing education programs that terminate in a diploma.

d. Practical nursing education programs.

2. If an approved program's graduate passage rates do not equal or exceed the required passage rates for 2 consecutive calendar years, the board shall place the program on probationary status pursuant to chapter 120 and the program director shall appear before the board to present a plan for remediation, which shall include specific benchmarks to identify progress toward a graduate passage rate goal. The program must remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any 1 calendar year. The board shall deny a program application for a new prelicensure nursing education program submitted by an educational institution if the institution has an existing program that is already on probationary status.

3. Upon the program's achievement of a graduate passage rate that equals or exceeds the required passage rate, the board, at its next regularly scheduled meeting following release of the program's graduate passage rate by the National Council of State Boards of Nursing, shall remove the program's probationary status. If the program, during the 2 calendar years following its placement on probationary status, does not achieve the required passage rate for any 1 calendar year, the board may extend the program's probationary status for 1 additional year, provided the program has demonstrated adequate progress toward the graduate passage rate goal by meeting a majority of the benchmarks established in the remediation plan. If the program is not granted the 1-year extension or fails to achieve the

required passage rate by the end of such extension, the board shall terminate the program pursuant to chapter 120. If a program on probationary status fails to achieve the required passage rate for the 2020 calendar year, including a program subject to termination during the 2021 calendar year, the board shall extend the program's probationary status for 1 additional year. The board shall grant such extension at a regularly scheduled meeting during the 2021 calendar year.

Section 2. Section 768.39, Florida Statutes, is created to read:

768.39 Immunity for educational institutions for actions related to the COVID-19 pandemic.—

(1) The Legislature finds that during the COVID-19 pandemic, educational institutions had little choice but to close or restrict access to their campuses in an effort to protect the health of their students, educators, staff, and communities. Despite these efforts, more than 120,000 cases of COVID-19 have been linked to colleges and universities nationwide, and the deaths of more than 100 college students have been attributed to the disease. The Legislature further finds that lawsuits against educational institutions based on their efforts to provide educational services while keeping students, faculty, staff, and communities safe during the COVID-19 public health emergency are without legal precedent. One court has even acknowledged that the "legal system is now feeling COVID-19's havoc with the current wave of class action lawsuits that seek tuition reimbursement related to forced online tutelage." Under these circumstances, the Legislature finds that there is an overpowering public necessity for, and no

reasonable alternative to, providing educational institutions with liability protections against lawsuits seeking tuition or fee reimbursements or related damages resulting from the institutions changing the delivery of educational services, limiting access to facilities, or closing campuses during the COVID-19 public health emergency.

(2) For the purposes of this section, the term "educational institution" has the same meaning as in s. 768.38(2).

(3)(a) An educational institution that has taken reasonably necessary actions in compliance with federal, state, or local guidance to diminish the impact or the spread of COVID-19 may not be held liable for, and shall be immune from, any civil damages, equitable relief, or other remedies relating to such actions. Reasonably necessary actions taken while a state of emergency was declared for this state for the COVID-19 pandemic include, but are not limited to, any of the following:

1. Shifting in-person instruction to online or remote instruction for any period of time.

2. Closing or modifying the provision of residential housing, dining, or other facilities on the campus of the educational institution.

3. Pausing or modifying ancillary student activities and services available through the educational institution.

(b) The provision of in-person or on-campus education and related services is deemed to have been impossible for educational institutions during any period of time in which such institutions took reasonably necessary actions described in paragraph (a) to protect students, staff, and educators in response to the COVID-19 public health emergency.

(c) As a result of the various governmental orders and the need for educational institutions to protect their communities, the reasonably necessary actions described in paragraph (a) are deemed justified.

(4) In any action against an educational institution for the reimbursement of tuition or fees, general publications of the institution are not evidence of an implied contract to provide in-person or on-campus education and related services or access to facilities during the COVID-19 public health emergency.

(5)(a) This section does not apply to losses or damages that resulted solely from a breach of an express contractual provision allocating liability in the event of a pandemic event.

(b) This section does not apply to losses or damages caused by an act or omission of a college or university which was in bad faith or malicious.

(6) If any aspect of the immunity under subsection (3) is limited by a court or by operation of law from applying to certain types of claims or causes of action, the immunity under this section must still be provided to the fullest extent authorized by law to any other types of claims or causes of action.

(7) This section shall apply retroactively to causes of actions accruing on or after March 1, 2020, the date of the declaration of the COVID-19 public health emergency by the State Surgeon General, and shall apply prospectively to causes of action that accrue before the end of the academic term during which the emergency declaration expires or is terminated.

Section 3. In recognition of the public health emergency

caused by the COVID-19 pandemic, and notwithstanding any other provision in law:

(1) School grades calculated for the 2020-2021 school year may be used for eligibility for the Florida School Recognition Program established under s. 1008.36, Florida Statutes, as provided in the General Appropriations Act.

(2) A school currently in turnaround status pursuant to s. 1008.33, Florida Statutes, may exit turnaround status if the school receives a grade of "C" or better.

(3) A school or approved provider under s. 1002.45, Florida Statutes, which receives the same or a lower school grade or school improvement rating for the 2020-2021 school year compared to the 2018-2019 school year is not subject to sanctions or penalties that would otherwise occur as a result of the 2020-2021 school grade or school improvement rating. A charter school system or a school district designated as high-performing may not lose the designation based on the 2020-2021 school grade of any of the schools within the charter school system or school district, as applicable.

(4) Notwithstanding s. 1008.25, Florida Statutes, a parent or guardian may request that his or her K-5 public school student be retained for the 2021-2022 school year in the grade level to which the student was assigned at the beginning of the 2020-2021 school year, provided that such request is made for academic reasons.

(a) A parent or guardian who wishes for his or her student to be retained as provided by this act must submit, in writing, to the school principal a retention request that specifies the academic reasons for the retention. Only requests received by

the principal on or before June 30, 2021, must be considered. A principal may consider a request received after that date at his or her discretion.

(b)1. A principal who considers a retention request submitted pursuant to this subsection shall inform the student's teachers of the retention request and collaboratively discuss with the parent or guardian any basis for agreement or disagreement with the request. As part of the discussion with the parent or guardian, the principal shall disclose that retention may impact the student's eligibility to participate in high school interscholastic or intrascholastic sports due to the student's age.

2. In lieu of retention, the principal, teachers, and parent or guardian may collaborate to develop a customized 1-year education plan for the student with the intent of helping the student return to grade level readiness by the end of the next academic year. Such plan may include, but need not be limited to, supplemental educational support, services, and interventions; summer education; promotion in some, but not all, courses; and midyear promotion.

3. The parent's or guardian's decision to promote or retain his or her student after discussing the retention request with the principal shall control.

(c) If a student retained under this subsection has an individual education plan (IEP) in effect, the student's IEP team shall convene to review and revise the student's IEP, as appropriate.

(d) By June 30, 2022, school districts shall report to the Department of Education the number of students retained pursuant

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to this act for all or part of the 2021-2022 school year.

(5) A student who meets all of the requirements for graduation at the end of the 2020-2021 school year except for passing either or both statewide, standardized assessments required pursuant to s. 1003.4282(3)(a) and (b), Florida Statutes, will be deemed to have met all of the requirements for graduation.

(6) Student performance results from the 2020-2021 statewide, standardized assessments may not be used for calculating student performance measurement and evaluating personnel pursuant to s. 1012.34, Florida Statutes.

(7) The provision in s. 1002.61(2)(a), Florida Statutes, that requires a summer prekindergarten program delivered by a public school or private prekindergarten provider to consist of at least 300 hours is waived. The 2021 summer prekindergarten program must consist of at least 200 hours. The full-time equivalent calculation for a student in a summer 2021 prekindergarten program delivered by a public school or private prekindergarten provider under s. 1002.71(2)(b), Florida Statutes, shall be prorated for the number of instructional hours reported.

(8) The requirement in s. 1002.89(6), Florida Statutes, that no more than 22 percent of the state, federal, and local matching funds provided to an early learning coalition to implement its approved school readiness program plan be used for any combination of administrative costs, quality activities, and nondirect services is waived for the 2020-2021 and 2021-2022 school years, provided that the funds are used for purposes of emergency recovery and direct support to providers.

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Section 4. This act is effective upon becoming a law.

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THE FLORIDA SENATE

APPEARANCE RECORD

April 20, 2021
Meeting Date

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

7070
Bill Number (if applicable)

SO2390
Amendment Barcode (if applicable)

Topic 7070

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Independent Colleges & Universities 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.

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)

4/20/21
Meeting Date

7070
Bill Number (if applicable)

502390
Amendment Barcode (if applicable)

Topic Impact of COVID on Edu

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Speaking: ☐ For ☑ Against ☐ Information

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

Representing Students

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)

4/20/21
Meeting Date

SB 7070
Bill Number (if applicable)

Topic SB 7070 COVID 19 impact on Ed institutions

Amendment Barcode (if applicable)

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

Representing State University System of Florida

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)

4/20/21
Meeting Date

7070
Bill Number (if applicable)

Topic Impact of COVID on Education Institutions

Amendment Barcode (if applicable)

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

4/26/21
Meeting Date

7070
Bill Number (if applicable)

Topic Impact of COVID on Education Institutions

Amendment Barcode (if applicable)

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

4/20/21
Meeting Date

7070
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Impact of Covid on Educational Institutions

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Speaking: ☐ For ☑ Against ☐ Information

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

Representing STUDENTS

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

4/20/21
Meeting Date

7070
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Impact of COVID-19 on Educational Institutions

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Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Justice 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

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 2012
INTRODUCER:	Senator Stargel
SUBJECT:	Promoting Equality of Athletic Opportunity
DATE:	April 12, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sagues	Bouck	ED	**Favorable**
2.	Smith	Brown	HP	**Favorable**
3.	Sagues	Phelps	RC	**Pre-meeting**

I. Summary:

SB 2012 creates the Promoting Equality of Athletic Opportunity Act with the intent of providing female athletes opportunities to demonstrate their strength, skills, and athletic abilities and enabling them to realize the long-term benefits that result from participating and competing in athletic endeavors. Specifically, the bill:

- Requires interscholastic, intercollegiate, intramural, or club athletic teams that are sponsored by, or that compete against, a public school or public postsecondary institution to be designated as male, female, or coed.
- Prohibits athletic teams designated for females to be open to students of the male sex.
- Establishes that persons who transition from male to female are eligible to compete in the female category if the student has declared a female gender identity to her school or institution and demonstrates a total testosterone level in serum below 10 nmol/L for at least 12 months before her first competition and throughout the period of desired eligibility.

The bill requires the Board of Governors to adopt regulations and the State Board of Education to adopt rules regarding the receipt and timely resolution of disputes by schools and institutions relating to provisions in the bill.

The bill provides private causes of action for injunctive relief, damages, and any other relief available under law for students, schools, and public postsecondary institutions harmed by a violation of the bill's provisions. All such civil actions must be initiated within two years after the alleged harm occurred.

The impact of state revenues or expenditures is indeterminate. *See* Section V.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Athletic Programs

The Florida High School Athletic Association (FHSAA) indicates that middle and high school interscholastic athletic programs play a vital role in the education of students who participate in them.[1] Through their participation in interscholastic athletics, students are provided character-building opportunities to demonstrate honesty, integrity, respect, caring, cooperation, trustworthiness, leadership, tolerance, and personal responsibility. These fundamental values enable participants to realize and fulfill their potential as students, athletes, individuals, and citizens.[2]

Athletics programs are widely accepted as integral parts of the college experience as well.[3] The National Collegiate Athletic Association (NCAA) indicates that the benefits of athletics participation include many positive effects on physical, social, and emotional well-being. Playing sports can teach student-athletes important lessons about self-discipline, teamwork, success, and failure and allow student athletes to experience the joy and shared excitement that being a member of a sports team can bring.[4]

Title IX and Sex Discrimination

Title IX is a federal civil rights law passed as part of the Education Amendments of 1972.[5] This law protects people from discrimination based on sex in education programs or activities that receive federal financial assistance. Title IX states that:[6]

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Athletic programs are considered educational programs and activities.[7] Title IX gives women athletes the right to equal opportunity in sports in educational institutions that receive federal funds, from elementary schools to colleges and universities. While there are few private elementary schools, middle schools, or high schools that receive federal funds, almost all colleges and universities, private and public, receive such funding.[8]

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[1] Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association, Inc. (2020-2021)* (2020), at 6, *available at* https://s3.amazonaws.com/fhsaa.org/documents/2020/10/1/2021_handbook_website_1001.pdf (last visited Mar. 26, 2021).
[2] *Id.*
[3] National Collegiate Athletic Association, *NCAA Inclusion of Transgender Student-Athletes* (2011), *available at* https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (last visited Mar. 26, 2021).
[4] *Id.*
[5] Harvard University, *What is Title IX, available at* https://titleix.harvard.edu/what-title-ix (last visited Mar. 26, 2021).
[6] U.S. Department of Education, Title IX and Sex Discrimination, *available at* https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html#:~:text=No%20person%20in%20the%20United%20States%20shall,%20on,education%20program%20or%20activity%20receiving%20Federal%20financial%20assistance (last visited Mar. 26, 2021).
[7] Women's Sports Foundation, *What is Title IX, available at* https://www.womenssportsfoundation.org/advocacy/what-is-title-ix/ (last visited Mar. 26, 2021).
[8] *Id.*

Approximately 16,500 local school districts, 7,000 postsecondary institutions, as well as charter schools, for-profit schools, libraries, and museums are receiving federal financial assistance that requires them to observe Title IX regulations. Also included are vocational rehabilitation agencies and education agencies of 50 states, the District of Columbia, and territories and possessions of the United States.[9]

Title IX regulations require institutions that receive federal education funds to provide equal opportunities in athletics for both sexes.[10] Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes is considered when determining whether an institution has provided equal opportunities for both sexes.[11] With respect to scholarships, Title IX regulations require educational institutions that award athletic scholarships or grants-in-aid to provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.[12]

Title IX regulations also authorize educational institutions to sponsor separate athletics teams for members of each sex.[13]

According to the NCAA, there are three areas where Title IX applies to athletics. Title IX: [14]

- Requires institutions to offer both sexes an equal opportunity to play but does not require both sexes to be offered identical sports;
- Requires that female and male student-athletes receive athletics scholarship dollars proportional to their participation; and
- Requires equal treatment of female and male athletes in the following: provision of equipment and supplies; scheduling of games and practice times; travel and daily allowance and per diem; access to tutoring; coaching; locker rooms, practice and competitive facilities; medical and training facilities and services; housing and dining facilities and services; publicity and promotions; support services; and recruitment of student-athletes.[15]

[9] U.S. Department of Education, *Title IX and Sex Discrimination*, *available at* https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html (last visited Mar. 26, 2021).
[10] *See* U.S. Department of Education, Office of Civil Rights, *Athletics, available at* https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/sex-issue04.html (last visited Mar. 26, 2021).
[11] 34 C.F.R. s 106.41(c).
[12] 34 C.F.R. s 106.37(c).
[13] 34 C.F.R. s 106.41(c).
[14] NCAA, *Title IX Frequently Asked Questions*, *available at* https://www.ncaa.org/about/resources/inclusion/title-ix-frequently-asked-questions#how (last visited Mar. 26, 2021).
[15] *Id.*

Transgender Participation in Athletic Programs

The number of students who identify as transgender[16] has steadily increased during the last decade. One estimate indicates that approximately 150,000 students 13 to 17 years of age identify as transgender in the United States.[17]

Federal Legislation

Currently, there is no federal law governing transgender participation in sports.[18] However, the U.S. Supreme Court recently ruled that discrimination in employment based on gender identity is illegal.[19] In addition, the U.S. Eleventh Circuit recently affirmed that a Florida school district's policy barring a transgender male student from the boys' restroom did not comport with the Constitution's guarantee of equal protection and Title IX's prohibition of sex discrimination.[20]

Currently, 25 states are proposing legislation related to transgender student athletics.[21] Both the NCAA and the FHSAA have issued guidance for transgender participation in athletic programs.

NCAA Inclusion of Transgender Student Athletes

Providing equal opportunities in all aspects of school programming is a core value in education. According to the NCAA, college athletic programs, as integral parts of higher educational institutions, are responsible and accountable for reflecting the goals and values of the educational institutions of which they are a part.[22]

The NCAA recommends that policies governing the participation of transgender student-athletes be informed by the following principles and be included in the institution's transgender student-athlete policy statement:[23]

- Participation in intercollegiate athletics is a valuable part of the education experience for all students.
- Transgender student-athletes should have equal opportunity to participate in sports.
- The integrity of women's sports should be preserved.
- Policies governing sports should be based on sound medical knowledge and scientific validity.

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[16] Transathlete.com, *Trans Terminology*, https://www.transathlete.com/starthere (last visited Mar. 26, 2021). NCAA, *NCAA Inclusion of Transgender Student-Athletes* (2011), *available at* https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (last visited Mar. 26, 2021).
[17] UCLA School of Law, Williams Institute, *LGBT FAQs*, https://williamsinstitute.law.ucla.edu/quick-facts/lgbt-faqs/ (last visited Mar. 26, 2021).
[18] Boston College Journal of Law and Social Justice, *Hurdling Gender Identity discrimination: The Implications of State Participation Policies on Transgender Youth Athletes Ability to Thrive* (2017), *available at* https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1108&context=jlsj (last visited Mar. 26, 2021).
[19] *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020).
[20] *Adams by & through Kasper v. Sch. Bd. of St. Johns County*, 968 F.3d 1286 (11th Cir. 2020).
[21] The New York Times, *How Some States Are Moving to Restrict Transgender Women in Sports, available at* https://www.nytimes.com/2021/03/11/sports/transgender-athletes-bills.html (last visited Mar. 26, 2021).
[22] NCAA, *NCAA Inclusion of Transgender Student-Athletes* (2011), at 6, *available at* https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (last visited Mar. 26, 2021).
[23] *Id* at 10.

- Policies governing sports should be objective, workable, and practicable and should also be written, available, and equitably enforced.
- Policies governing the participation of transgender students in sports should be fair in light of the tremendous variation among individuals in strength, size, musculature, and ability.
- The legitimate privacy interests of all student-athletes should be protected.
- The medical privacy of transgender students should be preserved.
- Athletics administrators, staff, parents of athletes, and student-athletes should have access to sound and effective educational resources and training related to the participation of transgender and gender-variant[24] students in athletics.
- Policies governing the participation of transgender students in athletics should comply with state and federal laws protecting students from discrimination based on sex, disability, and gender identity[25] and expression.

The NCAA has published policies to clarify participation of transgender student-athletes undergoing hormonal treatment for gender transition:[26]

- A transgender male, a female transitioning to a male, student-athlete who has received a medical exception for treatment with testosterone[27] for diagnosed Gender Identity Disorder or gender dysphoria[28] and/or Transsexualism,[29] for purposes of NCAA competition, may compete on a men's team but is no longer eligible to compete on a women's team without changing that team status to a mixed team.[30]
- A transgender female, a male transitioning to a female, student-athlete being treated with testosterone suppression medication for Gender Identity Disorder or gender dysphoria and/or Transsexualism, for the purposes of NCAA competition, may continue to compete on a men's team but may not compete on a women's team without changing it to a mixed team status until completing one calendar year of testosterone suppression treatment.

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[24] Gender-variant refers to gender nonconforming. Merriam-Webster Dictionary, *gender variance*, *available at* https://www.merriam-webster.com/dictionary/gender%20variance (last visited Mar. 26, 2021).

[25] Gender Identity is defined as a person's internal sense of being male, female, some combination of male and female, or neither male nor female. Merriam-Webster Dictionary, *gender identity*, *available at* https://www.merriam-webster.com/dictionary/gender%20identity (last visited Mar. 26, 2021).

[26] NCAA, *NCAA Inclusion of Transgender Student-Athletes* (2011), at 13, *available at* https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (last visited Mar. 26, 2021).

[27] Testosterone is defined as a hormone that is hydroxy steroid ketone $C_{19}H_{28}O_2$ produced especially by the testes or made synthetically and that is responsible for inducing and maintaining male secondary sex characters. Merriam-Webster Dictionary, *testosterone*, *available at* https://www.merriam-webster.com/dictionary/testosterone (last visited Mar. 26, 2021).

[28] Gender Identity Disorder and gender dysphoria are defined as a distressed state arising from conflict between a person's gender identity and the sex the person has or was identified as having at birth. Merriam-Webster Dictionary, *gender dysphoria*, *available at* https://www.merriam-webster.com/dictionary/gender%20dysphoria (last visited Mar. 26, 2021). Merriam-Webster Dictionary, *gender identity disorder*, *available at* https://www.merriam-webster.com/dictionary/gender%20identity%20disorder (last visited Mar. 26, 2021).

[29] Transsexual is defined as of, relating to, or being a person whose gender identity is opposite the sex the person had or was identified as having at birth. Merriam-Webster Dictionary, *transsexual*, *available at* https://www.merriam-webster.com/dictionary/transsexualism (last visited Mar. 26, 2021).

[30] A mixed team is a varsity intercollegiate sports team on which at least home individual of each gender competes. A mixed team must be counted as one team. A male participating in competition on a female team makes the team a mixed team. Such a team is ineligible for a women's NCAA championship but is eligible for a men's NCAA championship. A female on a men's team is eligible for a men's NCAA championship. NCAA, *NCAA Inclusion of Transgender Student-Athletes* (2011), at 12, *available at* https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (last visited Mar. 26, 2021).

- Any transgender student-athlete who is not taking hormone treatment related to gender transition may participate in sex-separated sports activities in accordance with his or her assigned birth gender.
- A transgender male student-athlete who is not taking testosterone related to gender transition may participate on a men's or women's team.
- A transgender female student-athlete who is not taking hormone treatments related to gender transition may not compete on a women's team.

FHSAA Policies for Transgender Athletes

The FHSAA is designated by law as the governing nonprofit organization of athletics in Florida public schools.[31] The FHSAA is not a state agency but performs similar functions.[32] The FHSAA is required to adopt bylaws regulating student eligibility, student residency and transfer, recruiting, and health and safety. Such bylaws include requiring all students participating in interscholastic athletic competition or who are candidates for an interscholastic athletic team, to satisfactorily pass a medical evaluation each year before participating in interscholastic athletic competition or engaging in any practice, tryout, workout, conditioning, or other physical activity associated with the student's candidacy.[33] The bylaws of the FHSAA govern high school athletic programs in its member schools, unless otherwise specifically provided by law.[34]

The FHSAA's bylaws state that the FHSAA will not discriminate in its governance policies, programs, and employment practices on the basis of age, color, disability, gender, national origin, race, religion, creed, sexual orientation, or educational choice.[35] The FHSAA bylaws further state the FHSAA will conduct its activities in a manner free of gender bias and will adopt rules that enhance schools' efforts to comply with applicable gender-equity laws.[36]

The FHSAA bylaws[37] on athletic participation by gender state the following:

- Girls may play on a boys' team in a sport if the school does not sponsor a girls' team in that sport.
- Team sports that have boys on a girls' team are required to compete in the boys division in that sport.
- Team sports that have both boys and girls on a mixed team are required to compete in the boys division in that sport.
- In an individual sport, girls may not participate on boys' teams in the Florida High School State Championship Series when a sport is offered in the Florida High School State Championship Series for girls.

Under the FHSAA administrative policies, all eligible students should have the opportunity to participate in interscholastic athletics in a manner that is consistent with their gender identity and

[31] Section 1006.20(1), F.S.
[32] *Id.*
[33] Section 1006.20(2), F.S.
[34] Section 1006.20(1), F.S.
[35] Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association, Inc. (2020-2021)* (2020), at 7, *available at* https://s3.amazonaws.com/fhsaa.org/documents/2020/10/1/2021_handbook_website_1001.pdf (last visited Mar. 26, 2021).
[36] *Id.*
[37] *Id.* at 23.

expression, irrespective of the gender listed on a student's birth certificate or records.[38] Under this situation, a student may seek review of his or her eligibility for participation through the following process:[39]

- The student and his or her parent(s) must contact the school administrator or athletic director, prior to the official start date of the sport season, indicating the student has a consistent gender identity and expression different than the gender listed on the student's school registration records and the student desires to participate in a gender-segregated athletic sport in a manner consistent with his or her gender identity and expression.
- The student must provide the principal or athletic director, and the FHSAA, with specified documentation.[40]
- The school administrator must contact the FHSAA, which will assign a facilitator to assist the school and student in preparation and completion of the process.
- The student will be scheduled for a review hearing before a committee[41] specifically established to preside over gender identity reviews.

An appeal process is available to any school on behalf of a student-athlete who is denied participation. If a student is granted eligibility consistent with his or her gender identity and expression, the eligibility is binding for the duration of the student's participation in every sport season of every school year.[42]

The Role of Testosterone in Athletic Performance

Both males and females produce testosterone naturally in their bodies, males primarily in the testes and females primarily in the ovaries.[43] Starting from the onset of male puberty, generally about age 11, testes begin to produce much more testosterone than ovaries. From that point forward, the normal female range is between 0.06 and 1.68 nanomoles[44] per liter (nmol/L), and

[38] *Id*. at 73.
[39] This policy does not apply to a private school member of the FHSAA which, because of its strongly held religious beliefs, would be entitled to the exemption provided to educational institutions of religious organizations by law. *Id.*
[40] Documentation includes current transcript and school registration information; information required for participation and eligibility in FHSAA athletics; written statement from the student affirming the consistent identity and expression to which the student self-relates; documentation from individuals such as, but not limited to, parents, friends and teachers, which affirm that the actions, attitudes, dress and manner demonstrate the student's consistent gender identification and expression; a complete list of all the student's prescribed, non-prescribed or over the counter, treatments or medications; written verification from an appropriate health-care professional of the student's consistent gender identification and expression; and any other pertinent documentation or information which the student or parent believe relevant and appropriate. *Id.*
[41] The committee must be comprised of a minimum of three of the following categories, one of which must be from the physical or mental health profession category: Physician with experience in gender identity health care and the World Professional Association for Transgender Health (WPATH) Standards of Care; psychiatrist, psychologist, or licensed mental health professional familiar with the WPATH Standards of Care; school administrator from outside the member school's FHSAA administrative section; athletic director from outside the member school's FHSAA administrative section; an athletic coach of the sport in which participation is desired, from outside the member school's FHSAA administrative section; an individual selected by the FHSAA familiar with Gender Identity and Expression issues. *Id*.
[42] *Id*.
[43] Women's Sports Policy Working Group, *Frequently Asked Questions – About Science and Sex* (2020), *available at* https://womenssportspolicy.org/wp-content/uploads/2021/01/faq-q09-male-and-female-range-testosterone.pdf (last visited Mar. 26, 2021).
[44] One mole contains exactly $6.02214076 \times 10^{23}$ elementary entities; an elementary entity may be an atom, a molecule, an ion, an electron, any other particle or specified group of particles. National Institute of Standards and Technology, *Definitions of SI Base Units, available at* https://www.nist.gov/si-redefinition/definitions-si-base-units (last visited Mar. 26, 2021). A

the normal male range is between 7.7 and 29.4 nmol/L. The gap between the top of the female range and the bottom of the male range is 6.02 nmol/L.[45]

International experts[46] in the sports science and sports medicine communities agree that males and females are materially different with respect to the main physical attributes that contribute to athletic performance and that the primary reason for sex differences in these attributes is exposure in gonadal males to much higher levels of testosterone during growth and development, and throughout the athletic career.[47]

The Connecticut Interscholastic Athletics Conference (CIAC)[48] permits transgender girls to compete in girls' events even if they have not yet gone on puberty blockers[49] or gender affirming hormones.[50] Two transgender girls who used to compete on their schools' boys' teams moved to the girls' teams when they began to identify as transgender.[51] Cisgender[52] female high school students have sued the CIAC and their respective boards of education alleging that the defendants' practice of permitting biological males who claim a female gender identity to compete in girls' athletic competitions violates Title IX because it displaces girls from track events and excludes them from honors and opportunities to compete at higher levels critical to college recruitment and scholarship opportunities.[53]

A study[54] conducted on transgender males and females in the United States Air Force with an average age of 26.2 years, concluded that transgender females displayed a 15 to 31 percent athletic advantage displayed over cisgender females prior to the commencement of gender-affirming hormones. This advantage declined with feminizing therapy. However, transgender

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Nanomole is defined as one billionth of a mole. Merriam-Webster Dictionary, *nanomole, available at* https://www.merriam-webster.com/medical/nanomole (last visited Mar. 26, 2021).

[45] Women's Sports Policy Working Group, *Frequently Asked Questions – About Science and Sex* (2020), *available at* https://womenssportspolicy.org/wp-content/uploads/2021/01/faq-q09-male-and-female-range-testosterone.pdf (last visited Mar. 26, 2021).

[46] International Experts Statement of the Role of Testosterone in Athletic Performances. Duke Law Center for Sports Law and Policy, Sex in Sport, *available at* https://law.duke.edu/sports/sex-sport/ (last visited Mar. 26, 2021). Duke Law, The Role of Testosterone in Athletic Performance (2019), *available at* https://web.law.duke.edu/sites/default/files/centers/sportslaw/Experts_T_Statement_2019.pdf (last visited Mar. 26, 2021).

[47] Duke Law, *The Role of Testosterone in Athletic Performance* (2019), *available at* https://web.law.duke.edu/sites/default/files/centers/sportslaw/Experts_T_Statement_2019.pdf (last visited Mar. 26, 2021).

[48] CIAC, CIAC Statement on Office of Civil Rights Decision, *available at* http://ciacsports.com/site/?p=14508 (last visited Mar. 26, 2021).

[49] A puberty blocker is a type of medicine that is used to prevent puberty from happening. Macmillian Dictionary, *puberty blocker, available at* https://www.macmillandictionary.com/dictionary/british/puberty-blocker (last visited Mar. 26, 2021).

[50] Women's Sports Policy Working Group, *Frequently Asked Questions – About Science and Sex*, (2020), *available at* https://womenssportspolicy.org/wp-content/uploads/2021/01/faq-q21-impact-of-trans-girls-on-hs-sports.pdf (last visited Mar. 26, 2021) *Soule et al v. Connecticut Association of Schools, Inc. et al*, 3:20-CV-00201 (2020).

[51] *Id.*

[52] Cisgender is defined as of, relating to, or being a person whose gender identity corresponds with the sex the person had or was identified as having at birth. Merriam-Webster Dictionary, *cisgender available at* https://www.merriam-webster.com/dictionary/cisgender (last visited Mar. 26, 2021).

[53] Justia Dockets & Filings, Soule et al v. Connecticut Association of Schools, Inc. et al, *available at* https://dockets.justia.com/docket/connecticut/ctdce/3:2020cv00201/137997 (last visited Mar. 26, 2021). *Soule et al v. Connecticut Association of Schools, Inc. et al*, 3:20-CV-00201 (2020).

[54] Roberts T.A., Smalley J., Ahrendt D., *Effect of gender affirming hormones on athletic performance in transwomen and transmen: implications for sporting organisations and legislators*. *British Journal of Sports Medicine* (2020), *available at* https://bjsm.bmj.com/content/early/2020/11/06/bjsports-2020-102329 (last visited Mar. 26, 2021).

females still had a nine percent faster mean run speed after the one year period of testosterone suppression that is recommended by World Athletics (WA)[55] or the International Olympic Committee (IOC)[56] for inclusion in women's events.[57] The study confirmed that use of gender-affirming hormones are associated with changes in athletic performance and demonstrated that the pretreatment differences between transgender and cisgender women persist beyond the 12-month time requirement currently being proposed for athletic competition by the WA and the IOC. The study suggests that more than 12 months of testosterone suppression may be needed to ensure that transgender women do not have an unfair competitive advantage when participating in elite level athletic competition.[58]

WA also requires that for a transgender female to be eligible she must demonstrate to the satisfaction of an expert panel that the concentration of testosterone in her serum has been less than 5 nmol/L continuously for a period of at least 12 months and she must keep her serum testosterone concentration below 5 nmol/L for so long as she wishes to maintain eligibility to compete in the female category of competition.[59]

The IOC requires that for a transgender female to be eligible, she:[60]

- Must have declared that her gender identity is female. The declaration cannot be changed, for sporting purposes, for a minimum of four years.
- Must demonstrate that her total testosterone level in serum has been below 10 nmol/L for at least 12 months prior to her first competition.

III. Effect of Proposed Changes:

SB 2012 creates s. 1006.205, F.S., the Promoting Equality of Athletic Opportunity Act. The bill specifies that it is the intent of the Legislature to provide opportunities for female athletes to demonstrate their strength, skills, and athletic abilities and to provide them with opportunities to obtain recognition and accolades, college scholarships, and the numerous other long-term benefits that result from participating and competing in athletic endeavors. The bill makes a Legislative finding that promoting the equality of athletic opportunity is an important state interest and that requiring the designation of separate sex-specific athletic teams or sports is necessary to promote such equality.

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[55] World Athletics, *World Athletics Eligibility Regulations for Transgender Athletes* (2019), *available at* http://www.athletics.org.tw/Upload/Web_Page/WA/Eligibility%20Regulations%20for%20Transgender%20Athletes,%20.pdf (last visited Mar. 27, 2021).

[56] Those who transition from female to male are eligible to compete in the male category without restriction. International Olympic Committee, *IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism* (2015), *available at* https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf (last visited Mar. 26, 2021).

[57] Roberts T.A., Smalley J., Ahrendt D., *Effect of gender affirming hormones on athletic performance in transwomen and transmen: implications for sporting organisations and legislators*. *British Journal of Sports Medicine* (2020), *available at* https://bjsm.bmj.com/content/early/2020/11/06/bjsports-2020-102329 (last visited Mar. 26, 2021).

[58] *Id.*

[59] *Supra* note 56.

[60] International Olympic Committee, *IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism* (2015), *available at* https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf (last visited Mar. 26, 2021).

The bill provides a pathway for transgender females to participate on female teams while also protecting competition for female athletes. Specifically, the bill:

- Requires interscholastic, intercollegiate, intramural, or club athletic teams that are sponsored by a public school or public postsecondary institution, or any school or institution whose students or teams compete against a public school or public postsecondary institution, to be designated as one of the following based on the biological sex of the team members:
  - Males, men, or boys;
  - Females, women, or girls; or
  - Coed or mixed, including both males and females.
- Prohibits athletic teams or sports designated for females to be open to students of the male sex.
- Specifies that persons who transition from male to female are eligible to compete in the female category if the student has declared a female gender identity to her school or institution and meets both of the following conditions:
  - The student demonstrates that her total testosterone level in serum has been below 10 nanomoles per liter (nmol/L) for at least 12 months before her first competition and monthly throughout the period of desired eligibility; and
  - The student's total testosterone level remains below 10 nmol/L throughout the period of desired eligibility.

If the student does not meet both conditions the student must be suspended from female competition for 12 months.

The bill requires the Board of Governors to adopt regulations and the State Board of Education to adopt rules regarding the receipt and timely resolution of disputes by schools and institutions relating to provisions in the bill.

The bill provides protections for educational institutions by prohibiting a governmental entity, a licensing or accrediting organization, or an athletic association or organization from entertaining a complaint, opening an investigation, or taking any other adverse action against any school or public postsecondary institution in Florida for maintaining separate athletic teams or sports for female students.

The bill also provides private causes of action to any student who is deprived of an athletic opportunity, or to a school or institution that suffers harm, as a result of a violation of the bill's provisions and to a student who is subject to retaliation by a school or athletic association for reporting a violation. All such civil actions must be initiated within two years after the alleged harm occurred.

The bill provides an effective date of 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:

Classifications based on transgender status are subject to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment.[61] The Equal Protection Clause does not require courts to disregard the physiological differences between men and women.[62]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact of the bill is indeterminate. School districts, postsecondary institutions, the State Board of Education, and the Board of Governors may incur costs to establish and administer transgender policies required by the Act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[61] Amend. XIV, U.S. Const. *See also Hecox v. Little*, 479 F. Supp. 3d 930, 975 (D. Idaho 2020) citing *Karnoski v. Trump*, 926 F.3d 1180, 1201 (9th Cir. 2019).
[62] *Hecox v. Little*, 479 F. Supp. 3d 930, 976 (D. Idaho 2020) (citing *Michael M. v. Superior Court of Sonoma County*, 450 U.S. 464, 481 (1981).

VIII. Statutes Affected:

This bill creates section 1006.205 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.

905484

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 1006.205, Florida Statutes, is created to read:

1006.205 Fairness in Women's Sports Act.—

(1) SHORT TITLE.—This section may be cited as the "Fairness in Women's Sports Act."

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to maintain opportunities for female athletes to demonstrate

905484

their skill, strength, and athletic abilities while also providing them with opportunities to obtain recognition and accolades, college scholarships, and the numerous other long-term benefits that result from success in athletic endeavors and to promote sex equality by requiring the designation of separate sex-specific athletic teams or sports.

(3) DESIGNATION OF ATHLETIC TEAMS OR SPORTS.—

(a) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public, primary or secondary school, a public postsecondary institution, or any school or institution whose students or teams compete against a public school or public postsecondary institution shall be expressly designated as one of the following based on biological sex:

1. Males, men, or boys;

2. Females, women, or girls; or

3. Coed or mixed.

(b) Athletic teams or sports designated for females, women, or girls may not be open to students of the male sex.

(c) The State Board of Education shall adopt rules regarding the receipt and timely resolution of disputes by schools and institutions consistent with this subsection.

(4) PROTECTION FOR EDUCATIONAL INSTITUTIONS.—A governmental entity, any licensing or accrediting organization, or any athletic association or organization may not entertain a complaint, open an investigation, or take any other adverse action against any school or public postsecondary institution for maintaining separate interscholastic, intercollegiate, intramural, or club athletic teams or sports for students of the

905484

female sex.

(5) CAUSE OF ACTION; CIVIL REMEDIES.—

(a) Any student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a violation of this section shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the school or public postsecondary institution.

(b) Any student who is subject to retaliation or other adverse action by a school, public postsecondary institution, or athletic association or organization as a result of reporting a violation of this section to an employee or representative of the school, institution, or athletic association or organization, or to any state or federal agency with oversight of schools or public postsecondary institutions in the state, shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the school, institution, or athletic association or organization.

(c) Any school or public postsecondary institution that suffers any direct or indirect harm as a result of a violation of this section shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the governmental entity, licensing or accrediting organization, or athletic association or organization.

(d) All civil actions brought under this section must be initiated within 2 years after the alleged harm occurred. Persons or organizations who prevail on a claim brought under this section shall be entitled to monetary damages, including for any psychological, emotional, or physical harm suffered,

905484

reasonable attorney fees and costs, and any other appropriate relief.

Section 2. 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 sex-specific student athletic teams or sports; creating s. 1006.205, F.S.; providing a short title; providing legislative intent; requiring that certain athletic teams or sports sponsored by certain educational institutions be designated on the basis of students' biological sex; prohibiting athletic teams or sports designated for female students to be open to male students; requiring the State Board of Education to adopt rules regarding the resolution of such disputes; providing protections for educational institutions from certain adverse actions taken by a governmental entity, any licensing or accrediting organization, or any athletic association or organization; providing civil remedies for students and educational institutions; providing a statute of limitation; providing for damages; providing an effective date.

834330

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Book) recommended the following:

Senate Amendment to Amendment (905484)

Delete lines 19 - 25
and insert:
(a) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a secondary school or postsecondary educational institution, or any secondary school or educational institution whose students or teams compete against a public school or public secondary or postsecondary educational institution must be expressly designated as one of the following, based on the biological sex

834330

of the team members:

708024

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Book) recommended the following:

Senate Amendment to Amendment (905484) (with title amendment)

Delete lines 20 - 33

and insert:

athletic teams or sports that are sponsored by a secondary school or postsecondary institution must be expressly designated as one of the following based on biological sex:

1. Males, men, or boys;

2. Females, women, or girls; or

3. Coed or mixed.

708024

(b) Athletic teams or sports designated for females, women, or girls may not be open to students of the male sex.

(c) Middle school students who transition from their assigned sex at birth are eligible to compete on an athletic team consistent with their respective gender identity.

(d) Secondary school students who transition from their assigned sex at birth are eligible to compete on an athletic team consistent with their respective gender identity in accordance with the Bylaws of the Florida High School Athletic Association, Inc., 2019-20 Edition, regarding gender identity participation.

(e) Postsecondary students who transition from their assigned sex at birth are eligible to compete on an athletic team consistent with their respective gender identity in accordance with the policy stated in National Collegiate Athletic Association Inclusion of Transgender Student-Athletes, August 2011 Edition.

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

And the title is amended as follows:

Delete lines 81 - 88

and insert:

short title; providing legislative intent; authorizing students who transition from their assigned sex at birth to compete on an athletic team consistent with their respective gender identity under certain conditions; providing protections for

791156

LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Farmer) recommended the following:

Senate Amendment to Amendment (905484) (with title amendment)

Between lines 71 and 72

insert:

Section 2. This act may not take effect until it is reviewed and approved by the Office for Civil Rights within the United States Department of Education for compliance with Title IX of the Education Amendments of 1972, 20 U.S.C. s. 1681 et seq.


791156

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 94
and insert:
limitation; providing for damages; prohibiting the act from taking effect until reviewed and approved by the Office for Civil Rights within the United States Department of Education for compliance with a specified federal law; providing an

726032

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Book) recommended the following:

Senate Amendment to Amendment (905484) (with title amendment)

Between lines 71 and 72

insert:

(6) APPLICABILITY.—This section does not apply to students who participate, on or before July 1, 2021, in interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public primary or secondary school, a public postsecondary educational institution, or any school or institution whose students or teams compete against a public

726032

primary or secondary school or public postsecondary educational institution.

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

And the title is amended as follows:

Delete line 94

and insert:

limitation; providing for damages; providing applicability; providing an

352320

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Powell) recommended the following:

Senate Amendment to Amendment (905484) (with title amendment)

Between lines 71 and 72

insert:

(6) PROHIBITION ON THE EXPENDITURE OF PUBLIC FUNDS.—Public funds may not be expended for the purpose of defending this section against any constitutional challenge or any challenge brought under Title IX of the Education Amendments of 1972, 20 U.S.C. s. 1681 et seq., or any other provision of federal law.

352320

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 94
and insert:
limitation; providing for damages; prohibiting the expenditure of public funds for the purpose of defending against specified legal challenges; providing an

688590

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Book) recommended the following:

Senate Amendment

Delete lines 106 - 112
and insert:
(a) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a secondary school or postsecondary institution, or any secondary school or institution whose students or teams compete against a public school or public secondary or postsecondary institution must be expressly designated as one of the following based on the biological sex of team members:

407712

LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Book) recommended the following:

Senate Amendment (with title amendment)

Between lines 176 and 177

insert:

(6) APPLICABILITY.—This section does not apply to students who participate, on or before July 1, 2021, in interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public primary or secondary school, a public postsecondary institution, or any school or institution whose students or teams compete against a public primary or secondary school or public postsecondary institution.



407712

12

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

14 And the title is amended as follows:

15 Between lines 23 and 24

16 insert:

17 providing applicability;

315338

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with title amendment)

Between lines 176 and 177
insert:
Section 2. This act may not take effect until it is reviewed and approved by the Office for Civil Rights within the United States Department of Education for compliance with Title IX of the Education Amendments of 1972, 20 U.S.C. s. 1681 et seq.

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

315338

And the title is amended as follows:

Between lines 23 and 24

insert:

prohibiting the act from taking effect until reviewed and approved by the Office for Civil Rights within the United States Department of Education for compliance with a specified federal law;

746008

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Powell) recommended the following:

Senate Amendment (with title amendment)

Between lines 176 and 177

insert:

(6) PROHIBITION ON THE EXPENDITURE OF PUBLIC FUNDS.—Public funds may not be expended for the purpose of defending this section against any constitutional challenge or any challenge brought under Title IX of the Education Amendments of 1972, 20 U.S.C. s. 1681 et seq., or any other provision of federal law.

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

746008

And the title is amended as follows:

Between lines 23 and 24

insert:

prohibiting the expenditure of public funds for the purpose of defending against specified legal challenges;

510910

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Book) recommended the following:

Senate Amendment

In title, delete lines 43 - 47.

By Senator Stargel

22-01360A-21 20212012__

A bill to be entitled

An act relating to promoting equality of athletic opportunity; creating s. 1006.205, F.S.; providing a short title; providing legislative intent and findings; requiring that certain athletic teams or sports sponsored by certain educational institutions be designated on the basis of students' biological sex; prohibiting athletic teams or sports designated for female students from being open to male students; specifying conditions under which persons who transition from male to female are eligible to compete in the female category; requiring a student that fails to comply with certain conditions to be suspended from female competition for 12 months; requiring the Board of Governors of the State University System to adopt regulations and the State Board of Education to adopt rules regarding the resolution of disputes; providing protections for educational institutions from certain adverse actions taken by a governmental entity, any licensing or accrediting organization, or any athletic association or organization; providing civil remedies for students and educational institutions; providing a statute of limitation; providing for damages; providing an effective date.

WHEREAS, the United States Supreme Court recognized in United States v. Virginia, 518 U.S. 515 (1996), that there are inherent differences between men and women and these differences remain cause for celebration, but not for denigration of the

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

22-01360A-21 20212012__

members of either sex for artificial constraints on an individual's opportunity, and

WHEREAS, the Supreme Court recognized that sex classifications may be used to compensate women for particular economic disabilities they have suffered, to promote equal employment opportunity, and to advance full development of the talent and capacities of our nation's people, and

WHEREAS, one area where sex classifications allow for the full development of the talent and capacities of our nation's people is in the context of sports and athletics, and

WHEREAS, the Olympic Games are considered the world's foremost sporting competitions in which thousands of male and female athletes from more than 200 nations participate, and

WHEREAS, the biological differences between females and males, especially as it relates to natural levels of testosterone, explain the male and female secondary sex characteristics, including physical strength, speed, and endurance, and

WHEREAS, after consulting with hundreds of athletes, doctors, and human rights experts, in November 2015, the International Olympic Committee issued guidelines specifying that an athlete who has transitioned from male to female is eligible to compete if she demonstrates that her total testosterone level in serum has been below 10 nmol/L for at least 12 months before her first competition, with the requirement for any longer period to be based on a confidential case-by-case evaluation considering whether 12 months is a sufficient length of time to minimize any advantage in women's competition, and

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WHEREAS, the athlete's total testosterone level in serum must remain below 10 nmol/L throughout the period of desired eligibility to compete in the female category, and

WHEREAS, these guidelines remain in effect and have successfully led to parity between athletes who have transitioned from male to female and cisgender female athletes, and

WHEREAS, the use of cross-sex hormone therapy is increasing nationwide and in this state, and

WHEREAS, the number of transgender athletes is also increasing in this state, and

WHEREAS, athletes who have transitioned from male to female generally have higher levels of testosterone and may excel in physical strength, speed, and endurance in comparison to cisgender females, and

WHEREAS, the increase in athletes who have transitioned from male to female has and will continue to displace cisgender female athletes in this state and prevent them from excelling in athletic competitions, and

WHEREAS, transgender athletes should compete against athletes with similar abilities, and

WHEREAS, this act, which requires the designation of separate sex-specific athletic teams, is necessary to redress past discrimination against female athletes and to avoid jeopardizing the equality of athletic opportunity in this state, NOW, THEREFORE,

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

Section 1. Section 1006.205, Florida Statutes, is created to read:

1006.205 Promoting Equality of Athletic Opportunity Act.—

(1) SHORT TITLE.—This section may be cited as the "Promoting Equality of Athletic Opportunity Act."

(2) LEGISLATIVE INTENT AND FINDINGS.—

(a) It is the intent of the Legislature to provide opportunities for female athletes to demonstrate their strength, skills, and athletic abilities and to provide them with opportunities to obtain recognition and accolades, college scholarships, and the numerous other long-term benefits that result from participating and competing in athletic endeavors.

(b) The Legislature finds that promoting the equality of athletic opportunity is an important state interest. The Legislature finds that requiring the designation of separate sex-specific athletic teams or sports is necessary to promote equality of athletic opportunity.

(3) DESIGNATION OF ATHLETIC TEAMS OR SPORTS.—

(a) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by a public primary or secondary school, a public postsecondary institution, or any school or institution whose students or teams compete against a public school or public postsecondary institution must be expressly designated as one of the following based on the biological sex of team members:

1. Males, men, or boys;

2. Females, women, or girls; or

3. Coed or mixed, including both males and females.

(b) Athletic teams or sports designated for females, women,

or girls may not be open to students of the male sex.

(c) Persons who transition from male to female are eligible to compete in the female category if all of the following conditions are met:

1. The student has declared a female gender identity to her school or institution.

2. The student demonstrates that her total testosterone level in serum has been below 10 nmol/L for at least 12 months before her first competition and monthly throughout the period of desired eligibility to compete in the female category.

3. The student's total testosterone level in serum must remain below 10 nmol/L throughout the period of desired eligibility to compete in the female category.

A student that fails to comply with the requirements of subparagraphs 2. or 3. must be suspended from female competition for 12 months.

(d) The Board of Governors of the State University System shall adopt regulations, and the State Board of Education shall adopt rules, regarding the receipt and timely resolution of disputes by schools and institutions, consistent with this subsection.

(4) PROTECTION FOR EDUCATIONAL INSTITUTIONS.—A governmental entity, licensing or accrediting organization, or an athletic association or organization may not entertain a complaint, open an investigation, or take any other adverse action against any school or public postsecondary institution in this state for maintaining separate interscholastic, intercollegiate, intramural, or club athletic teams or sports for students of the

female sex.

(5) CAUSE OF ACTION; CIVIL REMEDIES.—

(a) Any student who is deprived of an athletic opportunity or suffers any direct or indirect harm as a result of a violation of this section has a private cause of action for injunctive relief, damages, and any other relief available under law against the school or public postsecondary institution.

(b) Any student who is subject to retaliation or other adverse action by a school, a public postsecondary institution, or an athletic association or organization as a result of reporting a violation of this section to an employee or a representative of the school, institution, or athletic association or organization, or to any state or federal agency with oversight of schools or public postsecondary institutions in this state, has a private cause of action for injunctive relief, damages, and any other relief available under law against the school, institution, or athletic association or organization.

(c) Any public school or public postsecondary institution that suffers any direct or indirect harm as a result of a violation of this section shall have a private cause of action for injunctive relief, damages, and any other relief available under law against the governmental entity, licensing or accrediting organization, or athletic association or organization.

(d) A civil action brought under this section must be initiated within 2 years after the alleged harm occurred. Persons or organizations who prevail on a claim brought under this section are entitled to monetary damages, including for any

psychological, emotional, or physical harm suffered, reasonable attorney fees and costs, and any other appropriate relief.

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

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

Continuation of the published agenda for Friday, April 16, 2021, if necessary—

The bills were completed at the Rules Committee, April 16, 2021 meeting.

CourtSmart Tag Report

Room: KB 412 **Case No.:** - **Type:**
Caption: Senate Rules Committee **Judge:**

Started: 4/20/2021 8:35:08 AM
Ends: 4/20/2021 4:27:28 PM **Length: 07:52:21**

8:35:06 AM Meeting is called to order
8:35:12 AM Roll call
8:35:15 AM Quorum is present
8:35:46 AM Chair Passidomo gives instructions to the public at the civic Center
8:36:57 AM CS/CS/SB90 Election Administration by Senator Baxley was in debate at the close of last meeting. Debate will now resume.
8:37:41 AM Senator Gibson speaks to the record for constituents to confirm she did debate in the last meeting.
8:38:02 AM Chair Passidomo confirms that many of the senators debated at last meeting
8:38:26 AM Senator Farmer resumes his debate from last meeting
8:39:25 AM Leader Farmer comments regarding how last meeting ended
8:47:11 AM Chair Passidomo clarifies that the meeting last week was adjourned by rule.
8:48:26 AM Senator Brandes speaks in debate
8:49:04 AM Senator Baxley closes on the bill
8:51:12 AM Roll Call CS/CS/CS/SB90 is reported favorably
8:52:14 AM SB 2012 Promoting Equality of Athletic Opportunity by Senator Stargel moves to TP this bill
8:52:32 AM Motion adopted without objection to temporarily postpone SB 2012
8:52:45 AM CS/SB1488 Public Records/ Members of the Legislature by Senator Stargel is explained
8:53:13 AM No questions or public appearance
8:54:12 AM No debate
8:54:17 AM Senator Stargel waives close
8:54:21 AM Roll call on CS/SB1488 is reported favorably
8:55:02 AM CS/SB 654 Public Records/Department of Military Affairs by Senator Bradley is explained
8:55:57 AM Amendment 392722 is explained by Senator Bradley
8:56:09 AM No questions or public appearance or debate
8:56:12 AM Senator Bradley waives close
8:56:45 AM Amendment 392722 is adopted
8:56:56 AM Back on bill as amended
8:56:58 AM Senator Bradley waives close
8:56:58 AM No questions or public appearance or debate
8:57:11 AM Roll call on CS/CS/SB 654 is reported favorably
8:57:53 AM CS/CS/SB 844 Public Records by Senator Hooper is explained
8:59:15 AM Amendment 619874 by Senator Hooper is explained
8:59:55 AM No questions
9:00:46 AM Public appearance
9:00:57 AM Anthony DeMarco, Florida Bankers Association, speaks against the bill
9:02:09 AM Senator Hooper comments to Mr. DeMarco
9:02:50 AM Senator Hooper closes on the bill
9:03:01 AM Amendment 619874 is adopted
9:03:08 AM Back on the bill as amended
9:03:13 AM No public appearance
9:03:22 AM No debate
9:03:24 AM Senator Hooper waives close
9:03:29 AM Roll call on CS/CS/CS/SB 844 is reported favorably
9:04:11 AM CS/CS/SB 1194 Transportation by Senator Hooper is explained
9:04:26 AM Amendment 629784 by Senator Bracy is explained
9:04:58 AM No questions
9:05:52 AM No public appearance
9:06:05 AM No debate
9:06:12 AM Senator Hooper comments on amendment
9:06:21 AM Senator Bracy closes. Amendment 629784 is adopted
9:06:27 AM Back on the bill as amended
9:06:32 AM Questions

9:06:35 AM Senator Brandes requests Senator Hooper to review highlights of the bill
9:08:40 AM Discussion between Senator Hooper and Senator Brandes
9:09:03 AM Senator Brandes concludes
9:09:24 AM No public appearance, no debate. Senator Hooper waives close
9:09:46 AM Roll call on CS/CS/CS/SB 1194 is reported favorably
9:10:29 AM SB 7020 OGSR/County Tourism Promotion Agencies/Florida Tourism Industry Marketing Corporation by Senator Hooper is explained
9:11:02 AM No questions
9:11:09 AM No public appearance or debate
9:11:16 AM Senator Hooper waives close
9:11:21 AM Roll call vote on SB7020 is reported favorably
9:12:01 AM CS/CS/HB 259 Safety of Religious Institutions by Senator Gruters is explained
9:13:05 AM Amendment 706888 by Senator Thurston is explained
9:13:28 AM No questions.
9:13:30 AM Public appearance on amendment:
9:14:18 AM Rev Dr. Russell Meyer, Florida Council of Churches, speaks in support
9:14:47 AM Michael Sheedy, Florida Conference of Catholic Bishops, speaks in support
9:15:26 AM Angie Gallo, Florida Coalition to Prevent Gun Violence, waives in support
9:15:41 AM Debate on amendment
9:15:45 AM Senator Gruters comments on amendment
9:15:58 AM Senator Thurston closes on amendment
9:16:14 AM Amendment 706888 is not adopted
9:17:15 AM Back on bill
9:17:21 AM Questions: Senator Farmer with a question
9:18:13 AM Senator Gruters responds
9:18:30 AM Senator Farmer continues with questions
9:18:47 AM Senator Gruters responds
9:19:41 AM Senator Farmer and Senator Gruters in back and forth questions and answers
9:20:36 AM Senator Gruters explains allowances
9:21:20 AM Senator Farmer with additional question
9:21:39 AM Senator Gruters responds
9:22:17 AM Senator Farmer further in questions
9:22:31 AM Senator Gruters responds
9:22:59 AM Senator Farmer discusses conflict of laws
9:23:23 AM Senator Gruters responds
9:24:23 AM Senator Farmer with additional question
9:25:01 AM Senator Gruters responds
9:25:40 AM Senator Gibson with a question regarding time of day restrictions
9:26:00 AM Senator Gruters responds
9:26:17 AM Senator Gibson with additional question
9:26:47 AM Senator Gruters explains
9:27:22 AM Senator Gibson with additional question
9:27:54 AM Senator Gruters responds
9:28:24 AM Senator Gibson asks about needful notification
9:28:39 AM Senator Gruters responds
9:28:49 AM Senator Gibson asks question regarding attorneys
9:28:58 AM Senator Gibson inquires on parent notification
9:29:12 AM Senator Gruters answers
9:29:27 AM Senator Gruters elaborates
9:30:27 AM Senator Gibson continues comments
9:31:31 AM Senator Thurston with a question
9:32:05 AM Senator Gruters responds on guardianships
9:32:35 AM Senator Thurston with additional question- Senator Gruters discusses
9:33:36 AM Senator Thurston with additional question. Senator Gruters responds
9:34:28 AM Back and forth conversation regarding policy
9:36:44 AM Senator Gibson asks another question
9:37:19 AM Senator Gruters responds
9:37:29 AM Public appearance: Karen Woodall, FI Center for Fiscal and Economic Policy, is against
9:37:40 AM Lane Watkins, retired from Crestview, speaks in support
9:39:01 AM Jon Harris Maurer, Equality Florida, speaks in opposition
9:41:05 AM Angie Gallo, FL Coalition to Prevent Gun Violence, speaks in opposition
9:41:43 AM Carrie Boyd, SPLC Action Fund, speaks in opposition

9:42:20 AM Ida Eskamoni, FL Rising, speaks in opposition
9:43:22 AM Barbara DeVane, FL NOW, speaks in opposition
9:44:14 AM Rev Dr. Russell Meyers, Florida Council of Churches, speaks in opposition
9:46:41 AM Heidi Daniels, FL Citizens Alliance, speaks in support
9:48:40 AM Leighanne Boone, Tallahassee, speaks in opposition
9:48:58 AM Michael Sheedy, FL Conference of Catholic Bishops, speaks in opposition
9:49:51 AM Terry Kemple, Protect Our Children Project, speaks in support
9:51:00 AM Lakey Love, LGBTQIA+ Community, speaks in opposition
9:52:19 AM Jonathon Webber speaks in opposition
9:54:20 AM Karen Jaroch, Tampa Hillsborough County, speaks in support
9:56:15 AM Ash Soto, Student, speaks in opposition
9:56:59 AM Debate
9:57:04 AM Senator Farmer in debate
10:06:55 AM Senator Gibson in debate
10:09:15 AM Senator Baxley in debate
10:10:54 AM Senator Thurston in debate
10:15:45 AM Senator Gruters closes on the bill
10:19:00 AM Roll call on CS/CS/HB 259 is reported favorably
10:20:02 AM CS/SB1120 Telephone Solicitation by Senator Gibson and Senator Gruters
10:21:17 AM Senator Gruters elaborates further on the bill
10:22:21 AM No questions
10:22:28 AM Public appearance: Rev Dr. Russell Meyer speaks in support
10:23:12 AM No debate, Senator Gibson waives close
10:23:24 AM Roll call on CS/SB 1120 is reported favorably
10:23:57 AM SB 1512 Space Florida Board of Directors by Senator Wright is explained
10:24:28 AM No questions, no public appearance, and no debate. Senator Wright waives close.
10:24:49 AM Roll call on SB1512 is reported favorably
10:25:25 AM SB 7010 OGSR/Space Florida by Senator Wright is explained
10:26:19 AM No questions, no public appearance, and no debate.
10:26:23 AM Senator Wright waives close.
10:26:29 AM SB 7010 is reported favorably
10:27:10 AM CS/CS/SB 1076 Public Works Projects by Senator Brodeur is explained
10:27:26 AM Amendments 579782 by Senator Brodeur is explained
10:27:52 AM Questions: Senator Thurston asks for difference between House and Senate bill
10:28:11 AM Senator Brodeur responds
10:28:54 AM Senator Thurston follow up question on Senate bill
10:29:06 AM Senator Brodeur responds
10:31:00 AM Senator Thurston asks follow up question
10:31:26 AM Senator Brodeur responds
10:32:03 AM Carol Bowen, ABC Florida, waives in support
10:32:09 AM Kari Hebrank, National Utility Contractors of FL, in support
10:32:33 AM No debate. Senator Brodeur waives close
10:32:53 AM Amendment 579782 is adopted
10:33:03 AM Amendment 688082 by Senator Brodeur explains then moves to withdraw
10:33:31 AM Back on the bill as amended
10:33:38 AM Questions: Senator Gibson question on local ordinances
10:34:08 AM Senator Brodeur explains
10:34:35 AM Senator Gibson with follow question
10:34:48 AM Senator Brodeur clarifies
10:35:07 AM Senator Gibson has follow up question
10:35:09 AM Senator Brodeur confirms
10:35:21 AM Senator Thurston with a question
10:35:42 AM Senator Brodeur responds
10:36:33 AM Senator Brodeur explains the purpose of the bill
10:37:47 AM Senator Gibson with a question
10:38:10 AM Senator Brodeur responds
10:39:32 AM Senator Gibson and Senator Brodeur further discuss application of bill
10:39:44 AM Senator Farmer with a question
10:40:10 AM Senator Brodeur clarifies
10:41:10 AM Senators Farmer and Brodeur in back and forth question and responses
10:43:31 AM Public appearance : Rev Dr. Russell Meyer, Florida Council of Churches, speaks against
10:46:22 AM James Ingle, Gainesville Electrician, speaks against

10:48:26 AM Lakey Love, Tallahassee Community Action Committee, waives against
10:48:51 AM Carol Bowen, Associate Builders and Contractor of Florida, in support
10:49:34 AM Kari Hebrank, Florida Home Builders, speaks in support
10:51:13 AM Rich Templin, AFLCIO, appreciate amendment but speaking against the bill
10:54:07 AM Senator Thurston with a question for Mr. Templin
10:54:37 AM Mr. Templin responds
10:55:48 AM Ida V. EsKamani, Florida Rising, speaks in opposition
10:57:16 AM Kim Ross, citizen, speaks in opposition
10:57:50 AM Leighanne Boone, speaking against
10:58:04 AM Carrie Fyte, oppose this bill
10:58:28 AM Cortez Maria Lewis, Dignity Power, speaks in opposition
10:58:57 AM Randal King, Florida Gulf Coast Building Trades Council Tampa, waives against
10:59:12 AM Mike Kell, Plant City Operating Engineers, waives against
10:59:49 AM Shawn McDonnell, Palm Harbor Electrician, speaks in opposition
11:01:00 AM Jim Junecko, Tampa Operating Engineer, speaking against bill
11:02:02 AM Ken Williams, speaking against bill
11:03:31 AM Zach Cassidy, Journeyman Electrician, speaks in opposition
11:04:27 AM Theresa King, Florida Building Trades, speaks in opposition
11:05:59 AM Senator Gibson in debate
11:07:25 AM Senator Thurston in debate
11:08:43 AM Senator Farmer in debate
11:12:33 AM Senator Brandes in debate
11:15:29 AM Senator Brodeur closes on the bill
11:16:45 AM Roll call on CS/CS/CS/SB 1076 is reported favorably
11:17:47 AM Gavel returned to Chair Passidomo
11:17:53 AM CS/SB 896 Renewable Natural Gas by Senator Brodeur is explained
11:18:18 AM Amendment 713270 is explained by Senator Gruters
11:18:50 AM No questions
11:18:55 AM Public appearance: Kim Ross, Rethink Energy Florida, speaks in opposition
11:20:07 AM Karen Woodall, FL Center for Fiscal and Economic Policy, is against
11:20:17 AM Leighanne Boone, ReThink Energy Action Fund, speaks in opposition
11:21:58 AM Ida V. Eskamani, FL Rising, speaking against amendment
11:22:32 AM Rev Dr. Russell Meyer, FL Council of Churches, speaks against
11:23:02 AM Jonas Walker, Cattle Rancher Walton County, in support
11:23:48 AM Jonathan Webber, FL Conservation Voters, is opposed
11:25:40 AM David Cullen, Sierra Club FL, with information against
11:27:04 AM Michelle Suarez, Orange County Human Rights Advocate, speaks against
11:28:30 AM Michelle Rutledge, Archer, is against
11:30:17 AM Jessica Lewis, Floridians Against Fracking, is against
11:31:39 AM Jeff Scala, FL Association of Counties, speaks in opposition
11:33:26 AM Senator Gibson in debate
11:34:56 AM Senator Gruters closes on the amendment
11:35:51 AM Amendment 713270 is adopted
11:35:57 AM Back on bill as amended
11:36:03 AM Public appearance: Dale Calhoun, FL Natural Gas Association, in support
11:36:26 AM Mike Cassel, Chesapeake Utilities, waives in support
11:36:37 AM David Cullen, Sierra Club,speaks in opposition
11:38:29 AM Michelle Rutledge, Archer, is against the bill
11:41:20 AM Jessica Lewis, is against
11:42:02 AM Jonathon Webber, FL Conservation Voters, opposes the bill
11:43:24 AM Ida V. Eskamani, opposes the bill as amended
11:43:54 AM Rev Dr. Russell Meyer, FL Council of Churches, is against
11:45:03 AM Jeff Scala speaks in opposition
11:45:25 AM Cortez Maria Lewis speaks in opposition
11:46:17 AM Senator Gruters in debate
11:46:49 AM Senator Farmer in debate
11:47:41 AM Senator Farmer raises point of order regarding germanity of Amendment 713270 just adopted
11:48:24 AM Senator Farmer believes the amendment to be out of order
11:48:48 AM Chair Passidomo will consider but amendment already adopted and point should have been raised at time of introduction.
11:49:15 AM Senator Farmer moves to reconsider vote by which amendment was adopted
11:49:42 AM Senator Brandes in debate comments on updated title of the bill

11:50:48 AM Chair Passidomo TPs the bill and will return to it
11:50:52 AM CS/CS/SB 1146 Florida Building Code by Senator Brodeur
11:50:55 AM Amendment 485418 by Senator Brodeur is explained
11:51:07 AM AA954366 to by Senator Brodeur is explained
11:51:39 AM Senator Powell with a question
11:51:48 AM Senator Brodeur explains
11:51:56 AM Senator Powell has follow up question
11:52:15 AM Senator Brodeur responds
11:52:22 AM No public appearance
11:52:31 AM Senator Brodeur waives close on amendment to amendment
11:52:54 AM No objection, the amendment to amendment 954366 is adopted
11:53:09 AM Back on amendment 485418 as amended
11:53:16 AM No public appearance
11:53:34 AM Senator Farmer discusses amendment
11:54:20 AM Senator Farmer with a question
11:54:42 AM Senate Brodeur answers
11:54:53 AM Senator Brodeur explains the impact of design standards
11:55:15 AM Senator Farmer with follow up question and Senator Brodeur responds
11:56:00 AM Senator Powell with a question
11:56:19 AM Senator Brodeur answers
11:56:37 AM Senator Powell with questions
11:56:51 AM Senator Brodeur responds
11:58:39 AM No debate. No objection - amendment 485418 is adopted
11:58:53 AM Amendment 283658 by Senator Brodeur is explained
11:59:16 AM No public appearance
11:59:24 AM No debate. No objections - amendment 283658 is adopted
11:59:40 AM Amendment 435284 by Senator Brodeur is explained
11:59:54 AM Public appearance: Kari Hebrank, Florida Home Builders speaks in support
12:00:18 PM No debate. No objection - amendment 435284 is adopted
12:00:31 PM Amendment 970712 by Senator Brodeur is explained
12:00:45 PM No questions, no public appearance, no debate - amendment 970712 is adopted
12:01:11 PM Back on bill as amended
12:01:13 PM Kari Hebrank, Florida Home Builders, speaks in support
12:02:14 PM Jane West, 1000 Friends of Florida, waives in opposition
12:02:25 PM Senator Powell with a question
12:02:48 PM Senator Brodeur responds on code
12:03:00 PM Senator Powell has follow up
12:03:31 PM Senator Brodeur responds
12:03:36 PM Public appearance
12:04:15 PM Kari Hebrank, Florida Home Builders, in support
12:04:25 PM No debate. Senator Brodeur waives close
12:04:44 PM Roll call CS/CS/CS/SB1146 is reported favorably
12:05:38 PM Back to CS/SB 896. Senator Farmer had moved to reconsider the vote by which barcode 713270 had been adopted.
12:05:48 PM Chair explains that motion is debatable
12:06:12 PM Senator Farmer closes on the motion to reconsider
12:07:03 PM Motion fails
12:08:08 PM Back on bill CS/SB896 as amended
12:08:21 PM Debate:
12:08:41 PM Senator Thurston seeks to ask a question
12:09:17 PM Senator Brodeur responds
12:10:37 PM Senator Thurston with additional question for sponsor of amendment
12:10:57 PM Chair Passidomo asks Senator Gruters to respond to question in debate
12:11:19 PM Senator Gruters in debate
12:11:37 PM Chair Passidomo asks if that concludes his debate
12:11:52 PM Senator Powell in debate
12:13:28 PM Senator Farmer in debate
12:15:25 PM Senator Brodeur closes on the bill
12:15:49 PM Roll call CS/CS/SB896 is reported favorably
12:16:59 PM SB1294 Cottage Food Operations by Senator Brodeur
12:17:20 PM Amendment 849448 by Senator Brodeur is explained
12:17:40 PM No public appearance:

12:18:07 PM No debate. Senator Brodeur waives close.
12:18:10 PM Amendment 849448 is adopted
12:18:15 PM Back on bill as amended
12:18:19 PM Diego Echeverri, Americans for Prosperity, in support
12:18:37 PM No debate
12:18:42 PM Roll call on SB1294 is reported favorably
12:19:26 PM SB7006 OGSR/Trade Secrets/Department of Environment Protection by Senator Brodeur is explained
12:19:39 PM No questions, no public appearance, no debate. Senator Brodeur waives close
12:19:56 PM Roll call vote on SB7006 is reported favorably
12:20:48 PM CS/SB7008 OGSR/Trade Secrets/Department of Environmental Protection by Senator Brodeur is explained
12:20:54 PM No questions, no public appearance, no debate. Senator Brodeur waives close
12:21:05 PM Roll call vote on CS/SB7008 is reported favorably
12:22:04 PM Chair Passidomo comments on progression of bills
12:22:17 PM CS/SB 1704 Public Records/ County Supervisor of Elections by Senator Broxson is explained
12:23:01 PM No questions, no public appearance, no debate. Senator Broxson waives close
12:23:16 PM Roll call CS/SB 1704 is reported favorably
12:23:58 PM SB 7038 OGSR/Division of Fruit and Vegetables/Trade Secrets by Senator Rouson is explained
12:24:10 PM No questions, no public appearance, no debate. Senator Rouson waives close
12:24:37 PM Roll call vote on SB 7038 is reported favorably
12:25:15 PM SB 7040 OGSR/Department of Agriculture and Consumer Services is explained by Senator Rouson
12:25:36 PM No questions, no public appearance, no debate. Senator Rouson waives close
12:25:56 PM Roll call vote on SB 7040 is reported favorably
12:26:32 PM SB7042 OGSR/Trade Secret/Department of Citrus by Senator Rouson is explained
12:26:48 PM No questions, no public appearance, no debate. Senator Rouson waives close
12:27:06 PM Roll call on SB 7042 is reported favorably
12:27:46 PM SB 7044 OGSR/Noncommodity Advertising and Promotional Program Participants/Department of Citrus by Senator Rouson is explained
12:28:06 PM No questions, no public appearance, no debate.
12:28:10 PM Senator Rouson waives close
12:28:36 PM Roll call on SB 7044 is reported favorably
12:29:14 PM SB 7046 OGSR/Trade Secret/Marketing Order/Department of Citrus by Senator Rouson is explained
12:29:48 PM No questions, no public appearance, no debate.
12:29:50 PM Senator Rouson waives close
12:30:48 PM Roll call on SB 7046 is reported favorably
12:31:27 PM SB 7048 OGSR/Manufacturer's Formula/Department of Agriculture and Consumer Services is by Senator Rouson is explained
12:31:46 PM No questions, no public appearance, no debate.
12:31:49 PM Senator Rouson waives close
12:32:16 PM Roll call on SB 7048 is reported favorably
12:32:54 PM SB 7058 OGSR/Dairy Industry Business' Trade Secrets by Senator Rouson is explained
12:33:16 PM No questions, no public appearance, no debate. Senator Rouson waives close
12:33:34 PM Roll call on SB 7058 is reported favorably
12:34:17 PM Chair Passidomo calls for 30 minute break; Motion adopted to TP both SB 2012 and CS/SB 1014 for rest of the day.
12:35:02 PM Senator Farmer makes a comment.
12:35:16 PM Senators move to record votes be shown in the record, Senator Book: Yes 1512, 7010, 1294, 896; No on 1076, 1146.
12:35:38 PM Senator Gibson -NO on SB 1146
12:35:45 PM Senator Bracy: NO SB1076, SB896, SB1146; YEA on SB1294, SB7006
12:36:09 PM Senator Albritton -YEA on Tabs 19, 41, 42, 34, 51, 52, 53, 54, 55, 56.
12:36:34 PM Chair announced break to be back at 1:05pm.
12:36:35 PM Recording Paused for committee break
1:10:17 PM Recording Resumed.
1:11:21 PM Meeting called to order.
1:11:25 PM HB 1055 Public Records/Trade Secrets by Senator Boyd
1:11:47 PM Senator Baxley explains late filed amendment 418456
1:12:16 PM No questions, no public appearance, no debate. Senator Baxley waives close
1:12:47 PM Amendment is adopted
1:12:56 PM Back on bill as amended
1:13:02 PM No questions, no public appearance, no debate. Senator Boyd waives close
1:13:15 PM Roll call on CS//CS/HB 1055 is reported favorably

1:13:55 PM CS/SB 1408 Dept of Financial services by Senator Burgess is explained
1:14:12 PM Amendment 369026 is explained by Senator Farmer
1:14:56 PM Public appearance: Meridith Stanfield, Dept of Financial Services, waives against amendment
1:15:55 PM BG Murphy, Florida Association of Insurance Agents, waives against the amendment.
1:16:10 PM Senator Brandes in debate
1:18:01 PM Senator Burgess comments on the amendment
1:18:13 PM Senator Farmer closes on amendment
1:18:44 PM Amendment is 369026 not adopted
1:19:05 PM Back on the bill
1:19:11 PM Public appearance: Chief Ray Colburn, Florida Fire Chiefs' Association, waives in support
1:19:21 PM Timothy J. Meenan, NAIFA-FL, waives in support
1:19:30 PM BG Murphy, Florida Association of Insurance Agents, waives in support of bill
1:19:34 PM Meredith Stanfield, Dept of Financial Services, waives in support of bill
1:19:47 PM No debate. Senator Burgess waives close
1:19:54 PM Roll call on CS/SB 1408 is reported favorably
1:20:32 PM SB 1324 Digital Driver Licenses and Identification Cards by Senator Harrell is explained
1:21:11 PM Amendment 744864 is explained by Senator Harrell
1:22:12 PM No questions on technical amendment
1:22:35 PM Senator Gibson with a question
1:23:02 PM Senator Harrell responds
1:23:11 PM No public appearance, no debate. Senator Harrell waives close
1:23:27 PM Amendment #744864 is adopted
1:23:35 PM Amendment 384118 by Senator Harrell is taken up. Senator Harrell withdraws amendment
1:23:49 PM Amendment 564816 late filed by Senator Harrell is explained
1:24:21 PM Senator Thurston raises a point as to germanity of the amendment
1:25:37 PM Chair Passidomo TP's bill for now
1:25:49 PM CS/SB 1326 Public Records/Department of Highway Safety and Motor Vehicles by Senator Harrell is explained
1:26:35 PM No questions, no public appearance, no debate. Senator Harrell waives close
1:26:52 PM Roll call vote on SB 1326 is reported favorably
1:27:41 PM Gavel is returned to Chair Passidomo from Vice Chair Garcia
1:28:00 PM Back on SB 1324. On review of the bill, point is not well taken; finding that it is germaine
1:28:15 PM Senator Thurston comments further
1:28:48 PM Chair Passidomo thanks for point made - back on the bill
1:28:56 PM Late-filed amendment to amendment 802498 by Senator Farmer is explained
1:30:03 PM Public appearance: Kelly Mallette, FL Association of Motorist Service Providers, in support of amendment 564816
1:32:01 PM Senator Farmer with question regarding MOU
1:32:33 PM Kelly Mallette responds
1:33:52 PM Senator Brandes with question
1:34:01 PM Kelly Mallette responds
1:34:06 PM Senator Brandes in debate
1:35:36 PM Chair Passidomo gives clarification
1:35:49 PM Senator Farmer in debate
1:36:03 PM Senator Brandes in debate
1:36:06 PM AA Senator Harrell comments on amendment
1:36:47 PM Senator Harrell discusses safeguards
1:38:33 PM Senator Farmer makes suggestion to TP or WD the amendment per the concerns
1:39:42 PM Senator Harrell declines
1:40:41 PM Senator Farmer moves to TP this bill
1:40:51 PM Motion is not adopted. Roll call vote on motion to TP this bill
1:42:12 PM Vote to TP the bill fails
1:42:20 PM Senator Farmer closes on his amendment
1:44:36 PM Amendment is not adopted
1:44:51 PM Back on Amendment 564816
1:44:56 PM Senator Brandes with a question
1:45:25 PM Senator Harrell responds
1:45:31 PM Senator Brandes asks question re Highway Safety
1:45:40 PM Senator Harrell responds
1:46:04 PM Senator Brandes with a follow up
1:46:39 PM Senator Thurston with a question
1:46:55 PM Senator Harrell responds

1:47:24 PM Senator Thurston with follow up question
1:47:33 PM Senator Harrell responds
1:47:42 PM Senator Thurston with a question
1:47:56 PM Senator Harrell responds regarding fee
1:48:50 PM Senator Brandes with a question
1:48:59 PM Senator Harrell responds
1:49:40 PM No public appearance.
1:49:42 PM Senator Brandes in debate
1:50:07 PM Senator Farmer in debate
1:50:47 PM Senator Bean in debate
1:50:56 PM Senator Harrell closes on amendment
1:51:38 PM Amendment 564816 is not adopted
1:51:52 PM Back on the bill
1:52:12 PM Senator Brandes in debate
1:52:56 PM Senator Harrell closes on bill
1:53:03 PM Roll call on CS/SB 1324 is reported favorably
1:54:08 PM SB 1884 Preemption of Firearms and Ammunition is explained by Senator Rodrigues
1:54:46 PM Public appearance:
1:55:46 PM Karen Woodall, FL Center for Fiscal and Economic Policy, waives against
1:55:57 PM Barbara DeVane, FL NOW, speaks in opposition
1:55:59 PM Lane Watkins, Retired Crestview, in support
1:57:06 PM Senator Farmer in debate
1:59:28 PM Senator Rodrigues closes.
2:00:14 PM Roll call on SB1884 is reported favorably
2:01:00 PM CS/SB 1274 Growth Management by Senator Perry is explained
2:01:29 PM Amendment 596852 by Senator Hutson is explained
2:01:44 PM No questions, public appearance, or debate. Amendment 596852 is adopted
2:02:34 PM Amendment 307734 by Senator Farmer is explained
2:03:21 PM Public appearance:
2:03:25 PM Jessica Lewis in support
2:03:57 PM Senator Brandes in debate
2:05:08 PM Senator Perry comments on amendment
2:05:17 PM Senator Farmer closes on amendment
2:05:37 PM Amendment is not adopted
2:05:57 PM Back on the bill
2:06:01 PM Public appearance: Jessica Lewis, Sierra Club in opposition
2:08:51 PM Jane West, 1000 Friends of FL - provide clarification support the amendment.
2:09:00 PM No debate.
2:09:55 PM Senator Perry waives close
2:10:04 PM Roll call on CS/SB 1274 is reported favorably
2:10:56 PM CS/SB 1876 Relief from Burdens on Real Property Rights by Senator Albritton is explained
2:12:12 PM Substitute Amendment 579552 by Senator Albritton is explained
2:13:11 PM No questions, public appearance, or debate. Senator Albritton waives close - the amendment is adopted
2:13:54 PM Amendment 228802 by Senator Albritton is explained
2:14:07 PM No questions, public appearance, or debate.
2:14:10 PM Senator Albritton waives close
2:14:32 PM Amendment 228802 is adopted
2:14:37 PM Back on bill as amended
2:14:41 PM Senator Powell with a question
2:14:56 PM Senator Albritton responds
2:15:21 PM Senator Powell has follow up on attorney fee- Senator Albritton answers
2:15:56 PM Senator Powell has follow up on public necessity- Senator Albritton answers
2:16:42 PM Brewster Bevis, Associated Industries of Florida, waives in support
2:17:04 PM David Cruz, FL League of Cities, speaks in opposition
2:18:06 PM Jane West, 1000 Friends of FL, oppose
2:19:10 PM David Cullen, Sierra Club FL, speaks in opposition
2:20:38 PM Kim Ross, Rethink Energy FL, speaks in opposition
2:21:44 PM Jessica Lewis, Against Fracking, in opposition
2:23:09 PM Ida Eskamani, FL Rising, in opposition
2:23:59 PM Senator Baxley in debate
2:25:27 PM Senator Albritton closes on bill
2:27:04 PM Roll call on CS/CS/SB 1876 is reported favorably

2:27:53 PM CS/SB 954 Attorney Compensation by Senator Bean is explained
2:28:31 PM Amendment 387788 by Senator Bean is explained
2:28:53 PM No questions, public appearance, debate. Senator Bean waives close
2:29:25 PM The amendment is adopted
2:29:29 PM Back on bill as amended
2:29:36 PM No questions, public appearance or debate
2:29:40 PM Senator Bean closes on the bill
2:30:14 PM Roll call on CS/CS/SB954 is reported favorably
2:31:20 PM CS/SB220 Public Records and Public Meetings by Senator Brandes is explained
2:31:34 PM Public appearance:
2:32:11 PM Kristin Crawford Whitaker, State University System of Florida, waives in support
2:32:15 PM Benjamin Serber, FSU Graduate Assistants United, waives against
2:32:26 PM Krystal Williams, Tallahassee is against
2:32:43 PM Dr. Karen Morian, United Faculty of FL, speaks in opposition
2:35:04 PM Vincenza Berardo, Tallahassee, waives against
2:35:35 PM Jeremy Bullian, Librarian, is against
2:36:22 PM Indrani Sindhuvalli, Professor, speaks in opposition
2:37:18 PM James Ingle, Electrician Gainesville, speaks in opposition
2:38:34 PM Rich Templin, FL AFL-CIO, in opposition
2:40:09 PM Senator Powell with a question for Rich Templin
2:40:43 PM Rich Templin answers
2:42:18 PM Steven Kirn, United Faculty of Florida Gainesville, speaks in oppostion
2:43:41 PM Lakey Love, Former Graduate Student from FSU, speaks in opposition
2:45:01 PM Rev Dr. Russell Meyer, Florida Council of Churches, speaks in opposition
2:46:19 PM Senator Baxley in debate
2:48:46 PM Senator Farmer with a question regarding public records - is it subject to a 2/3 vote
2:49:16 PM Chair Passidomo explains that is just on the floor
2:49:22 PM Senator Farmer in debate
2:51:00 PM Senator Brandes closes
2:53:47 PM Roll call on CS/SB 220 is reported favorably
2:54:53 PM CS/SB 1620 Autonomous Vehicles by Senator Brandes
2:55:03 PM Senator Brandes explains bill
2:56:10 PM Amendment 577314 late filed by Senator Brandes is explained
2:57:11 PM No questions
2:57:16 PM No debate
2:57:22 PM Senator Brandes waives close
2:57:27 PM Amendment 577314 is adopted
2:57:33 PM Back on bill as amended
2:57:36 PM No public appearance
2:57:45 PM No debate
2:57:48 PM Senator Brandes closes on bill
2:58:50 PM Roll call on CS/CS/SB1620 is reported favorably
3:00:01 PM CS/SB 506 Transparency in Government Spending by Senator Garcia
3:00:08 PM Senator Garcia explains bill
3:00:19 PM No questions
3:01:07 PM No debate
3:01:13 PM Senator Garcia waives close
3:01:19 PM Roll call on CS/SB506 is reported favorably
3:02:11 PM CS/SB 1922 Dissolution of Marriage by Senator Gruters
3:02:24 PM Senator Gruters explains the bill
3:03:13 PM CS/SB 1922 is discussed
3:04:10 PM Amendment 508836 Delete all, Senator Gruters TP's bill to next year
3:05:56 PM SB 7070 Impact of Covid-19 on Educational Institutions by Senator Gruters
3:06:07 PM Amendment 502390 Strike all explained by Senator Gruters
3:07:15 PM Amendment 959540 to the Delete-all by Senator Gruters is explained
3:08:30 PM No questions, public appearance, debate
3:08:35 PM Senator Gruters waive close
3:08:47 PM Amendment 959540 is adopted
3:08:55 PM AA487960 Senator Thurston explains. Senator Thurston withdraws the amendment
3:09:56 PM No questions, public appearance, or debate. Senator Gruters comments on amendment.
3:09:59 PM Senator Thurston withdraws the amendment
3:11:06 PM Amendment 269424 is explained by Senator Thurston

3:11:27 PM No questions, no public appearance
3:11:30 PM Senator Gruters comments on the amendment
3:12:11 PM Senator Thurston withdraws amendment
3:12:28 PM Back on Amendment 502390 by Senator Gruters. Stewart Brown, Independent Colleges & Universities of FL waives in support
3:13:03 PM Howard Bushman, for Students across the state - speaks in opposition
3:15:02 PM Debate on amendment
3:15:06 PM Amendment is adopted. Back on the bill as amended
3:15:17 PM Kristin Whitaker, State University System of Florida, waives in support
3:15:47 PM Oliver Gras-Peralta, Wellington Student, speaks in opposition
3:17:44 PM Valerie Marie Moore, Jacksonville, speaks in opposition
3:20:10 PM Howard Bushman, Attorney for Students, speaks in opposition
3:21:41 PM Bill Cotterall, Florida Justice Association, speaks in opposition
3:22:44 PM Senator Gibson in debate
3:24:07 PM Senator Farmer in debate
3:25:21 PM Senator Gruters closes
3:26:06 PM Roll call on CS/SB 7070 is reported favorably
3:27:07 PM CS/CS/SB 856 Express Preemption of Fuel Retailers and Related Transportation Infrastructure
3:27:47 PM Bill is explained by Senator Hutson
3:28:00 PM No questions
3:28:01 PM Jake Farmer, FL Retail Federation, waives in support
3:28:02 PM Eric Hamilton, American Petroleum Institute, waives in support
3:28:15 PM Brewster Bevis, Associated Industries of Florida, waives in support
3:28:18 PM Robert Fingar, Florida Petroleum Marketers Association, speaking in support
3:28:58 PM Dave Cullen, Sierra Club, in opposition
3:29:44 PM Jessica Lewis, Floridians Against Fracking, is opposed
3:31:11 PM Senator Hutson waives close
3:31:20 PM Roll call CS SB 856 is reported favorably
3:32:08 PM CS/CS/SB 1128 Preemption Over Restriction of Utility Services by Senator Hutson
3:32:29 PM Amendment 587846 by Senator Hutson is explained
3:32:56 PM No questions, public appearance, or debate
3:32:59 PM Senator Hutson waives close
3:33:13 PM Amendment is adopted
3:33:20 PM Back on the bill
3:33:22 PM Public appearance
3:33:27 PM Rev Dr. Russell Meyer, Florida Council of Churches, speaks in opposition
3:35:33 PM Karen Woodall, FL Center for Fiscal and Economic Policy, waives against
3:35:42 PM Brewster Bevis, Associated Industries of Florida, waives in support
3:35:53 PM Lakey Love, Tallahassee Community Action Committee, waives against
3:36:08 PM Diego Echeverri, Americans for Prosperity, waives in support
3:36:37 PM Dave Cullen, Sierra Club, speaks in opposition
3:38:02 PM Leighanne Boone, Action Fund, speaks in opposition
3:38:41 PM Mike Cassel, Chesapeake Utilities Corporation, in support
3:38:56 PM Dale Calhoun, FL Natural Gas and Propane Association, speaks in support
3:39:25 PM Jonathan Webber, FL Conservation Voters, speaks in opposition
3:40:56 PM Kim Ross, Rethink Energy Florida, speaks in opposition
3:42:51 PM Ida V Eskamani, Florida Rising, speaks in opposition
3:44:12 PM Gianna Trocino, CLEO Institute, speaks in opposition
3:44:53 PM Jessica Lewis in opposition
3:46:46 PM Senator Gibson in debate
3:48:37 PM Senator Farmer in debate
3:50:33 PM Senator Hutson closes on the bill
3:52:12 PM Roll call CS/CS/CS/SB 1128 is reported favorably
3:53:21 PM CS/SB 410 Material Harmful to Minors by Senator Rodriguez is explained
3:54:16 PM Senator Powell asks question about parents
3:54:27 PM Senator Rodriguez explains options
3:54:39 PM Public appearance: Marilyn Riddlebarger, Christian Family Coalition - Pinellas County, speaks in support
3:55:15 PM Debra Gunnoe, Navarre, speaks in support
3:56:49 PM Wink Daniel, Christian Coalition, speaks in support
3:57:32 PM Peggy Joseph, Lake County, speaks in support
3:58:27 PM Bev Kilmer, Marianna Freedom Speaks, speaks in support
4:00:26 PM Cynthia Sheckly, Christian Florida Coalition, speaks in support

4:02:36 PM Terry Kemple, Protect Our Children Project, speaks in support
4:03:59 PM Heidi Daniels, FL Citizens Alliance, speaks in support
4:05:47 PM Anthony Verdugo, Miami Christian Family Coalition Florida, speaks in support
4:07:34 PM Armando V Pomar, Miami Beach former educator, speaks in support
4:08:16 PM Unnamed speaker, in support
4:08:58 PM Israel Hall, The Villages Christian Family Coalition, speaks in support
4:09:40 PM Marcia Jewell, Christian Family Coalition, speaks in support
4:10:39 PM Lynette Gee, The Villages Christian Coalition - Sumter County, speaks in support
4:11:07 PM Senator Rodriguez closes
4:11:42 PM Roll call on CS/SB 410
4:12:18 PM CS/SB 410 is reported favorably
4:12:24 PM SB 7022 OGSR/Proprietary Confidential Business Information by Regulated Industries
4:12:33 PM Senator Hutson explains the bill
4:12:52 PM No questions, public appearance, or debate
4:12:54 PM Senator Hutson waives close
4:13:38 PM Roll call on SB7022 is reported favorably
4:14:19 PM SB 7024 OGSR/Agency Trade Secrets by Regulated Industries is explained
4:14:34 PM No questions, public appearance, or debate. Senator Hutson waives close
4:15:02 PM Roll call on SB 7024 is reported favorably
4:15:53 PM SB 7028 OGSR/Data Processing Software by Regulated Industries
4:15:59 PM Senator Hutson explains the bill
4:16:08 PM No questions
4:16:29 PM No debate
4:16:36 PM Senator Hutson waives close
4:16:47 PM Roll call on SB 7028 is reported favorably
4:17:23 PM SB 7030 OGSR/Trade Secrets/Department of Business and Professional Regulation by Regulated Industries
4:17:29 PM Senator Hutson explains the bill
4:17:39 PM No questions
4:17:53 PM No debate
4:18:03 PM Senator Hutson waives close
4:18:07 PM Roll call on SB 7030 is reported favorably
4:18:50 PM SB 7032 OGSR/Prescription Drug Purchase Lists by Regulated Industries
4:18:55 PM Senator Hutson explains the bill
4:19:07 PM No questions
4:19:23 PM No debate
4:19:29 PM Senator Hutson waives close
4:19:33 PM Roll call on SB 7032 is reported favorably
4:20:10 PM SB 7034 OGSR/Trade Secrets/Department of Business and Professional Regulation by Regulated Industries
4:20:21 PM Senator Hutson explains the bill
4:20:33 PM No questions
4:20:49 PM No debate
4:21:01 PM Senator Hutson waives close
4:21:07 PM Roll call on SB 7034 is reported favorably
4:21:59 PM SB 7002 OGSR/Trade Secrets/Department of Health by Health Policy
4:22:16 PM Senator Diaz explains the bill
4:22:19 PM No questions
4:22:22 PM No debate
4:22:27 PM Senator Diaz waives close
4:22:33 PM Roll call on SB 7002 is reported favorably
4:23:26 PM TP 24, 12, 38, 32, 2, 9, 11, 8, 39, 5,
4:24:22 PM Senator votes to be recorded:
4:24:28 PM Senator Allbritton- yea on Tabs 3, 7, 33
4:24:48 PM Senator Bean- Yea on Tabs 3, 7, 33
4:24:57 PM Senator Bracey- YEA on Tabs 27, 33, 7, 45, 46; NO on Tabs 36, 3, 58, 6
4:25:22 PM Senator Powell- YEA 7058, 1055, 7022; NO on Tabs 1294
4:25:42 PM Senator Mayfield-YEA on Tabs 50, 40
4:26:05 PM Senator Baxley- Yea on SB1055
4:26:13 PM Senator Book - YEA on SB1055; NO on SB856
4:26:24 PM Senator Farmer- YEA on SB 7024; NO on SB1876
4:26:42 PM Senator Thurston- NO on Tab 6 SB 410

4:27:03 PM Motions adopted
4:27:09 PM Senator Farmer moves to adjourn
4:27:19 PM Meeting is adjourned