

SB 1020 by Bradley (CO-INTRODUCERS) Albritton, Hutson, Bracy; (Compare to H 00333) Hemp

SB 142 by Perry (CO-INTRODUCERS) Brandes; (Similar to CS/H 00127) Permit Fees

168484	A	S	RCS	IT, Brandes	Delete L.94 - 129:	03/07 11:14 AM
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SB 724 by Hooper; (Identical to H 00805) Residential Swimming Pool Safety

SB 796 by Gruters (CO-INTRODUCERS) Bracy; (Similar to H 00797) Public Utility Storm Protection Plans

352908	D	S	RCS	IT, Gruters	Delete everything after	03/07 01:39 PM
849624	AA	S	RCS	IT, Gruters	Delete L.69 - 70:	03/07 01:39 PM

SB 450 by Gibson (CO-INTRODUCERS) Bean; (Similar to CS/CS/H 00327) Public Meetings/Local Government Utility

110020	D	S	RCS	IT, Gibson	Delete everything after	03/07 10:38 AM
222594	AA	S	RCS	IT, Gibson	Delete L.31 - 64:	03/07 10:38 AM

SB 600 by Gibson (CO-INTRODUCERS) Bean; (Similar to CS/H 00591) Public Records/Meter-derived Data and Billing Information

908000	D	S	RCS	IT, Gibson	Delete everything after	03/07 11:17 AM
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CS/SB 76 by IS, Simpson (CO-INTRODUCERS) Passidomo, Hooper, Mayfield, Book, Rouson, Berman, Perry, Taddeo, Cruz; (Compare to H 00045) Driving While Distracted

200286	A	S	RCS	IT, Hutson	Delete L.50 - 73:	03/07 10:32 AM
452950	A	S	RCS	IT, Bracy	btw L.180 - 181:	03/07 10:32 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

INNOVATION, INDUSTRY AND TECHNOLOGY

Senator Simpson, Chair

Senator Benacquisto, Vice Chair

MEETING DATE: Wednesday, March 6, 2019

TIME: 10:30 a.m.—12:30 p.m.

PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Simpson, Chair; Senator Benacquisto, Vice Chair; Senators Bracy, Bradley, Brandes, Braynon, Farmer, Gibson, Hutson, and Passidomo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1020 Bradley (Compare H 333, S 1058, Linked S 1558)	Hemp; Authorizing the Department of Agriculture and Consumer Services to adopt rules to administer a state hemp program, etc. IT 03/06/2019 Favorable AG RC	Favorable Yeas 10 Nays 0
2	SB 142 Perry (Identical H 127)	Permit Fees; Requiring the governing bodies of counties and municipalities to post their permit and inspection fee schedules and building permit and inspection utilization reports on their websites; requiring certain governing bodies of local governments to post their building permit and inspection utilization reports on their websites by a specified date, etc. CA 02/05/2019 Favorable IT 03/06/2019 Fav/CS RC	Fav/CS Yeas 10 Nays 0
3	SB 724 Hooper (Identical H 805)	Residential Swimming Pool Safety; Citing this act as "The Kacen's Cause Act"; requiring a home inspector to include certain information relating to swimming pools in his or her report; requiring that new residential swimming pools meet an additional requirement in order to pass final inspection and receive a certificate of completion, etc. IT 03/06/2019 Favorable CA RC	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Innovation, Industry and Technology

Wednesday, March 6, 2019, 10:30 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 796 Gruters (Similar H 797)	Public Utility Storm Protection Plans; Requiring public utilities to individually submit to the Public Service Commission, for review and approval, a transmission and distribution storm protection plan as part of the storm hardening plan required by the commission; requiring the commission to conduct an annual proceeding to allow utilities to justify and recover certain costs through a storm protection cost recovery clause; providing that utilities may not include certain costs in their base rates, etc. IT 03/06/2019 Fav/CS IS AP	Fav/CS Yeas 10 Nays 0
5	SB 450 Gibson (Similar CS/H 327)	Public Meetings/Local Government Utility; Providing an exemption from public meeting requirements for portions of a meeting at which certain exempt records related to the security of the technology, processes, or practices of certain utilities and the security of existing or proposed information technology systems or industrial control systems of certain utilities are discussed or may otherwise be revealed; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. IT 03/06/2019 Fav/CS GO RC	Fav/CS Yeas 10 Nays 0
6	SB 600 Gibson (Similar CS/H 591)	Public Records/Meter-derived Data and Billing Information; Providing an exemption from public records requirements for certain utility customer meter-derived data and billing information; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. IT 03/06/2019 Fav/CS GO RC	Fav/CS Yeas 10 Nays 0
7	CS/SB 76 Infrastructure and Security / Simpson (Compare H 45, H 107)	Driving While Distracted; Designating the "Florida Driving While Distracted Law"; defining the term "driving while distracted"; prohibiting a person from operating a motor vehicle when driving while distracted; revising crash results for which a user's billing records for a wireless communications device or the testimony of or written statements from certain authorities are admissible as evidence, etc. IS 02/19/2019 Fav/CS IT 03/06/2019 Fav/CS JU RC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Innovation, Industry and Technology

Wednesday, March 6, 2019, 10:30 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	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 Innovation, Industry, and Technology

BILL: SB 1020

INTRODUCER: Senator Bradley

SUBJECT: Hemp

DATE: March 4, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	Favorable
2.	_____	_____	<u>AG</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1020 authorizes the Department of Agriculture and Consumer Services (department) to adopt rules to administer a state hemp program pursuant to 7 U.S.C s. 1639p. This federal law was created by the Agricultural Improvement Act of 2018 (2018 Farm Bill), which legalized the industrial use of hemp. It also provides standards for a state’s department of agriculture or an Indian tribe to have primary regulatory authority over the production of hemp by applying for approval to the United States Secretary of Agriculture.

Industrial hemp is a *Cannabis sativa* plant, which is a controlled substance under state law and federal law. Hemp may be used as a fiber and grain crop, building material, and animal feed.

Under the bill, the department’s rules must include, but are not limited to, provisions for the production and sale of hemp products, including the federal requirements for a state program.

The bill takes effect upon becoming law.

II. Present Situation:

Industrial Hemp

Industrial hemp is a *Cannabis sativa* plant (cannabis) that has been cultivated for approximately 10,000 years as a fiber and grain crop. It is used for fiber, building materials, forages (animal feed) and pain relief as a topical oil.¹

¹ See University of Florida, *UF/IFAS Industrial Hemp Pilot Project* at: <https://programs.ifas.ufl.edu/hemp/> (last visited February 25, 2019).

Cannabis

Cannabis is a Schedule I controlled substance.² It is a felony of the third degree³ to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, cannabis in Florida.⁴

As a controlled substance in ch. 893, F.S., “cannabis” is defined to mean:

all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include “marijuana,” as defined in s. 381.986, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986[, F.S., the Compassionate Medical Cannabis Act of 2014].⁵

Medical Marijuana

On November 4, 2016, Amendment 2 was voted into law and codified at Article X, section 29, Florida Constitution. This section of the constitution became effective on January 3, 2017, and created several exemptions from criminal and civil liability for:

- Qualifying patients medically using marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- Medical marijuana treatment centers (MMTCs), their agents, and employees for actions or conduct under the amendment and in compliance with rules promulgated by the Florida Department of Health.

Subsequently, the Legislature passed SB 8-A in Special Session A of 2017.⁶ The bill revised the Compassionate Medical Cannabis Act of 2014⁷ in s. 381.986, F.S., to implement Article X, section 29 of the Florida Constitution.

The term medical marijuana includes two distinct forms of the plant genus *Cannabis*:

- Marijuana without any limitation or restriction on the percentage of THC;⁸ and

² Section 893.03(1)(c)7., F.S.

³ 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.

⁴ Section 893.13(1)(a)2., F.S.

⁵ Section 893.02(3), F.S.

⁶ Chapter 2017-232, Laws of Fla.

⁷ Chapter 2014-157, Laws of Fla.

⁸ THC, or tetrahydrocannabinol, is the main active ingredient in cannabis and is responsible for most of the psychological effects of cannabis.

- “Low-THC cannabis” in which the percentage of THC is limited to 0.8 percent or less and has more than 10 percent of cannabidiol⁹ weight for weight.¹⁰

The Coalition for Medical Marijuana Research and Education located at the H. Lee Moffitt Cancer Center and Research Institute, Inc., may also conduct medical marijuana research and education.¹¹

A MMTC and a qualified patient or caregiver are specifically exempt from the criminal prohibition against the possession of cannabis.¹²

2014 Federal Farm Bill and State Industrial Hemp Pilot Programs

The Agricultural Improvement Act of 2014 (2014 Farm Bill) defined industrial hemp and allowed state departments of agriculture or universities to grow and produce industrial hemp as part of research or pilot programs. Specifically, the law allowed universities and state departments of agriculture to grow or cultivate industrial hemp if:

- The industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
- The growing or cultivating of industrial hemp is allowed under the laws of the state in which such institution of higher education or state department of agriculture is located and such research occurs.¹³

The 2014 Farm Bill defines “industrial hemp” to mean:

the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.¹⁴

Section 1004.4473, F.S., authorizes the department to oversee the development of industrial hemp pilot projects for the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida, Florida Agricultural and Mechanical University, and any land grant university in the state that has a college of agriculture.¹⁵ The purpose of the pilot projects is to cultivate, process, test, research, create, and market safe and effective commercial applications for industrial hemp

⁹ Cannabidiol (CBD) is a chemical compound, known as a cannabinoid, found in cannabis. CBD does not have the same psychoactivity as THC. See Michael J Breus, *Despite What You May Think... CBD Is Not Weed* (Sept. 20, 2018), Psychology Today, available at: <https://www.psychologytoday.com/us/blog/sleep-newzzz/201809/despite-what-you-may-think-cbd-is-not-weed> (last visited Feb. 25, 2019).

¹⁰ See ss. 381.986(1)(e) and (f), F.S.

¹¹ Section 1004.4351, F.S.

¹² See 381.986(14), F.S.

¹³ Agricultural Improvement Act of 2014, Pub. L. No. 113-79, s.7606, 128 Stat. 912 (2014) (codified at 7 U.S.C. s. 5940).

¹⁴ *Id.*

¹⁵ See University of Florida, *About the UF/IFAS Industrial Hemp Project*, at: <https://programs.ifas.ufl.edu/hemp/about-the-project/> (last visited Feb. 25, 2019).

in the agricultural sector in this state. The department has adopted a rule addressing safety, compliance, and accountability and other concerns.¹⁶

Section 1004.4473, F.S., does not provide a specific exemption from the criminal prohibition against the possession of cannabis in s. 893.13(1)(a)2., F.S.

2018 Federal Farm Bill

In the 2018 Farm Bill, the U.S. Congress legalized industrial hemp as an agricultural product by removing hemp's classification as a controlled substance.¹⁷ The 2018 Farm Bill defines "hemp" to mean:

the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.¹⁸

The 2018 Farm Bill allows a state department of agriculture or an Indian tribe to submit a plan to the United States Secretary of Agriculture and apply for primary regulatory authority over the production of hemp in their state or tribal territory. A state or tribal plan must include:

- A procedure for tracking land upon which hemp will be produced;
- Testing methods for determining THC concentration levels of hemp;
- Methods for effective disposal of noncompliant products;
- Enforcement procedures;
- Inspection procedures; and
- Certification procedures for the persons authorized to produce hemp producers, test hemp products, inspect hemp producers, and enforce the provisions of the state or tribal plan.¹⁹

Hemp Legislation in Other States

At least 38 states considered legislation related to industrial hemp in 2018. These bills ranged from clarifying existing laws to establishing new licensing requirements and programs. Alaska, Arizona, Kansas, Missouri, New Jersey, and Oklahoma enacted legislation in 2018 establishing hemp research and industrial hemp pilot programs.²⁰

¹⁶ Fla. Admin. Code R. 5B-57.013 (2018).

¹⁷ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 12619, 132 Stat. 409 (2018) (codified at 21 U.S.C. 802(16)).

¹⁸ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 10113, 132 Stat. 409 (2018) (codified at 7 U.S.C. s. 1639o).

¹⁹ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 10113, 132 Stat. 409 (2018) (codified at 7 U.S.C. s. 1639p).

²⁰ See <http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx> (last visited Feb. 25, 2019).

III. Effect of Proposed Changes:

The bill creates s. 581.084, F.S., to authorize the department to adopt rules to administer a state hemp program pursuant to the standards for a state-administered hemp program authorized under 7 U.S.C. s. 1639p.

Under the bill, the department's rules must include, but are not limited to, provisions for the production and sale of hemp products, including the federal requirements for a state program.

The bill takes effect upon becoming law.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

SB 1020 does not authorize the assessment of any fees or taxes.

B. Private Sector Impact:

Some Florida farmers may receive a beneficial economic opportunity provided by the planting, processing, and sale of hemp and hemp-based products.

C. Government Sector Impact:

The department may incur cost related to implementation of the state hemp program authorized by the bill. These costs have not been estimated.

VI. Technical Deficiencies:

SB 1020 does not provide a specific exemption from the criminal prohibition against the possession of cannabis in s. 893.03(1)(c)7., F.S., by a person who is not licensed by the DOH as a MMTC or is a qualified patient or caregiver under s. 381.986, F.S., relating to medical marijuana.

VII. Related Issues:

SB 1020 is linked to SB 1558 by Senator Rodriguez. SB 1558 amends s. 581.084, F.S., as created by SB 1020, to authorize a fee for each application for initial registration and renewal registration for participation in the state hemp program created under SB 1020. The fee authorized by SB 1558 must be specified in a rule adopted by the department, and may not exceed \$500 per application. SB 1558 allows the department to waive payment of the fee by rule and requires fees collected to be deposited in the Plant Industry Trust Fund.²¹

VIII. Statutes Affected:

This bill creates section 581.084 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.

²¹ Section 570.321, F.S., creates the Plant Industry Trust Fund to be administered by the department.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Finance and Tax
Innovation, Industry, and Technology
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR ROB BRADLEY
5th District

February 25, 2019

Senator Wilton Simpson, Chairman
Committee on Innovation, Industry, and Technology
525 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 1020, a bill relating to hemp, be placed on the committee's agenda at your earliest opportunity.

Thank you for your consideration and I look forward to working with you during the coming session.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Bradley".

Rob Bradley

REPLY TO:

- 1279 Kingsley Avenue, Suite 107, Orange Park, Florida 32073 (904) 278-2085
- 414 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1020

Bill Number (if applicable)

Meeting Date/

Topic HEAR BILL

Amendment Barcode (if applicable)

Name SPENCER HUNTER

Job Title OWNER HOUSE OF HEAR

Address 730 WEST GAINES ST

Phone 850-445-6128

Street

TALLAHASSEE

FL

32304

Email Spencerwhunter@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing HOUSE OF HEAR

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/19
Meeting Date

SB
1020
Bill Number (if applicable)

Topic Hemp

Amendment Barcode (if applicable)

Name Tabitha Burress

Job Title Gold Star Wife (Buds for Vets)

Address 4320 Randall Blvd

Phone 239-272-2257

Street

Naples

FL

34120

City

State

Zip

Email tabitha.burress@gmail.com

Speaking: For Against Information

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

Representing Buds for Vets

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
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3-6-19

Meeting Date

SB
1020

Bill Number (if applicable)

Topic Hemp

Amendment Barcode (if applicable)

Name Heather Preysz (Pronounced Prize)

Job Title Founder Buds for Vets

Address 635 Pullman Circle

Phone 904 3336728

Street

St. Augustine FL 32084

City

State

Zip

Email heather@budsforvets.org

~~Speaking:~~ For Against Information

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

Representing Buds for Vets

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

3-6-19

Meeting Date

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

SB 1020

Bill Number (if applicable)

Topic Hemp

Amendment Barcode (if applicable)

Name Jonathan

Job Title Veteran Buds For Vets

Address 829 W. Wisconsin Ave

Phone 386-748-0012

Street

DeLand

City

FL

State

32720

Zip

Email jdwadkins@gmail.com

Speaking: For Against Information

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

Representing Buds For Vets

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)

3/6/19

Meeting Date

SB120

Bill Number (if applicable)

Topic SB120 - HGMF

Amendment Barcode (if applicable)

Name Stephen Bridges

Job Title Veteran

Address 9 Lincoln Lane

Phone _____

Street

Palm Coast

City

FL

State

32137

Zip

Email SBRIDGES3@CFLRR.COM

Speaking: For Against Information

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

Representing Buds For Vets

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

6 March 2019

Meeting Date

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

SB/020

Bill Number (if applicable)

Topic SB/020 Hemp

Amendment Barcode (if applicable)

Name Staff Sergeant (Retired) Mike Bryant USA

Job Title Veteran Social Worker

Address 16126 Magnolia Hill St.

Phone 407 577 8571

Street

CLERMONT

FL

34714

City

State

Zip

Email

Speaking: ~~For~~ For Against Information

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

Representing Bud For Vets

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/6/19

Meeting Date

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

1020
HB 337

Bill Number (if applicable)

Topic Hemp Bill - Veteran Licensing Preference *No cost for sm biz/ind* Amendment Barcode (if applicable)

Name Joshua D Linney Veterans For Cannabis

Job Title Dir Web Dev / Fundraising

Address 6303 Holmes Beach B Phone 941 357 6093

Street

Holmes Beach, FL 34217

City

State

Zip

Email Linney@VFC.Foundation

Speaking: For Against Information

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

Representing Veterans For Cannabis

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/19

Meeting Date

SB 020

Bill Number (if applicable)

Topic Hemp

Amendment Barcode (if applicable)

Name Melissa Villar

Job Title Executive Director

Address PO Box 11254

Phone 850-354-8424

Street HWL

Email norm.tallahusse@gmail.com

City HWL State FL Zip 32302

Speaking: For Against Information

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

Representing Norm Tallahusse

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/2019
Meeting Date

51020
Bill Number (if applicable)

Topic Industrial Hemp

Amendment Barcode (if applicable)

Name Steve Edmonds

Job Title Citizen

Address 1022 Vanessa Dr
Street

Phone 407 701 9045

Orlando FL
City State Zip

Email Steve@hempwater.org

Speaking: For Against Information

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

Representing Citizens of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/19
Meeting Date

1020
Bill Number (if applicable)

Topic HEMP

Amendment Barcode (if applicable)

Name JEFFREY SHARKEY

Job Title Pres. Capital Alliance Group

Address LOW E College Dr

Phone 2241660

TH FL 32301
City State Zip

Email Jeffrey.Sharkey@capalliance.com

Speaking: For Against Information

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

Representing FLORIDA HEMP INDUSTRIES ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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3/6/19

1020

Meeting Date

Bill Number (if applicable)

Topic Hemp

Amendment Barcode (if applicable)

Name Emily Duda Buckley

Job Title Legislative Affairs Director

Address 400 Monroe St

Phone 850-617-7700

Street

Tallahassee

FL

32399

Email emily.buckley@freshfromflorida.com

City

State

Zip

Speaking: For Against Information

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

Representing Department of Agriculture and Consumer Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/19

Meeting Date

1020

Bill Number (if applicable)

Topic Hemp

Amendment Barcode (if applicable)

Name Drinda Meuth

Job Title Mayor

Address 135 Amy 40 W

Phone 352-229-0477

Street

Englis, FL 34449

City

State

Zip

Email mayor@drindameuth.com

Speaking: For Against Information

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

Representing Town of Englis

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/19

Meeting Date

1020

Bill Number (if applicable)

Topic State Hemp Program

Amendment Barcode (if applicable)

Name TIM STANFIELD

Job Title Attorney

Address 101 E. College Ave

Phone 222 6891

Street

Tall

FL

32301

Email Stanfieldt@gflaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Green Point Research / HIA 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.

By Senator Bradley

5-01720-19

20191020__

1 A bill to be entitled
2 An act relating to hemp; creating s. 581.084, F.S.;
3 providing definitions; authorizing the Department of
4 Agriculture and Consumer Services to adopt rules to
5 administer a state hemp program; providing an
6 effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Section 581.084, Florida Statutes, is created to
11 read:

12 581.084 Hemp production.—

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

14 (a) "Hemp" means the plant *Cannabis sativa L.* and any part
15 of that plant, including the seeds thereof and all derivatives,
16 extracts, cannabinoids, isomers, acids, salts, and salts of
17 isomers, whether growing or not, with a total delta-9
18 tetrahydrocannabinol concentration that does not exceed 0.3
19 percent on a dry weight basis. Hemp produced in accordance with
20 this section is not cannabis as defined in s. 893.02.

21 (b) "Hemp products" means all products derived from or made
22 by processing hemp plants or plant parts that are prepared in a
23 form available for retail sale, including, but not limited to,
24 cosmetics, personal care products, food intended for animal or
25 human consumption, cloth, cordage, fiber, fuel, paint, paper,
26 particleboard, plastics, and any product containing one or more
27 hemp-derived cannabinoids, such as cannabidiol.

28 (2) The department may adopt rules to administer a state
29 hemp program pursuant to 7 U.S.C. s. 1639p. The rules shall

5-01720-19

20191020__

30 include, but are not limited to, the production and sale of hemp
31 products and provisions required for a state hemp program as
32 provided by federal law.

33 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 Innovation, Industry, and Technology

BILL: CS/SB 142

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Perry

SUBJECT: Permit Fees

DATE: March 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Wiehle</u>	<u>Imhof</u>	<u>IT</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 142 requires the governing body of a local government to post its building permit and inspection fee schedules on its website. The bill also requires that by December 31, 2020, the governing body will post a newly required building permit and inspection utilization report. The report will include costs incurred and revenues derived from the enforcement of the Florida Building Code. After December 31, 2020, a local government must update the utilization report prior to amending its building permit and inspection fee schedule.

II. Present Situation:

Florida Building Code

Part IV of ch. 553, F.S., is known as the “Florida Building Codes Act.” The purpose and intent of the Florida Building Codes Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code.¹ The Florida Building Code must be applied, administered and enforced uniformly and consistently from jurisdiction to jurisdiction.² The Florida Building Commission develops and maintains the Florida Building Code.³

¹ Section 553.72(1), F.S.

² *Id.*

³ Section 553.74, F.S. The Florida Building Commission is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Florida Building Code.

Florida Fire Prevention Code

The State Fire Marshall must adopt, by rule, the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules.⁴ The FFPC operates in conjunction with the Florida Building Code. Conflicts between the FFPC and the Florida Building Code are resolved through coordination and cooperation between the State Fire Marshall and the Florida Building Commission in favor of requirements offering the greatest degree of life safety.⁵

Enforcement of the Florida Building Code: Permits and Inspections

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public's health, safety, and welfare.⁶ Authorized state and local government agencies enforce the Florida Building Code and issue building permits.⁷

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.⁸ 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 enforcing agency upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.⁹ A local enforcement agency must post each type of building permit application on its website.¹⁰

A building official is a local government employee who supervises building code activities, including plan review, enforcement, and inspection.¹¹ Any construction work that requires a building permit also requires plans and inspections by the local building official to ensure the work complies with the Florida Building Code,¹² including certain required building, electrical, plumbing, mechanical, and gas inspections.¹³

⁴ Section 633.202(1), F.S.

⁵ See ss. 553.72(5), 553.73(1)(d), and 633.104(5), F.S.

⁶ Section 553.72(2), F.S.

⁷ See ss. 125.01(1)(bb), 125.56(1), 553.72(3), and 553.80(1), F.S.

⁸ Section 202, 2017 Florida Building Code – Building, Sixth Edition (July 2017) available at <https://codes.iccsafe.org/content/FBC2017/chapter-2-definitions> (last visited February 26, 2019). Section 553.79(1)(b), F.S. requires a local enforcement agency of the Florida Building Code to post each type of building permit application on its website.

⁹ See ss. 125.56(4)(a) and 553.79(1), F.S. Other entities may, by resolution or regulation, be directed to issue permits.

¹⁰ Section 553.79(1)(b), F.S.

¹¹ Section 468.603(2), F.S.

¹² Section 553.79(2), F.S.

¹³ Section 110.3, 2017 Florida Building Code – Building, Sixth Edition (July 2017) available at <https://codes.iccsafe.org/content/FBC2017/chapter-1-scope-and-administration> (last visited February 26, 2019).

Local Government Building Code Permitting Fees

Determination and Usage

A local government entity may provide a schedule of reasonable inspection fees in order to defer the costs of inspection and enforcement of the Florida Building Code.¹⁴ The local government entity's fees must be used solely for carrying out that local government entity's responsibilities in enforcing the Florida Building Code.¹⁵ The basis for the fee structure must relate to the level of service provided by the local government.¹⁶ The total estimated annual revenue derived from fees, and fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities.¹⁷ Fees charged must be consistently applied.¹⁸ The funding of certain general government activities and programs from fee revenues is expressly prohibited. Examples of these include planning and zoning activities or the enforcement of local ordinances unrelated to the Florida Building Code.¹⁹

Fiscal Tracking and Accountability

A local government must use recognized management, accounting, and oversight practices to ensure that any building permitting and inspection fees, fines, and investment earnings are maintained and allocated or used solely for the purposes of enforcing building codes.²⁰ Any unexpended fee balances are carried forward to future years for allowable activities or are refunded at the discretion of the local government.²¹

The most recent information on building permit fee revenues provided by the Office of Economic and Demographic Research captures data from 2016. For that year, 64 counties reported building permit fee revenues totaling \$258,489,279; while 318 municipalities reported revenues totaling \$447,863,533.²²

Local Government Annual Financial Audit Reports and Web Postings

Sections 218.32 and 218.39, F.S., provide requirements for local governments regarding submissions of annual financial reports and audits. Local governments must submit an annual financial report to the Department of Financial Services (DFS) covering their operations for the

¹⁴ See ss. 125.56(2), 166.222, and 553.80(7), F.S. While not required by Florida Statutes, it appears that many local governments currently post fee schedules on their websites.

¹⁵ The phrase "enforcing the Florida Building Code" includes the direct costs and reasonable indirect costs associated with review of building plans, 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. See s. 553.80(7)(a), F.S.

¹⁶ Section 553.80(7), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 553.80(7)(b), F.S. Additional activities that may not be funded by permit fees include public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.

²⁰ Section 553.80(7)(b), F.S.

²¹ Section 553.80(7), F.S.

²² Office of Economic and Demographic Research, The Florida Legislature, *Building Permit Fees*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/a-f.cfm> (last visited February 26, 2019).

preceding fiscal year.²³ Each local governmental entity's website must provide a link to the DFS website to view the entity's submitted financial report.²⁴ If the local government does not have an official website, the county government's website must provide the required link.²⁵

III. Effect of Proposed Changes:

Section 1 amends s. 125.56, F.S., to require the governing body of a county that charges permit and inspection fees to enforce the Florida Building Code and Florida Fire Prevention Code to post on its website both its permit and inspection fee schedules and a building permit and inspection utilization report.

Section 2 amends s. 166.222, F.S., to require the governing body of a municipality that charges building code inspection or enforcement fees to post on its website both its permit and inspection fee schedules and a building permit and inspection utilization report.

Section 3 amends s. 553.80, F.S., to require the governing body of a local government that provides a schedule of Florida Building Code enforcement fees to create and post a building permit and inspection utilization report on its website by December 31, 2020. The information in the report must be derived from relevant information available in the most recently completed financial audit. After December 31, 2020, before the governing body can make any changes to its fee schedule, it must update its building permit and inspection utilization report.

The report must include:

- Direct and indirect costs incurred by the local government to enforce the Florida Building Code, including costs related to:
 - Personnel services costs, including salary and related employee benefit costs incurred by the local government to enforce the Florida Building Code; and
 - Operating expenditures and expenses.
- Permit and inspection utilization information, including:
 - Number of building permit applications submitted;
 - Number of building permits issued or approved;
 - Number of building inspections and reinspections requested;
 - Number of building inspections and reinspections conducted;
 - Number of building inspections conducted by a private provider;
 - Number of building audits conducted by the local government of the building inspection conducted by a private provider;
 - Number of positions dedicated by the local government to enforce the Florida Building Code, issue building permits, and conduct inspections; and
 - Other permissible activities for enforcing the Florida Building Code as described in s. 553.80(7)(a), F.S.
- Revenue information, including:
 - Revenue derived from fees;
 - Revenue derived from fines;

²³ It is possible that smaller municipalities (those with annual revenues or total expenditures and expenses between \$100,000 and \$250,000) may go three years between financial audit submissions. *See* s. 218.39(1)(g), F.S.

²⁴ Section 218.32(1)(g), F.S.

²⁵ *Id.*

- When applicable, investment earnings from the local government's investment of revenue derived from fees and fines;
- Balances carried forward by the local government;
- Balances refunded by the local government and
- Other revenue sources, including local government general revenue.

Section 4 provides an effective date of July 1, 2019.

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:

Eligible local governments are authorized to charge reasonable, level-of-service building permit fees to enforce the Florida Building Code. This bill does not abrogate that authority. The proposed building permit and inspection utilization report should capture the extent of existing fees as well as any fee adjustments going forward.

B. Private Sector Impact:

Requiring local governments to post their permit and inspection fee schedules as well as a building permit and inspection utilization report on their websites will help applicants for building permits assess the associated costs of the permits.

C. **Government Sector Impact:**

Some local governments may require an initial expenditure of funds to revise their existing websites to include the ability to post permit and inspection fee schedules as well as expenditures to create and then post a building permit and inspection utilization report.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 125.56, 166.222, and 553.80.

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 Innovation, Industry, and Technology on March 6, 2019:

The committee substitute revises the list of information that must be contained in the building permit and inspection utilization report, making it more detailed and specific.

- B. **Amendments:**

None.



168484

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2019	.	
	.	
	.	
	.	

The Committee on Innovation, Industry, and Technology (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 94 - 129
and insert:

(b) By December 31, 2020, the governing body of a local government that provides a schedule of fees shall create a building permit and inspection utilization report and post the report on its website. The information in the report shall be derived from relevant information available in the most recently completed financial audit. After December 31, 2020, the



168484

11 governing body of a local government that provides a schedule of
12 fees shall update its building permit and inspection utilization
13 report before making any adjustments to the fee schedule. The
14 report shall include:

15 1. Direct and indirect costs incurred by the local
16 government to enforce the Florida Building Code, including costs
17 related to:

18 a. Personnel services costs, including salary and related
19 employee benefit costs incurred by the local government to
20 enforce the Florida Building Code.

21 b. Operating expenditures and expenses.

22 2. Permit and inspection utilization information,
23 including:

24 a. Number of building permit applications submitted.

25 b. Number of building permits issued or approved.

26 c. Number of building inspections and reinspections
27 requested.

28 d. Number of building inspections and reinspections
29 conducted.

30 e. Number of building inspections conducted by a private
31 provider.

32 f. Number of building audits conducted by the local
33 government of the building inspection conducted by a private
34 provider.

35 g. Number of positions dedicated by the local government to
36 enforce the Florida Building Code, issue building permits, and
37 conduct inspections.

38 h. Other permissible activities for enforcing the Florida
39 Building Code as described in subparagraph (a)1.



168484

- 40 3. Revenue information, including:
- 41 a. Revenue derived from fees pursuant to paragraph (a).
- 42 b. Revenue derived from fines pursuant to paragraph (a).
- 43 c. When applicable, investment earnings from the local
- 44 government's investment of revenue derived from fees and fines
- 45 pursuant to paragraph (a).
- 46 d. Balances carried forward by the local government
- 47 pursuant to paragraph (a).
- 48 e. Balances refunded by the local government pursuant to
- 49 paragraph (a).
- 50 f. Other revenue sources, including local government
- 51 general revenue.

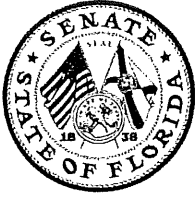
52
53 ===== T I T L E A M E N D M E N T =====

54 And the title is amended as follows:

55 Delete lines 8 - 9

56 and insert:

57 bodies of local governments to create a building
58 permit and inspection utilization report containing
59 certain information and to post such report on their



The Florida Senate

Committee Agenda Request

To: Senator Wilton Simpson, Chair
Committee on Innovation, Industry, and Technology

Subject: Committee Agenda Request

Date: January 10, 2019

I respectfully request that **Senate Bill #142**, relating to Permit Fees, be placed on the:

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

A handwritten signature in cursive script that reads "W. Keith Perry".

Senator Keith Perry
Florida Senate, District 8



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Infrastructure and Security, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Education

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR KEITH PERRY

8th District

MEMORANDUM

To: Senator Wilton Simpson, Chair
From: Senator Keith Perry
Subject: Unable to Present SB `142
Date: March 4, 2019

Chair Simpson,

Unfortunately I will not be able to present my bill SB 142 in front of Innovation Industry and Technology on Wednesday March 6th. I have asked Senator Brandes to present it in my place.

Thank you for your time and understanding.

Respectfully,

A handwritten signature in black ink that reads "W. Keith Perry".

REPLY TO:

- 2610 NW 43rd Street, Suite 2B, Gainesville, Florida 32606 (352) 264-4040
- Marion County Board of Commissioners, 115 SE 25th Avenue, Ocala, Florida 34471
- Putnam County Government Complex, 2509 Crill Avenue, Palatka, Florida 32177
- 316 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5008

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/19

Meeting Date

1412

Bill Number (if applicable)

Topic Permit Fees

Amendment Barcode (if applicable)

Name Scott Jenkins

Job Title Lobbyist

Address 113 E. Colloge Ave Ste. 200

Phone 850-661-0829

Street

Tallahassee FL 32301

City

State

Zip

Email scott@wilbea.com

Speaking: For Against Information

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

Representing FL Home Builders Assoc. / National Utility Contractors Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/06/19

Meeting Date

SB142

Bill Number (if applicable)

Topic Permit Fees

Amendment Barcode (if applicable)

Name Brian Threle

Job Title _____

Address 200 West College Ave

Phone _____

Street

Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing 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.

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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)

5/6/19
Meeting Date

SB 142
Bill Number (if applicable)

Topic Permit Fees

Amendment Barcode (if applicable)

Name Buddy Dewar

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing Florida Fire Sprinkler Assn.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/16/19
Meeting Date

142
Bill Number (if applicable)

Topic Permit Fees

Amendment Barcode (if applicable)

Name Edward Briggs

Job Title Consultant

Address 113 E. College Ave.
Street

Phone 850-933-5994

Tallahassee FL 32301
City State Zip

Email edward@rsacowulflc.com

Speaking: For Against Information

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

Representing Highland Homes

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

March 6, 2019

Meeting Date

SB 142

Bill Number (if applicable)

Topic Permit Fees

Amendment Barcode (if applicable)

Name Bob Ward

Not here but wants to support in record

Job Title President & CEO

Address 400 N. Tampa St., Suite 1010

Street

Tampa

City

Florida

State

33602

Zip

Phone (813) 229-1775

Email bward@fc100.org

Speaking: [] For [] Against [] Information

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

Representing Florida Council of 100

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.

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

THE FLORIDA SENATE
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3/6/19
Meeting Date

142
Bill Number (if applicable)

Topic Permit Fees

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Chief Lobbyist

Address 3730 Coconut Creek Pkwy, Ste 200
Street

Phone (954) 465-6811

Coconut Creek FL 33066
City State Zip

Email cbowen@audreestflorida.com

Speaking: For Against Information

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

Representing Associated Builders and Contractors

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/19

Meeting Date

142

Bill Number (if applicable)

168484

Amendment Barcode (if applicable)

Topic Permit Fees

Name Carol Bowen

Job Title Chief Lobbyist

Address 3730 Coconut Creek Pkwy, Ste 200
Street

Phone (954) 465-6811

Coconut Creek FL 33016
City State Zip

Email c.bowen@abc-eastflorida.com

Speaking: For Against Information

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

Representing Associated Builders and Contractors

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.

By the Committee on Innovation, Industry, and Technology; and
Senators Perry and Brandes

580-02755-19

2019142c1

1 A bill to be entitled
2 An act relating to permit fees; amending ss. 125.56
3 and 166.222, F.S.; requiring the governing bodies of
4 counties and municipalities to post their permit and
5 inspection fee schedules and building permit and
6 inspection utilization reports on their websites;
7 amending s. 553.80, F.S.; requiring certain governing
8 bodies of local governments to create a building
9 permit and inspection utilization report containing
10 certain information and to post such report on their
11 websites by a specified date; providing reporting
12 requirements; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Paragraph (c) is added to subsection (4) of
17 section 125.56, Florida Statutes, to read:

18 125.56 Enforcement and amendment of the Florida Building
19 Code and the Florida Fire Prevention Code; inspection fees;
20 inspectors; etc.—

21 (4)

22 (c) The governing body of a county authorized under this
23 section or s. 553.80 to issue fees shall post its permit and
24 inspection fee schedules and its building permit and inspection
25 utilization report required under s. 553.80(7) on its website.

26 Section 2. Section 166.222, Florida Statutes, is amended to
27 read:

28 166.222 Building code inspection fees.—

29 (1) The governing body of a municipality may provide a

580-02755-19

2019142c1

30 schedule of reasonable inspection fees in order to defer the
31 costs of inspection and enforcement of the provisions of its
32 building code.

33 (2) The governing body of a municipality authorized under
34 s. 553.80 to issue fees shall post its permit and inspection fee
35 schedules and its building permit and inspection utilization
36 report required under s. 553.80(7) on its website.

37 Section 3. Subsection (7) of section 553.80, Florida
38 Statutes, is amended to read:

39 553.80 Enforcement.—

40 (7) (a) The governing bodies of local governments may
41 provide a schedule of reasonable fees, as authorized by s.
42 125.56(2) or s. 166.222 and this section, for enforcing this
43 part. These fees, and any fines or investment earnings related
44 to the fees, shall be used solely for carrying out the local
45 government's responsibilities in enforcing the Florida Building
46 Code. When providing a schedule of reasonable fees, the total
47 estimated annual revenue derived from fees, and the fines and
48 investment earnings related to the fees, may not exceed the
49 total estimated annual costs of allowable activities. Any
50 unexpended balances shall be carried forward to future years for
51 allowable activities or shall be refunded at the discretion of
52 the local government. The basis for a fee structure for
53 allowable activities shall relate to the level of service
54 provided by the local government and shall include consideration
55 for refunding fees due to reduced services based on services
56 provided as prescribed by s. 553.791, but not provided by the
57 local government. Fees charged shall be consistently applied.

58 1.~~(a)~~ As used in this subsection, the phrase "enforcing the

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59 Florida Building Code" includes the direct costs and reasonable
60 indirect costs associated with review of building plans,
61 building inspections, reinspections, and building permit
62 processing; building code enforcement; and fire inspections
63 associated with new construction. The phrase may also include
64 training costs associated with the enforcement of the Florida
65 Building Code and enforcement action pertaining to unlicensed
66 contractor activity to the extent not funded by other user fees.

67 2.~~(b)~~ The following activities may not be funded with fees
68 adopted for enforcing the Florida Building Code:

69 a.1.~~(a)~~ Planning and zoning or other general government
70 activities.

71 b.2.~~(b)~~ Inspections of public buildings for a reduced fee or
72 no fee.

73 c.3.~~(c)~~ Public information requests, community functions,
74 boards, and any program not directly related to enforcement of
75 the Florida Building Code.

76 d.4.~~(d)~~ Enforcement and implementation of any other local
77 ordinance, excluding validly adopted local amendments to the
78 Florida Building Code and excluding any local ordinance directly
79 related to enforcing the Florida Building Code as defined in
80 subparagraph 1 ~~paragraph (a)~~.

81 3.~~(e)~~ A local government shall use recognized management,
82 accounting, and oversight practices to ensure that fees, fines,
83 and investment earnings generated under this subsection are
84 maintained and allocated or used solely for the purposes
85 described in subparagraph 1 ~~paragraph (a)~~.

86 4.~~(d)~~ The local enforcement agency, independent district,
87 or special district may not require at any time, including at

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88 the time of application for a permit, the payment of any
89 additional fees, charges, or expenses associated with:

90 ~~a.1.~~ Providing proof of licensure pursuant to chapter 489;

91 ~~b.2.~~ Recording or filing a license issued pursuant to this
92 chapter; or

93 ~~c.3.~~ Providing, recording, or filing evidence of workers'
94 compensation insurance coverage as required by chapter 440.

95 (b) By December 31, 2020, the governing body of a local
96 government that provides a schedule of fees shall create a
97 building permit and inspection utilization report and post the
98 report on its website. The information in the report shall be
99 derived from relevant information available in the most recently
100 completed financial audit. After December 31, 2020, the
101 governing body of a local government that provides a schedule of
102 fees shall update its building permit and inspection utilization
103 report before making any adjustments to the fee schedule. The
104 report shall include:

105 1. Direct and indirect costs incurred by the local
106 government to enforce the Florida Building Code, including costs
107 related to:

108 a. Personnel services costs, including salary and related
109 employee benefit costs incurred by the local government to
110 enforce the Florida Building Code.

111 b. Operating expenditures and expenses.

112 2. Permit and inspection utilization information,
113 including:

114 a. Number of building permit applications submitted.

115 b. Number of building permits issued or approved.

116 c. Number of building inspections and reinspections

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117 requested.

118 d. Number of building inspections and reinspections
119 conducted.

120 e. Number of building inspections conducted by a private
121 provider.

122 f. Number of building audits conducted by the local
123 government of the building inspection conducted by a private
124 provider.

125 g. Number of positions dedicated by the local government to
126 enforce the Florida Building Code, issue building permits, and
127 conduct inspections.

128 h. Other permissible activities for enforcing the Florida
129 Building Code as described in subparagraph (a)1.

130 3. Revenue information, including:

131 a. Revenue derived from fees pursuant to paragraph (a).

132 b. Revenue derived from fines pursuant to paragraph (a).

133 c. When applicable, investment earnings from the local
134 government's investment of revenue derived from fees and fines
135 pursuant to paragraph (a).

136 d. Balances carried forward by the local government
137 pursuant to paragraph (a).

138 e. Balances refunded by the local government pursuant to
139 paragraph (a).

140 f. Other revenue sources, including local government
141 general revenue.

142 Section 4. This act shall take effect July 1, 2019.

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 Innovation, Industry, and Technology

BILL: SB 724

INTRODUCER: Senator Hooper

SUBJECT: Residential Swimming Pool Safety

DATE: March 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>IT</u>	Favorable
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 724 may be cited as “The Kacen’s Cause Act” and requires that a new residential swimming pool must meet at least two required pool safety feature options in order to pass final inspection and receive a certificate of completion. Current law requires that new residential swimming pools meet just one safety feature. The bill expands the requirements for pool safety features to all existing residential swimming pools by imposing a requirement that a pool owner may not transfer ownership of a swimming pool unless the pool meets at least two of the pool safety features required by s. 515.27, F.S.

The bill requires home inspectors to include pool safety features, if any, in written home inspection reports prepared for compensation pursuant to s. 468.8323, F.S.

The bill provides an effective date of July 1, 2019.

II. Present Situation:

Introduction

In 2000, upon finding that drowning was the leading cause of death of young children in Florida, as well as a significant cause of death for medically frail elderly persons, the Legislature enacted ch. 515, F.S., the Residential Swimming Pool Safety act (the act).¹ The act provides that all new residential swimming pools, spas, and hot tubs must be equipped with at least one pool safety feature to protect children under age six, and medically frail elderly persons, defined as those who are at least 65 years of age with a medical problem that affects balance, vision, or judgment.²

¹ See ch. 2000-143, Laws of Fla. (creating ch. 515, F.S., effective Oct. 1, 2000).

² Section 515.25, F.S. Such problems include, but are not limited to, a heart condition, diabetes, or Alzheimer’s disease or any related disorder.

Using surveillance data for child drownings in Florida for newborns³ to age 19, the Florida Department of Health (DOH) indicates the following about children between ages one and four, with such children accounting for:

- Sixty-three percent of the 107 non-fatal hospitalizations from unintentional drowning; and
- Sixty percent of the 101 deaths from unintentional drowning.⁴

The DOH notes that nationally, in 2016, drowning was the leading cause of death of children between ages one and four, and Florida's rate was the highest in the United States.⁵ Children between the ages of one and four are more likely to drown in home swimming pools, with older children most likely to drown in natural water bodies.⁶

In May 2018, the United States Consumer Product Safety Commission reported that 85 percent of reported drownings (from 2013 to 2015) of children younger than five years of age involved residential locations.⁷ As to children younger than 15 years of age, approximately 54 percent of reported drownings (annual average of 190) occurred in in-ground pools, 19 percent occurred in above-ground pools (annual average of 66), and 4 percent in portable pools (annual average of 14).⁸

In Florida, certain certified pool alarms were added in 2016 as a method to meet the required pool safety features for new residential swimming pools.⁹ In addition, the Legislature exempted the following entities, pools, structures, and operations from the requirements of the act:

- Sumps, irrigation canals, or irrigation flood control or drainage works constructed or operated to store, deliver, or distribute water;
- Agricultural stock ponds, storage tanks, livestock operations, livestock watering troughs, or other structures;
- Public swimming pools;¹⁰
- Any political subdivision that has adopted or adopts a residential pool safety ordinance that is equal to or more stringent than the provisions of the act (ch. 515, F.S.);
- Any portable spa with a safety cover;¹¹ and

³ Most infant drownings occur in bathtubs and buckets. See http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/_documents/child-drowning-2017-infographic.pdf at p. 2 (last visited Feb. 27, 2019).

⁴ *Id.* at p. 1

⁵ *Id.* Florida's rate was also the highest in the nation in 2013. See <http://www.floridahealth.gov/programs-and-services/prevention/drowning-prevention/index.html> (last visited Feb. 27, 2019).

⁶ *Id.* at p. 2.

⁷ See the U.S. Consumer Product Safety Commission's *Pool or Spa Submersion: Estimated Nonfatal Drowning Injuries and Reported Drownings, 2018 Report* (CPSC 2018 Report), https://www.cpsc.gov/s3fs-public/Pool_Spa_Submersion_Estimated_nonfatal_drowning_injuries_and_reported_drownings_2018_report_2018H002.pdf?hak4TSK.2PVleeVQeMkFJkJOBSnoSP4Z (last visited Feb. 27, 2019)

⁸ *Id.*

⁹ See ch. 2016-129, s. 14, Laws of Fla.

¹⁰ Section 515.25(9), F.S., defines "public swimming pool" to mean a swimming pool operated with or without charge for the use of the general public (but not a pool located on the grounds of a private residence), as defined in s. 514.011(2), F.S. For comparison, s. 514.011(3), F.S., defines a "private pool" to mean a facility used only by an individual, family, or living unit members and their guests which does not serve any type of cooperative housing or joint tenancy of five or more living units.

¹¹ The pool cover must comply with ASTM F1346-91 (Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs), issued by the American Society for Testing and

- Small, temporary pools without motors (*i.e.*, kiddie pools).

Requirements for Pool Safety Features for New Residential Swimming Pools

Section 515.27(1), F.S., provides the requirements a new residential swimming pool must meet in order to pass its final inspection and receive a certification of completion. At least one of the following pool safety features must be in place:

- The pool must be isolated from access to a home by an enclosure that meets certain pool barrier requirements (discussed below);
- The pool must be equipped with an approved safety pool cover;¹²
- All doors and windows providing direct access from the home to the pool must be equipped with an exit alarm with a minimum sound pressure rating of 85 decibels at 10 feet;¹³
- All doors providing access from the home to the pool must have a self-closing, self-latching device, and the release mechanism must be more than 54 inches above the floor; or
- There is a pool alarm that, when placed in a pool, sounds an alarm upon detection of an accidental or unauthorized entrance into the water, and the alarm meets and is independently certified to meet safety specifications for residential pool alarms.¹⁴ Personal swimming protection alarm devices (e.g., alarm devices that attach to a child and are triggered if a child exceeds a certain distance or becomes submerged in water), do not meet the pool alarm requirement.

Residential Swimming Pool Barrier Requirements

The term “barrier” is defined in s. 515.25(2), F.S., to mean a fence, dwelling wall, or nondwelling wall, or any combination, which completely surrounds a swimming pool and obstructs access to the pool, especially access from the residence or from the yard outside the barrier.

Section 515.29(1), F.S., provides a residential swimming pool barrier must:

- Be at least 4 feet high on the outside;
- Not have any gaps or components that could allow a child under the age of six to crawl under, squeeze through, or climb over the barrier;
- Be placed around the pool’s perimeter, separate from any fence, wall, or other enclosure surrounding the yard, unless the fence, wall, or other enclosure or any portion on the perimeter of the pool, is being used as part of the barrier, and meets all other barrier requirements; and

Materials (ASTM). See <https://www.astm.org/Standards/F1346.htm> (last visited Feb. 24, 2019), which provides an abstract of the specification that is available for purchase from ASTM.

¹² An “approved safety pool cover” means a manually or power-operated pool cover that meets all of the standards of the American Society for Testing and Materials, in compliance with standard F1246-91. See s. 515.25(1), F.S.

¹³ The exit alarm must make continuous alarm sounds when any door or window with access to the pool area is opened or left ajar; at a level of 85 decibels (85 dbA, using A-weighted sounds), the alarm would sound louder than a passing freight train passing 100 feet away, which has a typical sound level of 80 dbA. See s. 515.25(4), F.S., and https://www.osha.gov/dts/osta/otm/new_noise/index.html#decibels (last visited Feb. 24, 2019).

¹⁴ The alarm must meet and be certified to ASTM Standard F2208, titled “Standard Safety Specification for Residential Pool Alarms” issued by the ASTM. See <https://www.astm.org/Standards/F2208.htm> (last visited Feb. 24, 2019), which provides an abstract of the specification that is available for purchase from ASTM.

- Be placed sufficiently away from the water's edge to prevent a child under the age of six or a medically frail elderly person who may have managed to penetrate the barrier from immediately falling into the water.

Gates that provide access to residential swimming pools must:

- Open outward away from the pool and be self-closing; and
- Be equipped with a self-latching locking device, with a release mechanism on the pool side of the gate, placed that it cannot be reached by a child under the age of six, either over the top or through any opening or gap.¹⁵

A dwelling wall may be part of barrier if the wall has no door or window opening providing access to the pool, but a barrier may not be located in a way that allows any permanent structure, equipment, or similar object to be used for climbing the barrier.¹⁶

For an aboveground residential swimming pool, the barrier may be the pool's structure itself or may be mounted on top of the pool's structure, but any such barrier must meet all barrier requirements in s. 515.29, F.S., as described above.¹⁷ In addition, any ladder or steps accessing an aboveground pool must be able to be secured, locked, or removed to prevent access or must themselves be surrounded by a barrier meeting all safety requirements.¹⁸

Penalties for Noncompliance with Requirements for Pool Safety Features

Section 515.27(2), F.S., provides that a person who fails to equip a new residential swimming pool with at least one of the required pool safety features commits a second degree misdemeanor.¹⁹ No penalty may be imposed if, within 45 days after arrest or issuance of a summons or a notice to appear, the person equips the pool with one of the required safety features and has attended a drowning prevention education program, if such a program is offered within 45 days of the citation.²⁰

The drowning prevention education program required by s. 515.31, F.S., was adopted by rule of the DOH in 2001 for persons in violation of the pool safety requirements is the 1995 American Red Cross Community Water Safety Course.²¹ An updated course is available at cost from the American Red Cross.²² The DOH also adopted by rule the 1994 U.S. Consumer Product Safety Commission publication Number 362, Safety Barrier Guidelines for Residential Home Pools.²³

¹⁵ Section 515.29(3), F.S.

¹⁶ Sections 515.29(4) and (5), F.S.

¹⁷ Section 515.29(2), F.S.

¹⁸ *Id.*

¹⁹ Section 775.082, F.S., provides a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

²⁰ See s. 515.27(2), F.S.

²¹ See Fla. Admin. Code R. 64E-21.001 (2019) at <https://www.flrules.org/gateway/ruleNo.asp?id=64E-21.001> (last visited Feb. 28, 2019).

²² See <https://www.nspf.org/training> or <https://www.redcross.org/get-help/how-to-prepare-for-emergencies/types-of-emergencies/water-safety/home-pool-safety.html> (last visited Feb. 28, 2019).

²³ See Fla. Admin. Code R. 64E-21.001(2) (2019) at <https://www.flrules.org/gateway/ruleNo.asp?id=64E-21.001> and <https://www.cpsc.gov/s3fs-public/362%20Safety%20Barrier%20Guidelines%20for%20Pools.pdf> (last visited Feb. 28, 2019).

Required Information to be Furnished by Contractors to Buyers

Florida law requires a licensed pool contractor contracting with a buyer to build a residential swimming pool, or a licensed home builder or developer contracting with a buyer to build a house with a swimming pool, to give the buyer:

- A document containing the requirements of the Residential Swimming Pool Safety act (ch. 515, F.S.); and
- A copy of the publication adopted by the DOH that provides information on drowning prevention and the responsibilities of pool ownership.²⁴

Required Information in Home Inspection Reports

A home inspector who has completed a home inspection for compensation from a client must provide a written report stating:

- As to the systems and components that were inspected, those systems and components that are significantly deficient or are near the end of their service lives, in the inspector's professional opinion, and if not obvious, a reason why the system or component is significantly deficient or near the end of its service life.
- Any systems and components that were present at the time of the inspection but were not inspected, and a reason they were not inspected.²⁵

III. Effect of Proposed Changes:

Section 1 of the bill provides for the citation of the act as “The Kacen’s Cause Act.” Kacen, a nearly three-year-old boy tragically drowned in the family’s swimming pool after opening a sliding glass door and bypassing an inadequate pool fence. His mother established a nonprofit foundation to educate others and pursue changes to pool safety laws.²⁶

Section 2 amends s. 468.8323, F.S., relating to home inspection reports, to require the reporting of any existing pool safety features, as described in s. 515.27(1), F.S., if there is a swimming pool at the home.

Section 3 amends s. 515.27, F.S., relating to residential pool safety features, to increase the minimum number of required pool safety features for such pools from one to two.

The bill expands the requirements for pool safety features to all residential swimming pools by prohibiting transfer of ownership of a pool unless it has at least two pool safety features. Specifically, the bill provides that a residential swimming pool owner may not transfer ownership of a pool unless the pool meets at least two of the required safety features.

Section 4 amends cross-references to conform to changes in the bill.

The bill includes technical conforming provisions to meet bill drafting conventions.

²⁴ See s. 515.33, F.S.

²⁵ See s. 468.8323, F.S. A home inspector is not required to provide estimates for repair costs of an inspected property.

²⁶ See <https://www.kacenscause.com/> (last visited Feb. 28, 2019), which notes the term “K.A.C.E.N.S. C.A.U.S.E.” stands for “Keeping Adults and Children Educated Nationwide: Creating Awareness on Unsafe Swimming Environments.”

The bill provides an effective date of July 1, 2019.

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:

Under the requirements of the bill, an owner of a residential property must specify in the construction plans for a swimming pool that the project must include at least two pool safety features in order to pass inspection (rather than one), which may increase construction costs.

An owner of an existing residential property with a swimming pool must ensure that there are at least two of the required pool safety features in place before transferring ownership of the property, to avoid delayed or failed transfers, and penalties for noncompliance. Compliance with the required pool safety features will increase the cost to affected owners of properties for sale. Realtors and others involved with the transfer of properties may also need to include the requirements for pool safety features imposed by the bill in procedures and requirements for real estate closings.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The following issues were raised at the Committee on Innovation, Industry, and Technology for consideration by the introducer: provide consequences of failure to comply with the pool feature requirements when a residential property with a pool is transferred by a seller, how to address the issue of out-of-state owners and foreclosure sales, and the transfer of a property for which a home inspection is not performed or is a cash transaction.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.8323, 515.27, and 515.31.

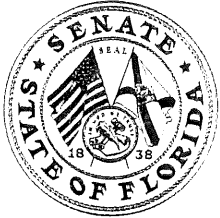
IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ED HOOPER
16th District

COMMITTEES:

Governmental Oversight and Accountability, Chair
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Health and Human
Services
Health Policy
Infrastructure and Security
Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Administrative Procedures Committee

February 19th, 2019

The Honorable Wilton Simpson, Chair
Innovation, Industry, and Technology Committee
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simpson:

I am writing to request that Senate Bill 724, Residential Swimming Pool Safety, be placed on the next meeting agenda of the Innovation, Industry, and Technology Committee.

Should you have any questions regarding this bill, please do not hesitate to reach out to me.
Thank you for your time and consideration.

Warm regards,

A handwritten signature in black ink, appearing to read "Ed Hooper", written over a circular stamp or seal.

Ed Hooper

CC: Booter Imhof, Staff Director
Lynn Koon, Administrative Assistant

REPLY TO:

- 3450 East Lake Road, Suite 305, Palm Harbor, Florida 34685-2411 (727) 771-2102
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/19

Meeting Date

SB 724

Bill Number (if applicable)

Topic Kacen's Cause Act

Amendment Barcode (if applicable)

Name April Phillips

Job Title Vice President, Kacen's Cause

Address 17436 Isbell Ln

Phone 727-744-9951

Street

Odessa

City

FL

State

33556

Zip

Email aprilphillips0929@live.com

Speaking: For Against Information

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

Representing Kacen's Cause

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/14/19
Meeting Date

8724
Bill Number (if applicable)

Topic Kacens's Cause Act

Amendment Barcode (if applicable)

Name Brittany Howard

Job Title President Kacens Cause Inc

Address 1010 Lafayette Blvd
Street

Phone (727) 339-9040

Oldsmar FL 34677
City State Zip

Email BrittanyHoward@hotmail.com

Speaking: For Against Information

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

Representing KACENS CAUSE 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)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/19
Meeting Date

SB724
Bill Number (if applicable)

Topic Kacens cause ACT

Amendment Barcode (if applicable)

Name Jeremy Howard

Job Title operator @ construction/

Address 616 Lafayette Blvd
Street

Phone 727-458-8054

Odessa FL 34677
City State Zip

Email Jeremy0115@hotmail.com

Speaking: For Against Information

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

Representing KACENS CAUSE 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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/16/19 Meeting Date

SB0724 Bill Number (if applicable)

Topic Swimming Pool Safety

Amendment Barcode (if applicable)

Name Khanh-Lien Banko KATHAN LYNN BANKO

Job Title Resolutions Chair - Florida PTA

Address 1747 Orlando Parkway Street Orlando, FL 32809 City State Zip

Phone 407-855-7607

Email resolutions@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.

**The Florida Senate
COMMITTEE VOTE RECORD**

COMMITTEE: Innovation, Industry, and Technology
ITEM: SB 724
FINAL ACTION: Favorable
MEETING DATE: Wednesday, March 6, 2019
TIME: 10:30 a.m.—12:30 p.m.
PLACE: 110 Senate Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bracy						
X		Bradley						
X		Brandes						
X		Braynon						
X		Farmer						
X		Gibson						
X		Hutson						
X		Passidomo						
X		Benacquisto, VICE CHAIR						
X		Simpson, CHAIR						
10	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

By Senator Hooper

16-01014A-19

2019724__

1 A bill to be entitled
2 An act relating to residential swimming pool safety;
3 providing a short title; amending s. 468.8323, F.S.;
4 requiring a home inspector to include certain
5 information relating to swimming pools in his or her
6 report; amending s. 515.27, F.S.; requiring that new
7 residential swimming pools meet an additional
8 requirement in order to pass final inspection and
9 receive a certificate of completion; prohibiting a
10 swimming pool owner from transferring ownership of a
11 swimming pool unless certain requirements are met;
12 revising criminal penalties relating to swimming pool
13 safety features; amending s. 515.31, F.S.; conforming
14 a cross-reference; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. This act may be cited as "The Kacen's Cause
19 Act."

20 Section 2. Paragraph (d) is added to subsection (1) of
21 section 468.8323, Florida Statutes, to read:

22 468.8323 Home inspection report.—Upon completion of each
23 home inspection for compensation, the home inspector shall
24 provide a written report prepared for the client.

25 (1) The home inspector shall report:

26 (d) If there is a swimming pool, as defined in s. 515.25,
27 any safety features, as described in s. 515.27(1), which are
28 present.

29 Section 3. Section 515.27, Florida Statutes, is amended to

16-01014A-19

2019724__

30 read:

31 515.27 Residential swimming pool safety feature options;
32 penalties.—

33 (1) In order to pass final inspection and receive a
34 certificate of completion, a residential swimming pool must meet
35 at least two ~~one~~ of the following requirements relating to pool
36 safety features:

37 (a) The pool must be isolated from access to a home by an
38 enclosure that meets the pool barrier requirements of s.
39 515.29.~~†~~

40 (b) The pool must be equipped with an approved safety pool
41 cover.~~†~~

42 (c) All doors and windows providing direct access from the
43 home to the pool must be equipped with an exit alarm that has a
44 minimum sound pressure rating of 85 dB A at 10 feet.~~†~~

45 (d) All doors providing direct access from the home to the
46 pool must be equipped with a self-closing, self-latching device
47 with a release mechanism placed no lower than 54 inches above
48 the floor.~~†~~~~or~~

49 (e) A swimming pool alarm that, when placed in a pool,
50 sounds an alarm upon detection of an accidental or unauthorized
51 entrance into the water. Such pool alarm must meet and be
52 independently certified to ASTM Standard F2208, titled "Standard
53 Safety Specification for Residential Pool Alarms," which
54 includes surface motion, pressure, sonar, laser, and infrared
55 alarms. For purposes of this paragraph, the term "swimming pool
56 alarm" does not include any swimming protection alarm device
57 designed for individual use, such as an alarm attached to a
58 child that sounds when the child exceeds a certain distance or

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59 becomes submerged in water.

60 (2) A swimming pool owner may not transfer ownership of a
61 swimming pool unless the swimming pool meets at least two of the
62 requirements under subsection (1).

63 (3)~~(2)~~ A person who fails to equip a new residential
64 swimming pool with at least two ~~one~~ pool safety features ~~feature~~
65 as required in subsection (1) commits a misdemeanor of the
66 second degree, punishable as provided in s. 775.082 or s.
67 775.083, except that a penalty may not ~~no penalty shall~~ be
68 imposed if the person, within 45 days after arrest or issuance
69 of a summons or a notice to appear, has equipped the pool with
70 at least two ~~one~~ safety features ~~feature~~ as required in
71 subsection (1) and has attended a drowning prevention education
72 program established by s. 515.31. However, the requirement of
73 attending a drowning prevention education program is waived if
74 such program is not offered within 45 days after issuance of the
75 citation.

76 Section 4. Subsection (1) of section 515.31, Florida
77 Statutes, is amended to read:

78 515.31 Drowning prevention education program; public
79 information publication.—

80 (1) The department shall develop a drowning prevention
81 education program, which shall be made available to the public
82 at the state and local levels and which shall be required as set
83 forth in s. 515.27(3) ~~s. 515.27(2)~~ for persons in violation of
84 the pool safety requirements of this chapter. The department may
85 charge a fee, not to exceed \$100, for attendance at such a
86 program. The drowning prevention education program shall be
87 funded using fee proceeds, state funds appropriated for such

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88 purpose, and grants. The department, in lieu of developing its
89 own program, may adopt a nationally recognized drowning
90 prevention education program to be approved for use in local
91 safety education programs, as provided in rule of the
92 department.

93 Section 5. This act shall take effect July 1, 2019.

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 Innovation, Industry, and Technology

BILL: CS/SB 796

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Gruters

SUBJECT: Public Utility Storm Protection Plans

DATE: March 6, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Fav/CS
2.			IS	
3.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 796 creates a recovery clause¹ for storm protection costs instead of recovering these costs through base rates, as is done now; provides for recovery of a return on capital costs (profit) through the clause; and potentially requires the Public Service Commission (PSC or commission) to approve cost recovery without consideration of the actual costs. The bill makes specific legislative findings that it is in the public interest to promote storm protection activities that will reduce restoration costs and outage times and increase reliability.

The bill applies to only public utilities, which are the investor-owned utilities (IOUs): Florida Power and Light, Duke Energy Florida, Gulf Power Company, Tampa Electric Company, and the Florida Public Utilities Corporation. Initially, the bill builds on PSC rule, requiring that, as part of the storm hardening plan required by the rule, each IOU must submit to the commission for review and approval a transmission and distribution storm protection plan that covers 30 years.

¹ Most of an investor-owned utility's costs and profits are recovered through base rates, the per-kilowatt-hour charges on a customer's bill. Recovery clause charges are additional charges, usually in separate line item charges on the bill. A recovery clause is typically used to make an annual recovery of costs that are difficult to plan for, are a simple pass-through of actual costs, do not include capital costs or a return on those capital costs, and for which regulatory lag in recovering such costs would be problematic.

The commission must approve or modify the proposed plan, as appropriate, within 6 months after the IOU initially submits the plan. In reviewing the plan, the commission must give due consideration to:

- Whether the plan enhances reliability, strengthens infrastructure, and reduces restoration costs and outage times in a prudent, practical, and cost-efficient manner.
- Whether transmission and distribution storm protection of electric infrastructure is feasible, reasonable, or practical in certain areas of the public utility's service territory, including, but not limited to, flood zones and rural areas.

Each public utility must submit an updated transmission and distribution storm protection plan at least every three years after commission approval of its most recent plan. The commission must approve or modify the plan using the same considerations as applied to the original plan.

The bill creates a storm protection cost recovery clause and requires the commission to conduct an annual proceeding to allow a public utility to justify and recover transmission and distribution storm protection plan costs through the cost recovery clause. Action taken by a public utility for storm protection of transmission and distribution facilities pursuant to a commission-approved plan is deemed prudent, but a party may challenge the commission's determination of prudence.

The annual cost recovery through the storm protection cost recovery clause must be stated separately from the public utility's base rates. If a capital expenditure cost is recoverable through the recovery clause, the IOU may recover annual depreciation and a return on capital.

The bill requires the commission to adopt rules to implement and administer its provisions.

The bill takes effect July 1, 2019.

II. Present Situation:

Electric Utilities and the Public Service Commission

Chapter 366, F.S., provides for regulation of electric utilities in Florida. Section 366.02, F.S., provides definitions for these purposes.

- "Commission" means the Florida Public Service Commission.
- "Electric utility" means any municipal electric utility, investor-owned electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.
- "Public utility" means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity ... to or for the public within this state; but the term "public utility" does not include either a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof;

The commission has grid reliability authority over all Florida electric utilities.² It has full economic regulation authority over the public utilities, including setting rates, and ensuring

² Sections 366.04(2)(c) and 366.05(8), F.S.

service quality standards.³ The public utilities are the investor-owned utilities: Florida Power and Light, Duke Energy Florida, Gulf Power Company, Tampa Electric Company, and the Florida Public Utilities Corporation.

Hurricane-Related Costs

Until recently, the subject of electric utility costs associated with a hurricane meant the costs of post-hurricane repair of the electric grid, the system of transmission and distribution lines and associated infrastructure. Then after the 2004-2005 hurricane seasons, there was an emphasis on storm hardening and the resulting costs. The IOUs now incur, and recover from their ratepayers (their customers), two types of costs associated with hurricanes and storms: after-the-fact repair costs and pre-storm hardening costs.⁴

Storm hardening and cost recovery are governed by PSC rule.⁵ The rule applies to all IOUs and is intended:

- To ensure safe, adequate, and reliable electric transmission and distribution service for both operational and emergency purposes;
- To require the cost-effective strengthening of critical electric infrastructure to increase the ability of transmission and distribution facilities to withstand extreme weather conditions; and
- To reduce restoration costs and outage times associated with extreme weather conditions.

Under the rule, each IOU filed an initial plan for the PSC's review and approval, after which each utility's plan must be updated every three years. In a proceeding to approve a utility's plan, the commission is to consider whether the utility's plan meets the desired objectives of enhancing reliability and reducing restoration costs and outage times in a prudent, practical, and cost-effective manner to the affected parties.

The rule requires each utility storm-hardening plan to contain a detailed description of the construction standards, policies, practices, and procedures to be employed to enhance the reliability of overhead and underground electrical transmission and distribution facilities. Each filing must, at a minimum, address the extent to which the utility's storm hardening plan:

- Complies with a specified national safety code;
- Adopts specified extreme wind loading standards;
- Is designed to mitigate damage to underground and supporting overhead transmission and distribution facilities due to flooding and storm surges; and
- Provides for the placement of new and replacement distribution facilities to facilitate safe and efficient access for installation and maintenance.

Each storm hardening plan must explain the systematic approach the utility will follow to achieve the desired objectives of enhancing reliability and reducing restoration costs and outage

³ Section 366.04(1), F.S.

⁴ Florida Public Service Commission, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions 2018*, 5 (July 2018).

⁵ Fla. Admin. Code R. 25-6.0342 (2007).

times associated with extreme weather events. The explanation of the deployment strategy must include, but is not limited to, the following:

- A description of the facilities affected, including technical design specifications, construction standards, and construction methodologies employed;
- The communities and areas within the utility's service area where the electric infrastructure improvements are to be made;
- The extent to which the electric infrastructure improvements involve joint-use facilities on which third-party attachments exist;
- An estimate of the costs and benefits to the utility of making the improvements, including the effect on reducing storm restoration costs and customer outages; and
- An estimate of the costs and benefits to third-party attachers affected by the electric infrastructure improvements, including the effect on reducing storm restoration costs and customer outages realized by the third-party attachers.

Approval of an IOU's storm-hardening plan does not guarantee the IOU the recovery of all costs incurred to implement the plan. After the IOU takes steps to implement the plan, the IOU must seek cost recovery during its next general rate case proceeding, where the PSC reviews the costs and determines whether they were prudently incurred before adding the approved costs to the IOU's base rates.⁶ This helps to protect the IOU's ratepayers.

Each IOU has a rate-case settlement in place with a provision freezing the IOU's base rates and they can't get an increase to recover these costs until the settlement expires and they initiate another rate case.

Recovery Clauses

The vast majority of an IOU's general costs of providing service, including the IOU's profit, or allowed range of rates of return, is recovered through base rates. Base rates are set in a rate case, where all of an IOU's projected costs of doing business are reviewed and individual costs or categories of costs can be reviewed separately for a determination of accuracy and prudence. All approved costs are added together, an allowed range of rates of return is set, and a "revenue requirement" is established, the total revenue necessary to recover all these costs and the profit. The rates for different customer classes are then set that will provide recovery of this revenue requirement. The process protects the interests of both the IOU and its ratepayers.

There are, however, some exceptions where costs are recovered through a recovery clause, an additional charge usually in separate line item charge on the bill. The primary recovery clause is the fuel-cost recovery clause charge. Fuel costs can vary, sometimes significantly, from year to year and are recovered through the fuel-cost recovery clause. A recovery clause is used when the costs at issue are volatile, unusual, or short-term and are therefore difficult to plan for, and when regulatory lag in recovering such costs would be problematic. Recovery clause proceedings are typically conducted on an annual basis and provide only for a pass-through of actual costs. As capital expenditures are typically made based on long-term plans, recovery clauses typically do not include capital costs or a return on those capital costs. An IOU cannot use a recovery clause

⁶ Florida Public Service Commission, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions 2018*, 12 (July 2018).

to recover capital expenses and a rate of return on those expenses when there is an existing, applicable rate-settlement agreement containing a rate freeze.⁷

Undergrounding Lines

The construction of underground electrical distribution systems is more expensive than overhead systems, and the ratepayers served by the underground line are responsible for the difference in the costs between underground and overhead. The costs and benefits of storm hardening are factored into the cost difference calculation for new construction or conversion to underground facilities.⁸

The data collected after Hurricane Irma showed that underground lines suffered minimal outages during storms. It should be noted that while underground facilities fared particularly well during Hurricane Irma, they still are susceptible to damage caused by uprooted trees and flooding, and these repairs typically take longer to complete.⁹

In response to data requests from PSC staff, the three largest IOUs¹⁰ stated that approximately 40 percent of all distribution lines are underground and that the majority of recent underground projects were for new construction, rather than the conversion of overhead to underground. Since 2006, the installed underground facilities have increased by approximately 5,300 miles for the IOUs. The total amount of installed underground facilities during the past five years was approximately 2,200 miles for an average rate of 440 miles/year.¹¹

In an effort to further the deployment of underground facilities, Duke Energy Florida and Florida Power and Light have initiated targeted undergrounding programs that: began in 2018, focused on historically poor performing lateral circuits¹² to replace several hundred miles of overhead lines, and were funded through current base rates. Duke Energy Florida's pilot program is scheduled over a period of ten years and Florida Power and Light's for three years. The goal for each program is to test different construction techniques and identify impediments to converting these targeted overhead facilities to underground.¹³

Federal Tax Reform Benefits

The federal Tax Cuts and Jobs Act of 2017 took effect January 1, 2018, and reduces the federal corporate income tax rate from 35 to 21 percent. These tax cuts will produce a financial benefit for the IOUs, and the PSC is reviewing each utility's circumstances to determine whether those

⁷ See, e.g., *Citizens of the State v. Graham*, 213 So. 3d 703, 715-717 (Fla. 2017).

⁸ Florida Public Service Commission, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions 2018*, 12 (July 2018).

⁹ *Id.*, 30.

¹⁰ Florida Power and Light, Duke Energy Florida, and Tampa Electric Company.

¹¹ Florida Public Service Commission, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions 2018*, 11-12 (July 2018).

¹² An IOU's distribution grid consists of feeder and lateral circuits. Feeders run outward from substations and can serve thousands of customers. Laterals branch out from feeders and are the final portion of the electric delivery system, serving smaller numbers of customers and typically associated with residential areas. Florida Public Service Commission, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions 2018*, 9-10 (July 2018).

¹³ *Id.*, 12.

benefits must be returned to customers and, if so, how. Four of the five IOUs¹⁴ have previous rate case settlement agreements that contain provisions for flowing tax cut benefits back to customers, and that process will proceed in accordance with these terms. Currently, Florida Power and Light is the only IOU that does not have such an agreement.

III. Effect of Proposed Changes:

The bill creates s. 366.96, F.S., to require a recovery clause for storm protection costs, provide for recovery of a return on capital costs (profit) through the clause, and potentially require commission approval of recovery without consideration of the cost.

The bill makes legislative findings that it is in the public interest to promote storm protection activities that will reduce restoration costs and outage times and increase reliability. It creates the following definitions.

- “Transmission and distribution storm protection plan” or “plan” means a plan for the overhead hardening of electric transmission and distribution facilities, undergrounding of electric distribution facilities, and increased vegetation management.
- “Transmission and distribution storm protection plan costs” means the reasonable and prudent costs to implement an approved transmission and distribution storm protection plan.
- “Vegetation management” means the actions a public utility takes to prevent or curtail vegetation from interfering with public utility infrastructure. The term includes the mowing of vegetation, application of herbicides, trimming of trees, and removal of trees or brush near and around electric transmission and distribution facilities.

The bill requires each public utility to file for commission review, as part of its storm hardening plan required by the commission under s. 366.04(2)(c), F.S., a transmission and distribution storm protection plan that covers 30 years. The commission must approve or modify the plan within 6 months after the public utility files the plan with the commission. In doing so, the commission must give due consideration to whether:

- The plan enhances reliability, strengthens infrastructure, and reduces restoration costs and outage times in a prudent, practical and cost-efficient manner. The plan should prioritize areas in order to generate the highest impact on system resiliency and efficiency and should focus on areas with large numbers of customers, high frequency outages, and lengthy outages.
- Storm protection of transmission and distribution infrastructure is feasible, reasonable, or practical in certain areas of the utility’s service territory, including in flood zones and rural areas.

Each public utility must submit an updated transmission and distribution storm protection plan at least every three years after commission approval of its most recent plan. The commission must approve or modify the plan using the same considerations as applied to the original plan.

¹⁴ The four IOUs are Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company. Press Release, Florida Public Service Commission, *PSC Asserts Jurisdiction to Recover Tax Savings for Customers* (Feb. 6, 2018), available at <http://www.floridapsc.com/Home/Newslink?id=11594> (last visited February 28, 2019).

The bill requires the commission to conduct an annual proceeding to allow a public utility to justify and recover transmission and distribution storm protection plan costs through a storm protection cost recovery clause. Action taken by a public utility for storm protection of transmission and distribution facilities pursuant to a commission-approved plan is deemed prudent, but a party may challenge the commission's determination of prudence.

The annual transmission and distribution storm protection plan costs that are recoverable through the storm protection cost recovery clause must be stated separately from the public utility's base rates and must be allocated to customer classes pursuant to the rate design most recently approved by the commission. If a capital expenditure cost is recoverable through a storm protection cost recovery clause, the public utility may recover the annual depreciation on such cost, calculated at the public utility's current approved depreciation rates. The IOU may also recover a return on the depreciated balance of the costs calculated at the public utility's weighted average cost of capital using the return on equity last approved by the commission in a rate case or settlement order.

The bill requires the commission to adopt rules to implement and administer its provisions.

The bill takes effect July 1, 2019.

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:

Each IOU may have to wait until its currently applicable rate settlement agreement expires to use the storm protection cost recovery clause provisions of the bill. Both the federal and State constitutions prohibit passage or implementation of a law impairing the obligation of contracts.¹⁵ A settlement agreement is a contract, and this prohibition would be applicable. The question, then, is whether the State's "significant and legitimate public purpose" outweighs the intrusion into the parties' bargain.¹⁶ Allowing an IOU to recover

¹⁵ U.S. CONST. art. I, s. 10 and FLA. CONST. art. I, s.10.

¹⁶ See, e.g., *Searcy, Denney, Scarola, Barnhart & Shipley, Etc., et al. v. State of Florida*, 209 So. 3d 1181 (Fla. 2017), 1192

capital expenses and a rate of return despite a rate freeze provision in a settlement agreement may violate the constitution's prohibition against impairment of contract.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Public utilities will incur unknown costs to develop and implement the transmission and distribution storm protection plans, which will be passed on to their customers. Customers will get the benefits of the energy grid improvements, but these benefits cannot be quantified with any certainty because they depend on many variables, such as what improvements are made and the details of future storms and outages.

C. Government Sector Impact:

The PSC will incur costs to adopt the required rules and to hold hearings to develop the disaster preparation and energy grid improvement plans. There will be additional costs to continue to monitor and periodically modify the plans. These costs have not yet been estimated.

These proceedings will also involve the Office of Public Counsel,¹⁷ which will also incur costs.

VI. Technical Deficiencies:

Lines 58-62 and 66-71 define "transmission and distribution storm protection plan" to include the costs of "increased vegetation management" and define "vegetation management" in a broadly inclusive manner. Existing storm hardening plans include vegetation management¹⁸ and the resulting costs are included in existing base rate charges,¹⁹ so it is unclear how future vegetation management costs would be recovered. Even if the phrase "increased vegetation management" limits clause recovery in some way, it may be difficult to separate a base line of vegetation management activities and costs from increased activities and costs, particularly as time passes.

VII. Related Issues:

In their analysis on the bill, the Public Service Commission staff raised several concerns.²⁰

¹⁷ The Office of Public Counsel represents utility customers in PSC proceedings (s. 350.0611, F.S.).

¹⁸ Florida Public Service Commission, *Review of Florida's Electric Utility Hurricane Preparedness and Restoration Actions 2018*, 5 (July 2018).

¹⁹ *Id.*, 12.

²⁰ 2019 Agency Legislative Bill Analysis issued by the PSC for SB 796, dated March 4, 2019 (on file with Senate Committee on Innovation, Industry, and Technology).

The Prudence Standard

The PSC's longstanding practice for determining prudence is "consideration of what a reasonable utility manager would have done, in light of the conditions and circumstances which were known, or should have been known, at the time the decision was made." This standard results in assessing the utility's actions and decisions that give rise to the costs incurred. If an action or decision was prudent then the resulting costs were prudently incurred and recoverable from customers. However, if an action or decision was not prudent, then the resulting costs were not prudently incurred and are not recoverable from customers.

The bill states "[a]ll actions taken in implementing the storm protection plan are considered prudent, but a party may challenge the prudence of the costs associated with such actions."²¹ The standard of review for determining prudence as expressed in the language of the bill may not be consistent with the PSC's longstanding practice. With a presumption that all utility actions are prudent, it is unclear how a party can challenge the prudence of costs associated with those actions.

Approval of a Storm Protection Plan versus a Storm Hardening Plan

Currently, commission approval of storm hardening plans do not constitute a finding that costs to implement the plan are prudently incurred. The bill does not appear to require changes to the commission's current review of storm hardening plans or the method of cost recovery for their implementation. The activities and costs incurred for storm hardening remain a consideration during rate cases.

However, the commission must address storm protection plans differently because implementation of the storm protection plan activities and associated costs will become subject to an annual clause. Commission orders on storm protection plans may need to address in detail each activity, level of activity, management oversight, and other similar aspects in addition to the specific factors set forth in the bill.

Separating Storm Protection Plan Cost Recovery from Base Rate Revenues

According to the commission, revenues from base rates are currently addressing the utility's costs for targeted undergrounding and all storm hardening activities. Utility activities and costs fluctuate year-to-year based in part on the utility's management decisions and external factors such as extreme weather events. Year-to-year fluctuation of costs that are addressed by base rate revenues is normal.

The commission indicated that the intent of the bill appears to promote an incremental increase of the same types of activities and costs that are already described by the existing storm hardening plans. However, there is no direct mechanism to measure or establish exactly what level of activities and associated costs are included in current base rates because fluctuations are normal. Consequently, there could be tension in assessing the level of activity and ultimately the costs that may qualify for recovery through the clause.

²¹ While the language quoted has changed in the committee substitute, it appears the concern should continue.

Administrative Timeline

The commission indicated that allowing only six months for the commission to complete its review of a public utility's transmission and distribution storm protection plans, hold hearings, and make a determination of approval or modification is aggressive. The bill language is unclear whether the six month period includes the additional time after commission vote that may be necessary for issuance of a final order. It is unlikely that six months is reasonably sufficient for an intervening party to perform a rigorous review assessing the factors required by the bill and validating that the costs identified by the utility are not included in base rates. In March 2016, all five public utilities filed storm hardening plans and the PSC voted on the plans in December, reflecting an administrative timeline of nine months.

Return on the Depreciated Balance versus Return on Undepreciated Balance

The bill describes costs that can be recovered through the clause. The costs include "a return on the depreciated balance." However, this is a departure from current accounting practice. Current accounting practice is to allow a utility to earn a return on the undepreciated balance. The undepreciated balance is the utility's remaining investment that has not been recovered. The depreciated balance is the sum of the annual amounts that the utility collects as depreciation expense through commission established rates.

VIII. Statutes Affected:

This bill creates section 366.96 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 Innovation, Industry, and Technology on March 6, 2019:

The committee substitute:

- Requires each transmission and distribution storm protection plan to cover 30 years of planned improvements;
- Requires each plan to prioritize areas in order to generate the highest impact on system resiliency and efficiency and should focus on areas with large numbers of customers, high frequency outages, and lengthy outages;
- Deletes from the bill all provisions relating to federal corporate income tax benefits;
- Deletes from the bill the restriction on undergrounding (burying) of lines to no more than four percent of a utility's lateral distribution lines per year;
- Deletes from the bill the reference to ch. 120, F.S., in the provisions on Public Service Commission approval of a plan;
- Revises the provisions on updates plans to require that they address at least a 30-year period, require that the Public Service Commission approve or modify each updated plan, and require that it do so using the criteria used for approving or modifying the original plan; and

- Deletes the definitions of the terms commission and public utility (those terms are already defined within ch. 366, F.S.)

B. Amendments:

None.

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



352908

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2019	.	
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	.	
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The Committee on Innovation, Industry, and Technology (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 366.96, Florida Statutes, is created to
read:

366.96 Storm protection plan cost recovery.-

(1) The Legislature finds that:

(a) During extreme weather conditions, high winds can cause
vegetation and debris to blow into and damage electrical



352908

11 transmission and distribution facilities, resulting in power
12 outages.

13 (b) A majority of the power outages that occurred during
14 the recent extreme weather conditions in the state were caused
15 by vegetation blown by the wind.

16 (c) It is in the public interest to promote overhead
17 hardening of electrical transmission and distribution
18 facilities, the undergrounding of certain electrical
19 distribution lines, and vegetation management in this state.

20 (d) Protecting and strengthening transmission and
21 distribution electric utility infrastructure from extreme
22 weather conditions will reduce restoration costs and outage
23 times to customers and improve overall service reliability for
24 customers.

25 (e) When considering costs, reliability, storm protection
26 and restoration, and the public convenience, it is in the
27 state's best interest that utilities focus primarily on
28 distribution laterals when undergrounding electric distribution
29 lines.

30 (f) It is in the public interest for each utility to
31 mitigate additional costs to utility customers when developing
32 transmission and distribution storm hardening plans.

33 (g) All customers benefit the reduced costs of storm
34 restoration.

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

36 (a) "Transmission and distribution storm protection plan"
37 or "plan" means a plan for the overhead hardening of electric
38 transmission and distribution facilities, undergrounding of
39 electric distribution facilities, and increased vegetation



352908

40 management.

41 (b) "Transmission and distribution storm protection plan
42 costs" means the reasonable and prudent costs to implement an
43 approved transmission and distribution storm protection plan.

44 (c) "Vegetation management" means the actions a public
45 utility takes to prevent or curtail vegetation from interfering
46 with public utility infrastructure. The term includes the mowing
47 of vegetation, application of herbicides, trimming of trees, and
48 removal of trees or brush near and around electric transmission
49 and distribution facilities.

50 (3) Each public utility shall file for commission review,
51 as part of its storm hardening plan required by the commission
52 under s. 366.04(2) (c), a transmission and distribution storm
53 protection plan that covers 30 years. The commission must
54 approve or modify the plan within 6 months after the public
55 utility files the plan with the commission. The commission must
56 give due consideration to whether:

57 (a) The plan enhances reliability, strengthens
58 infrastructure, and reduces restoration costs and outage times
59 in a prudent, practical and cost-efficient manner. The plan
60 should prioritize areas in order to generate the highest impact
61 on system resiliency and efficiency and should focus on areas
62 with large numbers of customers, high frequency outages, and
63 lengthy outages.

64 (b) Storm protection of transmission and distribution
65 infrastructure is feasible, reasonable, or practical in certain
66 areas of the utility's service territory, including in flood
67 zones and rural areas.

68 (4) Each public utility must submit an updated transmission



352908

69 and distribution storm protection plan at least every 3 years
70 after commission approval of its most recent plan.

71 (5) (a) The commission shall conduct an annual proceeding to
72 allow a public utility to justify and recover transmission and
73 distribution storm protection plan costs through a storm
74 protection cost recovery clause.

75 (b) Action taken by a public utility for storm protection
76 of transmission and distribution facilities pursuant to a
77 commission-approved plan is deemed prudent, but a party may
78 challenge the commission's determination of prudence.

79 (6) The annual transmission and distribution storm
80 protection plan costs recoverable through the storm protection
81 cost recovery clause must be stated separately from the public
82 utility's base rates and must be allocated to customer classes
83 pursuant to the rate design most recently approved by the
84 commission.

85 (7) If a capital expenditure cost is recoverable through a
86 storm protection cost recovery clause, the public utility may
87 recover the annual depreciation on such cost, calculated at the
88 public utility's current approved depreciation rates, and a
89 return on the depreciated balance of the costs calculated at the
90 public utility's weighted average cost of capital using the
91 return on equity last approved by the commission in a rate case
92 or settlement order.

93 (8) The commission shall adopt rules to implement and
94 administer this section.

95 Section 2. This act shall take effect July 1, 2019.

96
97 ===== T I T L E A M E N D M E N T =====



352908

98 And the title is amended as follows:

99 Delete everything before the enacting clause

100 and insert:

101 A bill to be entitled

102 An act relating to public utility storm protection
103 plans; creating s. 366.96, F.S.; providing legislative
104 findings; defining terms; requiring public utilities
105 to individually submit to the Public Service
106 Commission, for review and approval, a transmission
107 and distribution storm protection plan as part of the
108 storm hardening plan required by the commission;
109 requiring utilities to update their respective plans
110 on a specified basis; requiring the commission to
111 approve or modify submitted plans within a specified
112 timeframe, taking into consideration specified
113 factors; requiring the commission to conduct an annual
114 proceeding to allow utilities to justify and recover
115 certain costs through a storm protection cost recovery
116 clause; providing that a party may challenge the
117 prudence of certain costs; providing that utilities
118 may not include certain costs in their base rates;
119 providing for the allocation of such costs;
120 authorizing utilities to recover depreciation on
121 certain capital costs through the recovery clause;
122 requiring the commission to adopt rules; providing an
123 effective date.



849624

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2019	.	
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	.	

The Committee on Innovation, Industry, and Technology (Gruters) recommended the following:

Senate Amendment to Amendment (352908)

Delete lines 69 - 70
and insert:
and distribution storm protection plan that covers, at a minimum, the 30-year period addressed in its initial transmission and distribution storm protection plan at least every 3 years after commission approval of its most recent plan.
The commission shall approve or modify each updated plan pursuant to the criteria set forth in subsection (3).

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Banking and Insurance

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS

23rd District

February 20th, 2019

The Honorable Wilton Simpson, Chair
Innovation, Industry, and Technology Committee
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simpson:

I am writing to request that Senate Bill 796, Public Utility Storm Protection Plans, be placed on the agenda of the next Innovation, Industry, and Technology Committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,



Joe Gruters

cc: Booter Imhof, Staff Director
Lynn Koon, Committee Administrative Assistant

REPLY TO:

- 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/2019

Meeting Date

SB 796

Bill Number (if applicable)

Topic Utility Storm Protection Plans

Amendment Barcode (if applicable)

Name Donna Simmons

Job Title Director, State Gov't Relations

Address 106 E. College Ave

Phone 850-681-6785

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 Tampa Electric Company

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/2019

Meeting Date

SB 796

Bill Number (if applicable)

Topic Utility Storm Protection Plans

Amendment Barcode (if applicable)

Name Donna Simmons

Job Title Director, State Gov't Relations

Address 106 E. College Ave

Phone 850-681-6785

Street

Tallahassee

FL

32301

Email

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Tampa Electric Company

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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APPEARANCE RECORD

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3/6/2019

Meeting Date

SB 796

Bill Number (if applicable)

Topic Utility Storm Protection Plans

Amendment Barcode (if applicable)

Name Donna Simmons

Job Title Director, State Gov't Relations

Address 106 E. College Ave

Phone 850-681-6785

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 Tampa Electric Company

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.

THE FLORIDA SENATE
APPEARANCE RECORD

3-6-19

Meeting Date

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

796

Bill Number (if applicable)

Topic Public Utility Storm Protection Plan

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP of State & Federal Affairs

Address 516 N Adams St
Street

Phone _____

Tallahassee FL
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)

APPEARANCE RECORD

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

SB 796

Bill Number (if applicable)

Meeting Date

Topic Storm Protection for Utilities

Amendment Barcode (if applicable)

Name Christopher Emmanuel

Job Title Policy Director

Address 136 S. Bronough

Phone

Street

TLH

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 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/14

Meeting Date

SB 796

Bill Number (if applicable)

Topic SB 796

Amendment Barcode (if applicable)

Name Paul Griffin

Job Title Executive Director

Address 2844 Whitetail Circles

Phone 202-577-5454

Street

Lafayette CO 80026

City

State

Zip

Email paul@energyfairness.org

Speaking: For Against Information

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

Representing Energy Fairness

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/2019

SB 796

Meeting Date

Bill Number (if applicable)

Topic Public Utility Storm Protection Plans

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title Associate State Director

Address 200 W. College Ave

Phone 850-228-4243

Street

Tallahassee

FL

32301

Email zsmith@aarp.org

City

State

Zip

Speaking: [] For [x] Against [] Information

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

Representing AARP 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.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.6.19

Meeting Date

796

Bill Number (if applicable)

Topic Public Utility Storm Protection

Amendment Barcode (if applicable)

Name Anne Gerwig

Job Title Mayor

Address 12300 Forest Hill Blvd.

Phone 561.346.2952

Wellington FL 33414
City State Zip

Email agerwig@wellingtonfl.gov

Speaking: For Against Information

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

Representing Village of Wellington

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)

By the Committee on Innovation, Industry, and Technology; and
Senators Gruters and Bracy

580-02754-19

2019796c1

1 A bill to be entitled
2 An act relating to public utility storm protection
3 plans; creating s. 366.96, F.S.; providing legislative
4 findings; defining terms; requiring public utilities
5 to individually submit to the Public Service
6 Commission, for review and approval, a transmission
7 and distribution storm protection plan as part of the
8 storm hardening plan required by the commission;
9 requiring utilities to update their respective plans
10 on a specified basis; requiring the commission to
11 approve or modify submitted plans within a specified
12 timeframe, taking into consideration specified
13 factors; requiring the commission to conduct an annual
14 proceeding to allow utilities to justify and recover
15 certain costs through a storm protection cost recovery
16 clause; providing that a party may challenge the
17 prudence of certain costs; providing that utilities
18 may not include certain costs in their base rates;
19 providing for the allocation of such costs;
20 authorizing utilities to recover depreciation on
21 certain capital costs through the recovery clause;
22 requiring the commission to adopt rules; providing an
23 effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 366.96, Florida Statutes, is created to
28 read:

29 366.96 Storm protection plan cost recovery.-

580-02754-19

2019796c1

30 (1) The Legislature finds that:

31 (a) During extreme weather conditions, high winds can cause
32 vegetation and debris to blow into and damage electrical
33 transmission and distribution facilities, resulting in power
34 outages.

35 (b) A majority of the power outages that occurred during
36 the recent extreme weather conditions in the state were caused
37 by vegetation blown by the wind.

38 (c) It is in the public interest to promote overhead
39 hardening of electrical transmission and distribution
40 facilities, the undergrounding of certain electrical
41 distribution lines, and vegetation management in this state.

42 (d) Protecting and strengthening transmission and
43 distribution electric utility infrastructure from extreme
44 weather conditions will reduce restoration costs and outage
45 times to customers and improve overall service reliability for
46 customers.

47 (e) When considering costs, reliability, storm protection
48 and restoration, and the public convenience, it is in the
49 state's best interest that utilities focus primarily on
50 distribution laterals when undergrounding electric distribution
51 lines.

52 (f) It is in the public interest for each utility to
53 mitigate additional costs to utility customers when developing
54 transmission and distribution storm hardening plans.

55 (g) All customers benefit the reduced costs of storm
56 restoration.

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

58 (a) "Transmission and distribution storm protection plan"

580-02754-19

2019796c1

59 or "plan" means a plan for the overhead hardening of electric
60 transmission and distribution facilities, undergrounding of
61 electric distribution facilities, and increased vegetation
62 management.

63 (b) "Transmission and distribution storm protection plan
64 costs" means the reasonable and prudent costs to implement an
65 approved transmission and distribution storm protection plan.

66 (c) "Vegetation management" means the actions a public
67 utility takes to prevent or curtail vegetation from interfering
68 with public utility infrastructure. The term includes the mowing
69 of vegetation, application of herbicides, trimming of trees, and
70 removal of trees or brush near and around electric transmission
71 and distribution facilities.

72 (3) Each public utility shall file for commission review,
73 as part of its storm hardening plan required by the commission
74 under s. 366.04(2)(c), a transmission and distribution storm
75 protection plan that covers 30 years. The commission must
76 approve or modify the plan within 6 months after the public
77 utility files the plan with the commission. The commission must
78 give due consideration to whether:

79 (a) The plan enhances reliability, strengthens
80 infrastructure, and reduces restoration costs and outage times
81 in a prudent, practical and cost-efficient manner. The plan
82 should prioritize areas in order to generate the highest impact
83 on system resiliency and efficiency and should focus on areas
84 with large numbers of customers, high frequency outages, and
85 lengthy outages.

86 (b) Storm protection of transmission and distribution
87 infrastructure is feasible, reasonable, or practical in certain

580-02754-19

2019796c1

88 areas of the utility's service territory, including in flood
89 zones and rural areas.

90 (4) Each public utility must submit an updated transmission
91 and distribution storm protection plan that covers, at a
92 minimum, the 30-year period addressed in its initial
93 transmission and distribution storm protection plan at least
94 every 3 years after commission approval of its most recent plan.
95 The commission shall approve or modify each updated plan
96 pursuant to the criteria set forth in subsection (3).

97 (5) (a) The commission shall conduct an annual proceeding to
98 allow a public utility to justify and recover transmission
99 distribution storm protection plan costs through a storm
100 protection cost recovery clause.

101 (b) Action taken by a public utility for storm protection
102 of transmission and distribution facilities pursuant to a
103 commission-approved plan is deemed prudent, but a party may
104 challenge the commission's determination of prudence.

105 (6) The annual transmission and distribution storm
106 protection plan costs recoverable through the storm protection
107 cost recovery clause must be stated separately from the public
108 utility's base rates and must be allocated to customer classes
109 pursuant to the rate design most recently approved by the
110 commission.

111 (7) If a capital expenditure cost is recoverable through a
112 storm protection cost recovery clause, the public utility may
113 recover the annual depreciation on such cost, calculated at the
114 public utility's current approved depreciation rates, and a
115 return on the depreciated balance of the costs calculated at the
116 public utility's weighted average cost of capital using the

580-02754-19

2019796c1

117 return on equity last approved by the commission in a rate case
118 or settlement order.

119 (8) The commission shall adopt rules to implement and
120 administer this section.

121 Section 2. This act shall take effect July 1, 2019.

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 Innovation, Industry, and Technology

BILL: CS/SB 450

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Gibson

SUBJECT: Public Meetings/Local Government Utility

DATE: March 6, 2019 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 450 amends s. 286.0113, F.S., to create an exemption from public meetings law. Current law provides a public records law exemption for information held by a utility owned or operated by a unit of local government that relates:

- to the security of the technology, processes, or practices of the utility and that are designed to protect the utility’s networks, computers, programs, and data from attack, damage, or unauthorized access, and which, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources; and
- to the security of existing or proposed information technology systems or industrial control technology systems of the utility, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.

The bill exempts from public meetings law that portion of a meeting held by the utility at which the information covered by this public records exemption is discussed or may otherwise be revealed. The exempt portions of the meeting must be recorded and transcribed, and the recording and transcript of the meeting are confidential and exempt from disclosure unless a court of competent jurisdiction, following an in-camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only the portion of the recording or transcript which reveals nonexempt data and information may be disclosed to a third party.

The bill also provides legislative findings as to the public necessity for the exemption and the balancing of public and private harm.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

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 exemption for public records and public meetings. The bill creates a public meeting exemption, therefore it requires a two-thirds vote for final passage.

The bill takes effect July 1, 2019.

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 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

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 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.”

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 by passing a general law by a two-thirds vote of each of the House and the Senate.⁹ 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.¹⁰ A statutory exemption, which does not meet these two criteria, may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹² Records designated “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹³

Open Meetings Laws

The Florida Constitution also provides that the public has a right to access governmental meetings.¹⁴ 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.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁶

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”¹⁷ or the

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.*

¹¹ *Halifax Hosp. Medical Center v. News-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.

¹² 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 School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹³ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ FLA. CONST. art. I, s. 24(b).

¹⁵ *Id.*

¹⁶ FLA. CONST. art. I, s. 24(b). 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.”

¹⁷ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

“Sunshine Law,”¹⁸ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken, to be open to the public.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ 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.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²²

Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.²⁵ 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.²⁶ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁸ The OGSR 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.²⁹ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR 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.³⁰ 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:

¹⁸ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

²⁵ FLA. CONST. art. I, s. 24(c).

²⁶ *Id.*

²⁷ *Supra*, note 11.

²⁸ 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. 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.

²⁹ Section 119.15(3), F.S.

³⁰ 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;³¹
- 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;³² or
- It protects trade or business secrets.³³

The OGSR also requires specified questions to be considered during the review process.³⁴ In examining an exemption, the OGSR asks 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.³⁵ 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.³⁶

Current Public Records Exemption for Specified Types of Information Held by a Utility Owned or Operated by a Unit of Local Government

Section 119.011, F.S., defines the term “utility” to mean a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

Subsection 119.0713(5), F.S., exempts the following information held by a utility owned or operated by a unit of local government:

- Information related to the security of the technology, processes, or practices of a utility owned or operated by a unit of local government that are designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of existing or proposed information technology systems or industrial control technology systems of a utility owned or operated by a unit of local government, which, if disclosed, would facilitate unauthorized access to, and alteration or

³¹ Section 119.15(6)(b)1., F.S.

³² Section 119.15(6)(b)2., F.S.

³³ Section 119.15(6)(b)3., F.S.

³⁴ 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?

³⁵ FLA. CONST. art. I, s. 24(c).

³⁶ Section 119.15(7), F.S.

destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.

The exemption applies to such information before, on, or after the effective date of this exemption, March 24, 2016. The exemption is subject to the OGSR and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Current Exemption for Records of a Public Utility and Protection during Public Meetings

Section 366.093, F.S., provides for the exemption from public records law of certain types of information in public utility records, including the protection of the information when the records are used in a meeting or hearing. The Florida Public Service Commission (commission) has reasonable access to all public utility records and records of the utility's affiliated companies, including its parent company, regarding transactions or cost allocations among the utility and such affiliated companies, and such records necessary to ensure that a utility's ratepayers do not subsidize nonutility activities. However, upon request of the public utility or other person, any records received by the commission which are shown and found by the commission to be proprietary confidential business information must be kept confidential and are exempt from public records law.

During any proceeding before the commission, upon a showing by a utility or other person and a finding by the commission that discovery will require the disclosure of proprietary confidential business information, the commission must issue appropriate protective orders designating the manner for handling such information during the course of the proceeding and for protecting such information from disclosure outside the proceeding. The proprietary confidential business information is exempt from public records law and any records provided pursuant to a discovery request for which proprietary confidential business information status is requested must be treated by the commission, the office of the Public Counsel, and any other party subject to the public records law as confidential and are exempt from public records law pending a formal ruling on such request by the commission or the return of the records to the person providing the records.

Any record which has been determined to be proprietary confidential business information and is not entered into the official record of the proceeding must be returned to the person providing the record within 60 days after the final order, unless the final order is appealed. If the final order is appealed, any such record must be returned within 30 days after the decision on appeal. The commission shall adopt the necessary rules to implement this provision.

For these purposes, proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

- Trade secrets;
- Internal auditing controls and reports of internal auditors;

- Security measures, systems, or procedures;
- Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms;
- Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information; and
- Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

Any finding by the commission that records contain proprietary confidential business information is effective for a period set by the commission not to exceed 18 months, unless the commission finds, for good cause, that the protection from disclosure must be for a specified longer period. The commission must order the return of records containing proprietary confidential business information when such records are no longer necessary for the commission to conduct its business. At that time, the commission must order any other person holding such records to return them to the person providing the records. Records containing proprietary confidential business information which have not been returned at the conclusion of the period set pursuant to this subsection are no longer be exempt from public records law unless the public utility or affected person shows, and the commission finds, that the records continue to contain proprietary confidential business information. Upon such finding, the commission may extend the period for confidential treatment for a period not to exceed 18 months unless the commission finds, for good cause, that the protection from disclosure must be for a specified longer period. During commission consideration of an extension, the records in question will remain exempt from public records law. The commission must adopt rules to implement this provision, which must include notice to the public utility or affected person regarding the expiration of confidential treatment.

III. Effect of Proposed Changes:

The bill amends s. 286.0113, F.S., to exempt from public meetings law that portion of a local government utility meeting at which information currently exempted from public records law disclosure requirements relating to the security of the utility's data and information technology and industrial control technology systems is to be discussed or may otherwise be revealed. The exempt portions of the meeting must be recorded and transcribed, and the recording and transcript of the meeting are confidential and exempt from disclosure unless a court of competent jurisdiction, following an in-camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only the portion of the recording or transcript which reveals nonexempt data and information may be disclosed to a third party.

The exemption is subject to the OGSR and stands repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides legislative findings. The Legislature finds that it is a public necessity that the portion of a meeting relating directly to or that would reveal specified information which is confidential and exempt under public records law be made exempt from public meetings law,

and that the recording and transcript of such a meeting be made confidential and exempt public records law.

The Legislature finds that, as utility system infrastructure becomes more connected and integrated through information and communications technology, the exposure to damage from attacks through such technology grows. These attacks may result in the disruption of utility services and damage to utility systems. Maintaining safe and reliable utility systems is vital to protecting the public health and safety and to ensuring the economic well-being of this state. The Legislature finds that the public and private harm in disclosing the information made exempt by this act outweighs any public benefit derived from the disclosure of such information. The protection of information and communications made exempt by this act will ensure that utilities have greater safeguards to protect against security threats and will bolster efforts to develop more resilient information technology systems and industrial control technology systems.

Therefore, the Legislature finds that it is a public necessity to make such information exempt from public meetings requirements and to make the recording and transcript thereof confidential and exempt from public records requirements.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 exemption for public records and public meetings. The bill creates a public meeting exemption, therefore it requires a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 286.0113 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 Innovation, Industry, and Technology on March 6, 2019:**

The committee substitute:

- Requires that the portion of meetings being made exempt from public meetings law be recorded and transcribed so the information is preserved;
- Provides that the recording and transcription are exempt from public records requirements unless there is a judicial determination that the meeting was not restricted due to discussion of the information sought to be protected; and
- Revises the legislative findings and public necessity statements to conform to these changes and to provide more detail.

B. Amendments:

None.



110020

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2019	.	
	.	
	.	
	.	

The Committee on Innovation, Industry, and Technology (Gibson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) is added to section 286.0113,
Florida Statutes, to read:

286.0113 General exemptions from public meetings.—

(3) (a) That portion of a meeting held by a utility owned or
operated by a unit of local government which would reveal
information that is exempt under s. 119.0713(5) is exempt from



110020

11 s. 286.011 and s. 24(b), Art. I of the State Constitution. All
12 exempt portions of such a meeting must be recorded and
13 transcribed. The recording and transcript of the meeting are
14 confidential and exempt from disclosure under s. 119.07(1) and
15 s. 24(a), Art. I of the State Constitution unless a court of
16 competent jurisdiction, following an in-camera review,
17 determines that the meeting was not restricted to the discussion
18 of data and information made confidential and exempt by this
19 section. In the event of such a judicial determination, only the
20 portion of the recording or transcript which reveals nonexempt
21 data and information may be disclosed to a third party.

22 (b) This subsection is subject to the Open Government
23 Sunset Review Act in accordance with s. 119.15 and shall stand
24 repealed on October 2, 2024, unless reviewed and saved from
25 repeal through reenactment by the Legislature.

26 Section 2. (1) The Legislature finds that it is a public
27 necessity that the portion of a meeting relating directly to or
28 that would reveal the following information, which is
29 confidential and exempt under s. 119.0713(5), Florida Statutes,
30 be made exempt from s. 286.011, Florida Statutes, and s. 24(b),
31 Article I of the State Constitution:

32 (a) Information related to the security of the technology,
33 processes, or practices of the utility which are designed to
34 protect the utility's networks, computers, programs, and data
35 from attack, damage, or unauthorized access, and which
36 information, if disclosed, would facilitate the alteration,
37 disclosure, or destruction of such data or information
38 technology resources.

39 (b) Information related to the security of existing or



110020

40 proposed information technology systems or industrial control
41 technology systems of the utility, and which information, if
42 disclosed, would facilitate unauthorized access to and
43 alteration or destruction of such systems in a manner that would
44 adversely impact the safe and reliable operation of the systems
45 and utility.

46 (2) The Legislature finds that, as utility system
47 infrastructure becomes more connected and integrated through
48 information and communications technology, the exposure to
49 damage from attacks through such technology grows. These attacks
50 may result in the disruption of utility services and damage to
51 utility systems. Maintaining safe and reliable utility systems
52 is vital to protecting the public health and safety and to
53 ensuring the economic well-being of this state.

54 (3) The Legislature finds that the public and private harm
55 in disclosing the information made exempt by this act outweighs
56 any public benefit derived from the disclosure of such
57 information. The protection of information and communications
58 made exempt by this act will ensure that utilities have greater
59 safeguards to protect against security threats and will bolster
60 efforts to develop more resilient information technology systems
61 and industrial control technology systems.

62 (4) Therefore, the Legislature finds that it is a public
63 necessity to make such information exempt from public meetings
64 requirements.

65 Section 3. This act shall take effect July 1, 2019.

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

68 And the title is amended as follows:



110020

69 Delete everything before the enacting clause
70 and insert:

71 A bill to be entitled
72 An act relating to public meetings; amending s.
73 286.0113, F.S.; exempting from public meetings
74 requirements certain exempt information concerning
75 information technology systems held by specified
76 utilities; requiring the exempt portions to be
77 recorded and transcribed; authorizing the release of
78 portions of such meetings under specified
79 circumstances; providing for future legislative review
80 and repeal of the exemptions; providing a statement of
81 public necessity; providing an effective date.



222594

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2019	.	
	.	
	.	
	.	

The Committee on Innovation, Industry, and Technology (Gibson) recommended the following:

1 **Senate Amendment to Amendment (110020) (with title**
2 **amendment)**

3
4 Delete lines 31 - 64
5 and insert:

6 Article I of the State Constitution and that the recording and
7 transcript of such a meeting be made confidential and exempt
8 from disclosure under s. 119.07(1) and s. 24(a), Art. I of the
9 State Constitution:

10 (a) Information related to the security of the technology,



222594

11 processes, or practices of the utility which are designed to
12 protect the utility's networks, computers, programs, and data
13 from attack, damage, or unauthorized access, and which
14 information, if disclosed, would facilitate the alteration,
15 disclosure, or destruction of such data or information
16 technology resources.

17 (b) Information related to the security of existing or
18 proposed information technology systems or industrial control
19 technology systems of the utility, and which information, if
20 disclosed, would facilitate unauthorized access to and
21 alteration or destruction of such systems in a manner that would
22 adversely impact the safe and reliable operation of the systems
23 and utility.

24 (2) The Legislature finds that, as utility system
25 infrastructure becomes more connected and integrated through
26 information and communications technology, the exposure to
27 damage from attacks through such technology grows. These attacks
28 may result in the disruption of utility services and damage to
29 utility systems. Maintaining safe and reliable utility systems
30 is vital to protecting the public health and safety and to
31 ensuring the economic well-being of this state.

32 (3) The Legislature finds that the public and private harm
33 in disclosing the information made exempt by this act outweighs
34 any public benefit derived from the disclosure of such
35 information. The protection of information and communications
36 made exempt by this act will ensure that utilities have greater
37 safeguards to protect against security threats and will bolster
38 efforts to develop more resilient information technology systems
39 and industrial control technology systems.



222594

40 (4) Therefore, the Legislature finds that it is a public
41 necessity to make such information exempt from public meetings
42 requirements and to make the recording and transcript thereof
43 confidential and exempt from public records requirements.
44

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

46 And the title is amended as follows:

47 Delete line 72

48 and insert:

49 An act relating to public records and public meetings;
50 amending s.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Rules, *Vice Chair*
Appropriations
Innovation, Industry, and Technology
Judiciary

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR AUDREY GIBSON

Minority Leader
6th District

February 4, 2019

Senator Wilton Simpson, Chair
Committee on Innovation, Industry and Technology
525 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Simpson:

I respectfully request that SB 450, relating to cyber security systems of municipal utilities be placed on the next committee agenda.

SB 450, exempts meetings, or portions of a meeting, where a local government utility discusses cyber security or topics related thereto to further protect municipal utilities and the public from the very real threat of cyber terrorism.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Audrey Gibson".

Audrey Gibson
State Senator
District 6

101 East Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553
200 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/20/19
Meeting Date

450
Bill Number (if applicable)

Topic Public Meeting

Amendment Barcode (if applicable)

Name Amy Zubaly

Job Title Executive Dir.

Address 417 E College Av
Street

Phone 850-251-6200

Tallahassee FL 32301
City State Zip

Email azubaly@publicpower.com

Speaking: For Against Information

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

Representing Florida Municipal Electric 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

9/6/19

Meeting Date

450

Bill Number (if applicable)

Topic PUBLIC MEETINGS / LOCAL GOV. UTILITY

Amendment Barcode (if applicable)

Name KEVIN NOONAN

Job Title DIRECTOR, LEGISLATIVE AFFAIRS

Address 100 W ANDERSON ST

Phone 407 466 1287

Street

ORLANDO

City

FL

State

32801

Zip

Email KNOONAN@FLS.CS.FL.GOV

Speaking: For Against Information

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

Representing ORLANDO UTILITIES COMMISSION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/19
Meeting Date

450
Bill Number (if applicable)

Topic Public Meetings/Local Government Utility

Amendment Barcode (if applicable)

Name Suzanne Goss

Job Title Government Relations Specialist

Address 21 W. Church St.
Street

Phone 904-665-8331

Jacksonville FL 32202
City State Zip

Email gossSE@jea.com

Speaking: For Against Information

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

Representing JEA

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.

By the Committee on Innovation, Industry, and Technology; and
Senators Gibson and Bean

580-02751-19

2019450c1

1 A bill to be entitled
2 An act relating to public records and public meetings;
3 amending s. 286.0113, F.S.; exempting from public
4 meetings requirements certain exempt information
5 concerning information technology systems held by
6 specified utilities; requiring the exempt portions to
7 be recorded and transcribed; authorizing the release
8 of portions of such meetings under specified
9 circumstances; providing for future legislative review
10 and repeal of the exemptions; providing a statement of
11 public necessity; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsection (3) is added to section 286.0113,
16 Florida Statutes, to read:

17 286.0113 General exemptions from public meetings.—

18 (3) (a) That portion of a meeting held by a utility owned or
19 operated by a unit of local government which would reveal
20 information that is exempt under s. 119.0713(5) is exempt from
21 s. 286.011 and s. 24(b), Art. I of the State Constitution. All
22 exempt portions of such a meeting must be recorded and
23 transcribed. The recording and transcript of the meeting are
24 confidential and exempt from disclosure under s. 119.07(1) and
25 s. 24(a), Art. I of the State Constitution unless a court of
26 competent jurisdiction, following an in-camera review,
27 determines that the meeting was not restricted to the discussion
28 of data and information made confidential and exempt by this
29 section. In the event of such a judicial determination, only the

580-02751-19

2019450c1

30 portion of the recording or transcript which reveals nonexempt
31 data and information may be disclosed to a third party.

32 (b) This subsection is subject to the Open Government
33 Sunset Review Act in accordance with s. 119.15 and shall stand
34 repealed on October 2, 2024, unless reviewed and saved from
35 repeal through reenactment by the Legislature.

36 Section 2. (1) The Legislature finds that it is a public
37 necessity that the portion of a meeting relating directly to or
38 that would reveal the following information, which is
39 confidential and exempt under s. 119.0713(5), Florida Statutes,
40 be made exempt from s. 286.011, Florida Statutes, and s. 24(b),
41 Article I of the State Constitution and that the recording and
42 transcript of such a meeting be made confidential and exempt
43 from disclosure under s. 119.07(1) and s. 24(a), Art. I of the
44 State Constitution:

45 (a) Information related to the security of the technology,
46 processes, or practices of the utility which are designed to
47 protect the utility's networks, computers, programs, and data
48 from attack, damage, or unauthorized access, and which
49 information, if disclosed, would facilitate the alteration,
50 disclosure, or destruction of such data or information
51 technology resources.

52 (b) Information related to the security of existing or
53 proposed information technology systems or industrial control
54 technology systems of the utility, and which information, if
55 disclosed, would facilitate unauthorized access to and
56 alteration or destruction of such systems in a manner that would
57 adversely impact the safe and reliable operation of the systems
58 and utility.

580-02751-19

2019450c1

59 (2) The Legislature finds that, as utility system
60 infrastructure becomes more connected and integrated through
61 information and communications technology, the exposure to
62 damage from attacks through such technology grows. These attacks
63 may result in the disruption of utility services and damage to
64 utility systems. Maintaining safe and reliable utility systems
65 is vital to protecting the public health and safety and to
66 ensuring the economic well-being of this state.

67 (3) The Legislature finds that the public and private harm
68 in disclosing the information made exempt by this act outweighs
69 any public benefit derived from the disclosure of such
70 information. The protection of information and communications
71 made exempt by this act will ensure that utilities have greater
72 safeguards to protect against security threats and will bolster
73 efforts to develop more resilient information technology systems
74 and industrial control technology systems.

75 (4) Therefore, the Legislature finds that it is a public
76 necessity to make such information exempt from public meetings
77 requirements and to make the recording and transcript thereof
78 confidential and exempt from public records requirements.

79 Section 3. This act shall take effect July 1, 2019.

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 Innovation, Industry, and Technology

BILL: CS/SB 600

INTRODUCER: Innovation, Industry, and Technology Committee and Senators Gibson and Bean

SUBJECT: Public Records/Meter-derived Data and Billing Information

DATE: March 6, 2019 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 600 amends s. 119.0713(5), F.S., to create a public records exemption for customer meter-derived data and billing information in increments of less than one billing cycle held by a utility owned or operated by a unit of local government. The bill also provides legislative findings as to the public necessity for the exemption and the balancing of public and private harm.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

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 exemption for public records and public meetings. The bill creates a public meeting exemption, therefore it requires a two-thirds vote for final passage.

The bill takes effect July 1, 2019.

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 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 by passing a general law by a two-thirds vote of each of the House and the Senate.⁹ 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.¹⁰ A statutory exemption, which does not meet these two criteria, may be unconstitutional and may not be judicially saved.¹¹

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 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).

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.*

¹¹ *Halifax Hosp. Medical Center v. News-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

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹² Records designated “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹³

Current Public Records Exemption for Specified Types of Information Held by a Utility Owned or Operated by a Unit of Local Government

Section 119.011, F.S., defines the term “utility” to mean a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

Subsection 119.0713(5), F.S., exempts the following information held by a utility owned or operated by a unit of local government:

- Information related to the security of the technology, processes, or practices of a utility owned or operated by a unit of local government that are designed to protect the utility’s networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of existing or proposed information technology systems or industrial control technology systems of a utility owned or operated by a unit of local government, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.

The exemption applies to such information before, on, or after the effective date of this exemption, March 24, 2016. The exemption is subject to the OGSR and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR 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

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.

¹² 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 School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹³ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ 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. 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.

must reenact the exemption or repeal the sunset date.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR 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.¹⁶ 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 subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁷
- 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;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks 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.²¹ 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.²²

III. Effect of Proposed Changes:

The bill amends s. 119.0713(5), F.S., which currently provides a public records exemption for specified types of information held by a utility²³ owned or operated by a unit of local

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ 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?

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ Section 119.011, F.S., defines the term "utility" to mean a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

government. The bill adds to this list of types of information customer meter-derived data and billing information in increments of less than one billing cycle.

The exemption is subject to the OGSR and stands repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill makes legislative findings. The Legislature finds that it is a public necessity that customer meter-derived data and billing information in increments less than one billing cycle held by a utility that is owned or operated by a unit of local government be exempt from public records law requirements. The Legislature finds that safeguarding customer meter-derived data and billing information in increments of less than one billing cycle is of the utmost importance. Smart meters, which can record and transmit detailed data on a customer's use of utility services, present unique security concerns. These concerns were addressed in a report released in October 2010 by the United States Department of Energy titled "Data Access and Privacy Issues Related to Smart Grid Technologies."²⁴ The report recommended that customer data be protected from release to third parties. This detailed customer data can be used to specifically identify minute-by-minute usage patterns, including the exact appliance or service being used. This information creates significant security issues for both businesses and homeowners.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 exemption for public records and public meetings. The bill creates a public meeting exemption, therefore it requires a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

²⁴ Available at https://www.energy.gov/sites/prod/files/gcprod/documents/Broadband_Report_Data_Privacy_10_5.pdf (last accessed March 6, 2019).

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 119.0713 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 Innovation, Industry, and Technology on March 6, 2019:**

The committee substitute revises the findings of public necessity to more completely identify the risks to customers whose information might otherwise be disclosed.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2019	.	
	.	
	.	
	.	

The Committee on Innovation, Industry, and Technology (Gibson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (5) of section 119.0713, Florida
Statutes, is amended to read:

119.0713 Local government agency exemptions from inspection
or copying of public records.—

(5) (a) The following information held by a utility owned or
operated by a unit of local government is exempt from s.



11 119.07(1) and s. 24(a), Art. I of the State Constitution:

12 1. Information related to the security of the technology,
13 processes, or practices of a utility owned or operated by a unit
14 of local government that are designed to protect the utility's
15 networks, computers, programs, and data from attack, damage, or
16 unauthorized access, which information, if disclosed, would
17 facilitate the alteration, disclosure, or destruction of such
18 data or information technology resources.

19 2. Information related to the security of existing or
20 proposed information technology systems or industrial control
21 technology systems of a utility owned or operated by a unit of
22 local government, which, if disclosed, would facilitate
23 unauthorized access to, and alteration or destruction of, such
24 systems in a manner that would adversely impact the safe and
25 reliable operation of the systems and the utility.

26 3. Customer meter-derived data and billing information in
27 increments less than one billing cycle.

28 (b) This exemption applies to such information held by a
29 utility owned or operated by a unit of local government before,
30 on, or after the effective date of this exemption.

31 (c) This subsection is subject to the Open Government
32 Sunset Review Act in accordance with s. 119.15 and shall stand
33 repealed on October 2, 2024 ~~2021~~, unless reviewed and saved from
34 repeal through reenactment by the Legislature.

35 Section 2. (1) The Legislature finds that it is a public
36 necessity that customer meter-derived data and billing
37 information in increments less than one billing cycle held by a
38 utility that is owned or operated by a unit of local government
39 be exempt from s. 119.07(1), Florida Statutes, and s. 24(a),



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40 Article I of the State Constitution.

41 (2) The Legislature finds that safeguarding customer meter-
42 derived data and billing information in increments of less than
43 one billing cycle is of the utmost importance. Smart meters,
44 which can record and transmit detailed data on a customer's use
45 of utility services, present unique security concerns. These
46 concerns were addressed in a report released in October 2010 by
47 the United States Department of Energy titled "Data Access and
48 Privacy Issues Related to Smart Grid Technologies." The report
49 recommended that customer data be protected from release to
50 third parties. This detailed customer data can be used to
51 specifically identify minute-by-minute usage patterns, including
52 the exact appliance or service being used. This information
53 creates significant security issues for both businesses and
54 homeowners.

55 Section 3. This act shall take effect July 1, 2019.

56

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

58 And the title is amended as follows:

59 Delete everything before the enacting clause
60 and insert:

61 A bill to be entitled
62 An act relating to public records; amending s.
63 119.0713, F.S.; exempting from public records
64 requirements customer meter-derived data and billing
65 information in increments of less than one billing
66 cycle which is held by certain utilities; providing a
67 statement of public necessity; providing an effective
68 date.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Rules, *Vice Chair*
Appropriations
Innovation, Industry, and Technology
Judiciary

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR AUDREY GIBSON

Minority Leader
6th District

February 11, 2019

Senator Wilton Simpson, Chair
Committee on Innovation, Industry and Technology
525 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Simpson:

I respectfully request that SB 600, relating to customer information of municipal utilities be placed on the next committee agenda.

SB 600, provides a public records exemption for customer utility usage data on a less than 30 day billing cycle. Also, it will reduce the potential for municipal utilities and their customers from becoming victims of targeted and systematic cyber terrorism and enable customers to be protected from data mining, scams and unlawful activity.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Audrey Gibson".

Audrey Gibson
State Senator
District 6

101 East Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553
200 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/19
Meeting Date

6000
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Amy Zubaly

Job Title Executive Director

Address 417 E College Av
Street

Phone 850-251-6708

Tallahassee FL 32304
City State Zip

Email azubaly@publicpower.com

Speaking: For Against Information

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

Representing Florida Municipal Electric Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

9/6/19

Meeting Date

600

Bill Number (if applicable)

Topic PUBLIC RECORDS / METER DERIVED DATA BILLING Amendment Barcode (if applicable)
INFO

Name KEVIN NOONAN

Job Title DIRECTOR, LEGISLATIVE AFFAIRS

Address 100 W ANDERSON ST
Street

Phone 407 466 1287

ORLANDO FL 32801
City State Zip

Email KNOONAN@OUC.COM

Speaking: For Against Information

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

Representing ORLANDO UTILITIES COMMISSION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/19
Meeting Date

600
Bill Number (if applicable)

Topic Public Records/Meter-derived Data & Billing Information Amendment Barcode (if applicable)

Name Suzanne Goss

Job Title Government Relations Specialist

Address 21 W. Church St.
Street
Jacksonville, FL 32202
City State Zip

Phone 904-665-8331

Email gossst@jea.com

Speaking: For Against Information

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

Representing JEA

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.

By the Committee on Innovation, Industry, and Technology; and
Senators Gibson and Bean

580-02752-19

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1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.0713, F.S.; exempting from public records
4 requirements customer meter-derived data and billing
5 information in increments of less than one billing
6 cycle which is held by certain utilities; providing a
7 statement of public necessity; providing an effective
8 date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (5) of section 119.0713, Florida
13 Statutes, is amended to read:

14 119.0713 Local government agency exemptions from inspection
15 or copying of public records.—

16 (5) (a) The following information held by a utility owned or
17 operated by a unit of local government is exempt from s.
18 119.07(1) and s. 24(a), Art. I of the State Constitution:

19 1. Information related to the security of the technology,
20 processes, or practices of a utility owned or operated by a unit
21 of local government that are designed to protect the utility's
22 networks, computers, programs, and data from attack, damage, or
23 unauthorized access, which information, if disclosed, would
24 facilitate the alteration, disclosure, or destruction of such
25 data or information technology resources.

26 2. Information related to the security of existing or
27 proposed information technology systems or industrial control
28 technology systems of a utility owned or operated by a unit of
29 local government, which, if disclosed, would facilitate

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30 unauthorized access to, and alteration or destruction of, such
31 systems in a manner that would adversely impact the safe and
32 reliable operation of the systems and the utility.

33 3. Customer meter-derived data and billing information in
34 increments less than one billing cycle.

35 (b) This exemption applies to such information held by a
36 utility owned or operated by a unit of local government before,
37 on, or after the effective date of this exemption.

38 (c) This subsection is subject to the Open Government
39 Sunset Review Act in accordance with s. 119.15 and shall stand
40 repealed on October 2, 2024 ~~2021~~, unless reviewed and saved from
41 repeal through reenactment by the Legislature.

42 Section 2. (1) The Legislature finds that it is a public
43 necessity that customer meter-derived data and billing
44 information in increments less than one billing cycle held by a
45 utility that is owned or operated by a unit of local government
46 be exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
47 Article I of the State Constitution.

48 (2) The Legislature finds that safeguarding customer meter-
49 derived data and billing information in increments of less than
50 one billing cycle is of the utmost importance. Smart meters,
51 which can record and transmit detailed data on a customer's use
52 of utility services, present unique security concerns. These
53 concerns were addressed in a report released in October 2010 by
54 the United States Department of Energy titled "Data Access and
55 Privacy Issues Related to Smart Grid Technologies." The report
56 recommended that customer data be protected from release to
57 third parties. This detailed customer data can be used to
58 specifically identify minute-by-minute usage patterns, including

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59 the exact appliance or service being used. This information
60 creates significant security issues for both businesses and
61 homeowners.

62 Section 3. This act shall take effect July 1, 2019.

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 Innovation, Industry, and Technology

BILL: CS/CS/SB 76

INTRODUCER: Innovation, Industry, and Technology Committee, Infrastructure and Security Committee; Senator Simpson and others

SUBJECT: Use of Wireless Communications Devices While Driving

DATE: March 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
2.	<u>Wiehle</u>	<u>Imhof</u>	<u>IT</u>	<u>Fav/CS</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 76 amends s. 316.305, F.S., to rename the “Florida Ban on Texting While Driving Law” to the “Florida Driving While Distracted Law,” and to authorize enforcement of the ban on driving while distracted as a primary offense punishable as a moving violation instead of the current nonmoving violation. Driving while distracted is defined to include a number of physical activities, including the handheld use of wireless communication devices while driving.

The bill allows for a statewide public education and awareness campaign, and provides for enforcement only by a warning from October 1, 2019, through December 31, 2019, after which the citations may be issued. In addition, the bill allows for the dismissal of first-time offenses under certain conditions, and if eligible, allows for the election to attend a distracted driving safety program to avoid penalties, costs, and points associated with a citation.

The bill requires that all penalties collected for a violation of the ban be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health (DOH), which will have an indeterminate fiscal impact on the General Revenue Fund, a number of state trust funds, the clerks of court, and municipalities. See Section V. Fiscal Impact Statement.

The bill requires that information on the race and ethnicity of persons violating the driving while distracted prohibition be recorded, maintained, and reported, as specified.

The bill takes effect July 1, 2019.

II. Present Situation:

Florida Ban on Texting While Driving Law

Section 316.305, F.S., is the “Florida Ban on Texting While Driving Law.” It bans a person from operating a motor vehicle while using a wireless communications device¹ in specified ways. Enforcement is permitted only as a secondary action when an operator of a motor vehicle has been detained for a suspected violation of another provision of ch. 316, F.S., the “Florida Uniform Traffic Control Law,” ch. 320, F.S., relating to motor vehicle licenses, or ch. 322, F.S., relating to driver licenses.

More specifically, the statute bans operation of a motor vehicle either while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device or while sending or reading data on such a device for the purpose of non-voice interpersonal communication.² The ban does not apply to a stationary motor vehicle or to a motor vehicle operator who is:

- Performing official duties as an operator of an authorized emergency vehicle,³ a law enforcement or fire service professional, or an emergency medical services professional.
- Reporting an emergency or criminal or suspicious activity to law enforcement authorities.
- Receiving messages that are: related to the operation or navigation of the motor vehicle; safety-related information, including emergency, traffic, or weather alerts; data used primarily by the motor vehicle; or radio broadcasts.
- Using a device or system for navigation purposes.
- Conducting wireless interpersonal communication that does not require manual entry of multiple letters, numbers, or symbols, except to activate, deactivate, or initiate a feature or function.
- Conducting wireless interpersonal communication that does not require reading text messages, except to activate, deactivate, or initiate a feature or function.
- Operating an autonomous vehicle in autonomous mode.

Any person who violates the ban commits a noncriminal traffic infraction. A first violation is punishable as a nonmoving violation, and a second or subsequent violation within five years after the date of a prior conviction is punishable as a moving violation.

¹ The statute defines the term “wireless communications device” to mean any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15, F.S., and that allows text communications.

² This includes but is not limited to texting, e-mailing, and instant messaging.

³ The term “authorized emergency vehicle” is defined in s. 322.01(4), F.S., to mean a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized to display red or blue lights, and that is on call to respond to emergencies. The term includes, but is not limited to, ambulances, law enforcement vehicles, fire trucks, and other rescue vehicles; it does not include wreckers, utility trucks, or other vehicles that are used only incidentally for emergency purposes.

According to the Department of Highway Safety and Motor Vehicles (HSMV), there were a total of 1,627 citations from both state and local law enforcement agencies for violation of s. 316.305, F.S., in calendar year 2017.⁴ Of those, 1,627 were for a first violation of the statute, and 27 were for a second or subsequent violation of the statute.

Drivers convicted of unlawful use of a wireless communications device that results in a crash will have six points assessed against their driver license,⁵ and drivers convicted of unlawful use of a wireless communications device within a school safety zone is assessed an additional two points.⁶

A user's billing records for a wireless communications device or the testimony of or written statements from appropriate authorities receiving such messages are admissible as evidence in any proceeding to determine whether a violation of the ban has been committed only in the event of a crash resulting in death or personal injury.

Texting While Driving Bans in Other States

As of April 2018, 47 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands ban text messaging for all drivers. In 43 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands texting laws are primary enforcement, and 4 States have secondary enforcement of texting for drivers.⁷

Hand-Held Device Bans in Other States

In 2016, there were 444 fatal crashes (with 486 fatalities) in the United States reported to have involved cell phone use as a distraction (14 percent of all fatal distraction-affected crashes). For these distraction-affected crashes, the police crash report stated that the driver was talking on, listening to, or engaged in some other cell phone activity at the time of the crash.⁸

There are negative implications associated with distracted driving - especially in conjunction with a crash. Survey research shows that self-reporting of negative behavior is lower than actual occurrence of that negative behavior. There is little reason to believe that self-reporting of distracted driving to a law enforcement officer would differ. The inference may be drawn that the reported occurrence of driver distraction during crashes is lower than the actual occurrence. Additionally, if a driver fatality occurs in the crash, law enforcement must rely on the crash

⁴ Department of Highway Safety and Motor Vehicles Annual Uniform Traffic Citation Report, available at <https://services.flhsmv.gov/specialtyplates/uniformtrafficcitationreport> (last visited February 26, 2019).

⁵ Section 322.27(3)(d)3., F.S.

⁶ Section 322.27(3)(d)11., F.S.

⁷ Governors Highway Safety Association, Distracted Driving Laws by State (April 2018), available at https://www.ghsa.org/sites/default/files/2018-06/DistractedDrivingLawChart_Jun18.pdf (last visited February 26, 2019).

⁸ U.S. Department of Transportation - National Highway Traffic Safety Administration, Distracted Driving 2016 (April 2018), available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812517> (last visited February 26, 2019).

investigation in order to report on whether driver distraction was involved, and they may not have information to indicate distraction.⁹

As of April 2018, using a hand-held device while driving violations are enforced as primary offenses in 16 States, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.¹⁰

Distracted Driving

The National Highway Traffic Safety Administration defines distracted driving as any activity that diverts attention from the primary task of driving.¹¹ Besides using electronic devices, distractions can also include adjusting a radio, eating and drinking, reading, grooming, and interacting with passengers. In 2016, distracted driving claimed 3,450 lives nationwide.¹²

According to the Insurance Institute for Highway Safety research, it is not clear that banning hand-held cellphone use and texting reduces crashes. Even though research has documented that bans on hand-held cellphone use reduces overall cellphone use, crashes have increased in recent years, but overall cellphone use has not. The institute points out that drivers seem to be distracted by things other than cellphones, so prohibiting cellphone use alone does not appear to eliminate distracted driving. The institute concluded that broader countermeasures that keep drivers from becoming distracted or that mitigate the consequences of distracted driving, such as crash avoidance technology, may be more effective than cellphone bans.¹³

Both the District of Columbia¹⁴ and Ohio¹⁵ have distracted driver laws that encompass more than just the use of personal electronic devices.

Traffic Infraction Civil Penalties

Section 318.18, F.S., provides for penalties for traffic infractions and establishes a penalty of \$30 for a nonmoving traffic violation and \$60 for a moving violation.¹⁶

⁹ U.S. Department of Transportation - National Highway Traffic Safety Administration, An Examination of Driver Distraction as Recorded in NHTSA Databases (September 2009), available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/811216> (last visited February 26, 2019).

¹⁰ Governors Highway Safety Association, Distracted Driving Laws by State (April 2018), available at https://www.ghsa.org/sites/default/files/2018-06/DistractedDrivingLawChart_Jun18.pdf (last visited February 26, 2019).

¹¹ U.S. Department of Transportation - National Highway Traffic Safety Administration, Distracted Driving 2016 (April 2018), available at <https://www.nhtsa.gov/risky-driving/distracted-driving> (last visited February 26, 2019).

¹² U.S. Department of Transportation - National Highway Traffic Safety Administration, Traffic Safety Facts, *Distracted Driving 2016* (April 2018), available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812517> (last visited February 20, 2019).

¹³ Insurance Institute for Highway Safety, Highway Loss Data Institute, available at <https://www.iihs.org/iihs/topics/t/distracted-driving/topicoverview> (last visited February 26, 2019).

¹⁴ Sections 50-1731.02 and 50.1731.03, Code of the District of Columbia

¹⁵ Section 4511.051, Ohio Revised Code

¹⁶ After the addition of court costs and service charges, the final amount paid could be up to \$108 for a nonmoving traffic violation and up to \$158 for a moving violation. See The Florida Court Clerks and Comptrollers, Distribution Schedule (July 2018), available at https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public_documents_/2018_distribution_schedule_1.pdf (last visited February 26, 2019).

Section 318.21, F.S., requires that all traffic infraction civil penalties be paid monthly as follows:

- One dollar from every civil penalty shall be remitted to the Department of Revenue for deposit into the Child Welfare Training Trust Fund for child welfare training purposes.
- One dollar from every civil penalty shall be remitted to the Department of Revenue for deposit into the Juvenile Justice Training Trust Fund for juvenile justice purposes.
- Of the remainder:
 - Fifty-six and four-tenths percent: shall be divided if the violation occurred within a municipality, with 50.8 percent paid to that municipality and 5.6 percent deposited into the Fine and Forfeiture Trust Fund for use by the Clerks of the Circuit Court in performing court-related functions; shall be deposited into the Fine and Forfeiture Trust Fund for use by the Clerks of the Circuit Court in performing court-related functions if the violation occurred within the unincorporated area of a county; or shall be paid to a special improvement district of the Seminole Indian Tribe or Miccosukee Indian Tribe if the violation occurred there.
 - Twenty and six-tenths percent shall be remitted to the Department of Revenue for deposit into the General Revenue Fund of the state, except that the first \$300,000 shall be deposited into the Grants and Donations Trust Fund in the Justice Administrative Commission for administrative costs, training costs, and costs associated with the implementation and maintenance of Florida foster care citizen review panels in a constitutional charter county.
 - Seven and two-tenths percent shall be remitted to the Department of Revenue for deposit in the Emergency Medical Services Trust Fund.
 - Five and one-tenth percent shall be remitted to the Department of Revenue for deposit in the Additional Court Cost Clearing Trust Fund for criminal justice purposes.
 - Eight and two-tenths percent shall be remitted to the Department of Revenue for deposit in the Brain and Spinal Cord Injury Program Trust Fund.
 - Two percent shall be remitted to the Department of Revenue and transmitted monthly to the Florida Endowment Foundation for Vocational Rehabilitation.
 - Five-tenths percent shall be paid to the Clerk of the Circuit Court for administrative costs.

Driver Improvement Schools

The HSMV has the authority to approve and regulate courses for driver improvement schools, including courses that use technology as a delivery method.¹⁷ In determining whether to approve a course, the HSMV considers course content designed to promote safety, driver awareness, crash avoidance techniques, and other factors or criteria to improve driver performance from a safety viewpoint, including promoting motorcyclist, bicyclist, and pedestrian safety and risk factors resulting from driver attitude and irresponsible driver behaviors, such as speeding, running red lights and stop signs, and using electronic devices while driving.¹⁸

In addition to regular course costs, an assessment of \$2.50 is collected for the driver improvement course from each person who elects to attend a course. The course provider must remit the \$2.50 assessment to the HSMV for deposit into the Highway Safety Operating Trust

¹⁷ Section 318.1451(1), F.S.

¹⁸ Section 318.1451(2)(a), F.S.

Fund in order to receive unique course completion certificate numbers for course participants.¹⁹ The assessment fee is used to administer the program and to fund the general operations of the HSMV.

III. Effect of Proposed Changes:

The bill renames the “Florida Ban on Texting While Driving Law” to the “Florida Driving While Distracted Law,” and authorizes enforcement of the ban on driving while distracted as a primary offense. The bill provides for phased-in enforcement from October 1, 2019 to December 31, 2019, law enforcement officers are authorized to provide a verbal or written warning to those who are driving while distracted, and after December 31, 2019, officers may issue a uniform traffic citation for an infraction. The penalty classification for a violation is increased from a nonmoving violation to a moving violation.

“Driving while distracted” means inattentive operation of a motor vehicle while the vehicle is in motion. Inattentive or distracted driving conduct includes:

- Reading;
- Writing;
- Grooming;
- Applying beauty products;
- Interacting with pets and unsecured cargo;
- Using personal wireless communications devices; or
- Engaging in any other activity, conduct, task or actions which causes distractions.

“Wireless communications device” means any handheld device that can receive or transmit text or character-based messages, record or view images, access or store data, connect to the Internet or a communications service, or allows text communications. The term includes, but is not limited to, a:

- Cell phone;
- Tablet;
- Laptop;
- Two-way messaging device; or
- Electronic game.

The term “wireless communications device” does not include a safety, security, or convenience feature built into a motor vehicle that does not require the use of a handheld device.

The current prohibition on texting while driving provides that only in the event of a crash involving a death or personal injury may specified forms of evidence be used to establish whether a violation of the prohibition has occurred. The bill changes the term “personal injury” to “serious bodily injury.”

In issuing a citation for driving while distracted, a law enforcement officer must indicate in the comments section of the citation what type of distracted-driving conduct is the basis for the citation.

¹⁹ Section 318.1451(4), F.S.

A person issued a citation for a first offense may elect to participate in a distracted driving safety program approved by the HSMV and have any penalties, associated costs, and points waived. Additionally, if a first-time citation involves the use of a personal wireless communications device, the person receiving the citation may show the clerk of the court proof of purchase of equipment that enables hands-free use of their personal wireless communications device, upon which the clerk may assess court costs and dismiss the case.

All penalties collected for a violation of the ban on driving while distracted must be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the DOH. Currently, only seven and two-tenths percent of the penalties is deposited in this fund.

Each law enforcement officer who issues a ticket for a violation of the driving while distracted prohibition must record the race and ethnicity of the violator. All law enforcement agencies are required to maintain and report this information to the Department of Highway Safety and Motor Vehicles in a form and manner determined by the department. Beginning February 1, 2020, the department is required to annually report the collected data to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The collected data must be reported at least by statewide totals for local law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies. The statewide total for local law enforcement agencies must combine the data for the county sheriffs and the municipal law enforcement agencies.

The bill creates an unnumbered section of law which allows the HSMV, in consultation with the Department of Transportation, to implement a statewide safety and public awareness campaign to prevent drivers from driving while distracted. The HSMV is authorized to contract with county, and local law enforcement agencies, safety councils, and public schools to assist with planning and conducting the statewide campaign.

The bill takes effect July 1, 2019.

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:

Operators of motor vehicles who drive while distracted may be issued a citation and have resulting penalties. In addition, with the first violation being changed from a nonmoving to a moving traffic violation, the base fine amount doubles from \$30 to \$60, along with 3 points being assessed against their driver license.

C. Government Sector Impact:

The Emergency Medical Services Trust Fund of the DOH will receive 100 percent of the driving while distracted civil penalty amount instead of the current 7.2 percent associated with the texting while driving civil penalty, which will have an indeterminate positive fiscal impact. The other current recipients will no longer receive any of the texting while driving penalty revenues, resulting in an indeterminate negative fiscal impact to the following:

- Child Welfare Training Trust Fund;
- Juvenile Justice Training Trust Fund;
- Municipalities;
- Circuit Court Clerks/Fine and Forfeiture Trust Fund;
- General Revenue Fund;
- Additional Court Cost Clearing Trust Fund;
- Brain and Spinal Cord Injury Program Trust Fund;
- Florida Endowment Foundation for Vocational Rehabilitation; and
- Circuit Court Clerks for administrative costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.305 of the Florida Statutes.

This bill creates an unnumbered section 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 Innovation, Industry, and Technology on March 6, 2019:

The committee substitute for committee substitute:

- Revises a definition and a statement of intent to clarify that the driving while distracted provisions apply when the vehicle is in motion; and
- Requires that information on the race and ethnicity of persons violating the driving while distracted prohibition be recorded, maintained, and reported, as specified.

CS by Infrastructure and Security on February 19, 2019:

The CS changes the “relating to” clause of the bill to “an act relating to driving while distracted,” and adds numerous provisions to the bill. The CS:

- Expands the bill to include multiple forms of driving distracted;
- Renames a section of statute Driving while Distracted prohibition;
- Renames a statute section citation title to “Florida Driving While Distracted Law”;
- Defines the term “driving while distracted”;
- Defines the term “wireless communications device”;
- Allows law enforcement to issue citations to distracted drivers as a primary offense after December 1, 2019;
- Changes the first offense from a nonmoving violation, to a moving violation and provides an option to avoid points and penalties through participation in a distracted driving safety program;
- Allows that an operators first citation due to use of personal wireless communications device may be dismissed if they show proof of having purchased equipment that allows their personal wireless communications device to be used in a hands-free manner;
- Allows a user’s billing records for wireless communications device to be admissible as evidence in the event a crash results in “death or serious bodily injury”, current law allows admissibility when a crash results in “death or personal injury”;
- Allows for use of wireless communications device in hands-free or voice operated mode;
- Provides for a warning period from October 1, 2019 to December 31, 2019;
- Provides that the HSMV may implement a safety and public awareness campaign; and
- Directs all fines collected to be deposited in the Emergency Medical Services Trust Fund of the DOH.

- B. **Amendments:**

None.



200286

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2019	.	
	.	
	.	
	.	

The Committee on Innovation, Industry, and Technology (Hutson) recommended the following:

Senate Amendment

Delete lines 50 - 73
and insert:
operation of a motor vehicle while the vehicle is in motion.
Inattentive or distracted driving conduct includes reading,
writing, performing personal grooming, applying a beauty aid or
similar products, interacting with pets or unsecured cargo,
using a personal wireless communications device, or engaging in
any other activity, conduct, task, or action that causes



200286

11 distraction.

12 (b) "Wireless communications device" means any handheld
13 device that is designed or intended to receive or transmit text-
14 or character-based messages, to record or view images, to access
15 or store data, or to connect to the Internet or any
16 communications service, as defined in s. 812.15, or which allows
17 text communications. The term includes, but is not limited to, a
18 cell phone, a tablet, a laptop, a two-way messaging device, or
19 an electronic game that is used or capable of being used in a
20 handheld manner. The term does not include a safety, security,
21 or convenience feature built into a motor vehicle which does not
22 require the use of a handheld device.

23 (3)-(2) It is the intent of the Legislature to:

24 (a) Improve roadway safety for all vehicle operators,
25 vehicle passengers, bicyclists, pedestrians, and other road
26 users.

27 (b) Prevent crashes related to the act of driving while
28 distracted when operating text messaging while driving a motor
29 vehicle while the vehicle is in motion.



452950

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2019	.	
	.	
	.	
	.	

The Committee on Innovation, Industry, and Technology (Bracy) recommended the following:

Senate Amendment (with title amendment)

Between lines 180 and 181
insert:

(7) When a law enforcement officer issues a citation for a violation of this section, the law enforcement officer must record the race and ethnicity of the violator. All law enforcement agencies must maintain such information and must report such information to the department in a form and manner determined by the department. Beginning February 1, 2020, the



452950

11 department shall annually report the data collected under this
12 subsection to the Governor, the President of the Senate, and the
13 Speaker of the House of Representatives. The data collected must
14 be reported at least by statewide totals for local law
15 enforcement agencies, state law enforcement agencies, and state
16 university law enforcement agencies. The statewide total for
17 local law enforcement agencies must combine the data for the
18 county sheriffs and the municipal law enforcement agencies.

19
20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 Delete line 30

23 and insert:

24 action; requiring a law enforcement officer to record
25 the race and ethnicity of a violator when issuing a
26 citation for a violation of this section; requiring
27 all law enforcement agencies to maintain such
28 information and report the information to the
29 Department of Highway Safety and Motor Vehicles in a
30 form and manner determined by the department;
31 beginning on a specified date, requiring the
32 department to annually report the data to the Governor
33 and Legislature; providing requirements for the
34 report; authorizing the Department of Highway Safety

PATRICK RIDES ON

Patrick Wanninkhof lived for adventure, bicycles and social justice. While on a charity cross-country cycling trip with Bike and Build in the summer of 2015, he was killed by a cell phone distracted driver.

Patrick was an engineer, a physics and computer science teacher, a bassist, a cyclist, and an incredible friend, brother and son.

He devoted himself to his students in the Bronx and taught them to "fail harder!" Patrick loved music, poetry, modern art, coffee and life. In his short 25 years, he accomplished more than most people do in a lifetime.

NEVER DRIVE DISTRACTED

PatrickRidesOn@gmail.com

DO ALL THE GOOD
YOU CAN
IN ALL THE WAYS
YOU CAN
TO ALL THE PEOPLE
YOU CAN
FOR AS LONG AS
YOU CAN



PATRICK WANNINKHOF
1990-2015

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 6, 2019

Meeting Date

76

Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name H Lee Moffitt

Job Title Attorney

Address 3327 NW Perimeter Rd

Street

Phone 813 760-5712

Palm City

FL

34990

Email MrSpeaker@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing AutoNation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/19

Meeting Date

SB 76

Bill Number (if applicable)

Topic DISTRACTED DRIVING

Amendment Barcode (if applicable)

Name KEYNA CORY

Job Title LOBBYIST

Address 730 E. PAUL AVE

Phone 850 681 1065

Street

TALLAHASSEE FL 3230

City

State

Zip

Email keynacory@pacconsultants.com

Speaking: [X] For [] Against [] Information

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

Representing NATIONAL WASTE + RECYCLING ASSN + FL DNT TXT N DRV COALITION

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/19

Meeting Date

SB 76

Bill Number (if applicable)

Topic DISTRACTED DRIVING

Amendment Barcode (if applicable)

Name BECKY AFONSO

Job Title EXECUTIVE DIRECTOR

Address PO BOX 2452

Phone 813 748-1513

Street

DUDSMAR

City

FL

State

34677

Zip

Email becky@floridabicycle.org

Speaking: For Against Information

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

Representing FLORIDA BICYCLE 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)

3/6/19

Meeting Date

SB 76

Bill Number (if applicable)

Topic DISTRACTED DRIVING

Amendment Barcode (if applicable)

Name LESLIE DUGHI

Job Title LOBBYIST

Address COLLEGE AVE

Phone 850 222-6891

Street

TALLAHASSEE FL 32301

Email DUGHILE@LAW.COM

City

State

Zip

Speaking: For Against Information

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

Representing ENTERPRISE HOLDINGS

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)

3/6/19

Meeting Date

5B76

Bill Number (if applicable)

Topic HANDS FREE BILL

Amendment Barcode (if applicable)

Name Gwendolyn Reese

Job Title

Address 3806 34th Ter. So 3B

Phone 727-418-8881

Street

St. Pete FL 33711

City

State

Zip

Email gwen.reese@smail.com

Speaking: [X] For [] Against [] Information

Waive Speaking: [X] Support [] Against (The Chair will read this information into the record.)

Representing HANDS FREE 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)

03-06-19
Meeting Date

76
Bill Number (if applicable)

Topic Distracted driving

Amendment Barcode (if applicable)

Name Mark Merwitzer

Job Title Student

Address 725 NW 13 St

Phone 786-505-7272

Gainesville FL
City State

32601
Zip

Email mbmerwitzer@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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THE FLORIDA SENATE

APPEARANCE RECORD

3-6-19

Meeting Date

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

76

Bill Number (if applicable)

Topic Hands Free Florida

Amendment Barcode (if applicable)

Name Demetrius Branca

Job Title

Address 815 Vancite Ave

Phone 850 339 8213

Street

Tallahassee FL 32303

Email demetriusbranca@gmail.com

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing APB Foundation

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] 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)

SB 76
Bill Number (if applicable)

Meeting Date _____

Amendment Barcode (if applicable) _____

Topic SB 76 Distracted Driving
Name Debbie Wanninkhof

Job Title _____

Address 255 W. Heather Drive
Street
Key Biscayne, FL 33149
City State Zip

Phone 305-992-7470

Email debbie.wanninkhof@gmail.com

Speaking: For Against Information

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

Representing The Wanninkhof Family

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/19

Meeting Date

51376

Bill Number (if applicable)

Topic HANDS FREE

Amendment Barcode (if applicable)

Name Brooke & Jordan Scherer

Job Title Living for Logan Foundation

Address 1989 Mullinix Rd

Phone 813-545-7964

Street

Greenwood

IN

46143

Email info@livingforlogan.org

City

State

Zip

Speaking: For Against Information

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

Representing Living for Logan Foundation

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-6-19

Meeting Date

76

Bill Number (if applicable)

Topic DISTRACTED DRIVING

Amendment Barcode (if applicable)

Name STEPHEN ANGELLO

Job Title

Address 11434 VERSAILLES LN

Phone

Street

PORT RICHEY FL 34668

Email

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/2019

Meeting Date

SB 76

Bill Number (if applicable)

Topic Driving While Distracted

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title Associate State Director

Address 200 W. College Ave

Street

Phone 850-228-4243

Tallahassee

FL

32301

Email zsmith@aarp.org

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing AARP Florida

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] 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)

3/6/19

76

Meeting Date

Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Allie Pass

Job Title Government Affairs Coordinator

Address 4890 Planters Ridge Dr

Phone 850-566-1979

Street

Tallahassee

FL

32311

Email apass@flsheriffs.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs 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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/19

Meeting Date

76

Bill Number (if applicable)

Topic Drawing while distracted

Amendment Barcode (if applicable)

Name Dunela Merritt

Job Title Mayer

Address 135 Hwy 40 W

Phone 352-229-0479

Englis FL 34449
City State Zip

Email _____

Speaking: For Against Information

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

Representing Town of Englis

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/19
Meeting Date

SB76
Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Jennifer Smith

Job Title CEO, StopDistractions.org

Address PO Box 6743
Street

Phone 708-334-3058

River Forest IL 60302
City State Zip

Email jsmith@stopdistractions.org

Speaking: For Against Information

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

Representing stopdistractions.org

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)

3/6/19 Meeting Date

076

Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Cesar Fernandez

Job Title

Address 480 NE 30th St, Apt 802

Phone 786-262-6092

Miami FL 33137

Email Cesar@convergegov.com

Speaking: For Against Information

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

Representing Village of Key Biscayne

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/20/19 Meeting Date

SB76 Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Khank-Lien R. Banto

Job Title Resolutions Chair

Address 1747 Orlando Central Parkway Street

Phone 407.855.7604

Orlando FL 32809 City State Zip

Email resolutionset@ndapta.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.

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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)

2/6/19

Meeting Date

78

Bill Number (if applicable)

Topic DISTRACTED DRIVING

Amendment Barcode (if applicable)

Name WILLIAM B. SMITH

Job Title PRESIDENT PAP/PBA CHAPTER

Address 300 E BREVARD ST.
Street

Phone 850-222-3329

TALL R 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3-6-19 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

SB 76
Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Diane Satz

Job Title Lobbyist

Address 2529 Goose Pond Ct
Street

Phone 850.339.8550

Tallahassee FL 32308
City State Zip

Email disatz@yahoo.com

Speaking: For Against Information

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

Representing Hillsb. County Planning Commission / MPO

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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THE FLORIDA SENATE

APPEARANCE RECORD

3-6-19

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

76

Meeting Date

Bill Number (if applicable)

Topic Driving While Distracted

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP of State Federal Affairs

Address 516 N Adams

Phone _____

Street

Tallahassee

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

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)

3/6/19

Meeting Date

76

Bill Number (if applicable)

Topic DRIVING WHILE DISTRACTED

Amendment Barcode (if applicable)

Name USA HURLEY

Job Title

Address 301 E. Park Av

Phone 850.228.5081

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 CITY OF NAPLES

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-6-19

Meeting Date

S.B. 76

Bill Number (if applicable)

Topic Texting while driving

Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title

Address 106 E. College Ave. #1200

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 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/19
Meeting Date

76
Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Logan McFaddin

Job Title Regional Manager

Address 215 S. Monroe St. Suite 120
Street

Phone 850-681-2615

Tallahassee
City

FL
State

32301
Zip

Email logan.mcfaddin@apci.org

Speaking: For Against Information

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

Representing American Property Casualty Insurance Association (APCIA)

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)

3/6

Meeting Date

SB 76

Bill Number (if applicable)

Topic Driving while Distracted

Amendment Barcode (if applicable)

Name Jennifer Langston

Job Title Legislative Affairs Director

Address 2900 Apalachee Pkwy

Phone 677-3195

Street

Tan

FL

32309

City

State

Zip

Email jennifer.langston@flhsmv.gov

Speaking: For Against Information

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

Representing FL Dept of Highway Safety & Motor Vehicles

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)

3-6-19

Meeting Date

76

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 1674 UNIVERSITY PKWY #296

Phone 941-323-2404

Street

SARASOTA

City

FL

State

34243

Zip

Email cullenasea@aol.com

Speaking: For Against Information

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

Representing ADVOCACY INSTITUTE FOR CHILDREN

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)

3/16/19
Meeting Date

SB 76
Bill Number (if applicable)
452950
Amendment Barcode (if applicable)

Topic Driving while Distracted

Name Khanh-Lien Banko

Job Title Resolution's Chair

Address 1747 Orlando Central Parkway

Phone 407-855-7604

Street

Orlando

City

FL

State

32809

Zip

Email resolutionseforidpta.org

Speaking: For Against Information

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

Representing Florida PTA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/19

Meeting Date

76

Bill Number (if applicable)

200286

Amendment Barcode (if applicable)

Topic DISTRACTED DRIVING

Name WILLIAM B. SMITH

Job Title PRESIDENT FHP IP30 CHAPTER

Address 300 E. BOULEVARD ST. Street

Phone 850-222-3320

TALL City R State 32321 Zip

Email

Speaking: [X] 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: [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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THE FLORIDA SENATE
APPEARANCE RECORD

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

03/06/2019

Meeting Date

76

Bill Number (if applicable)

200286

Amendment Barcode (if applicable)

Topic Driving while distracted

Name Jim Cordero

Job Title Director of Governmental Affairs

Address 1007 E. De Soto Park Drive, Ste. 201

Street

Tallahassee

City

Florida

State

32301

Zip

Phone 850-222-7300

Email jcordero@acaf.org

Speaking: For Against Information

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

Representing Asphalt Contractors Association of Florida, 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.

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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)

3/6/2019

76

Meeting Date

Bill Number (if applicable)

Topic Driving While Distracted

Amendment Barcode (if applicable)

Name Chief David Perry

Job Title Chief of Police, Florida State University P.D.

Address 2636 Mitcham Drive

Phone 850-219-3631

Street

Tallahassee

FL

32308

Email ghester@fpca.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Police 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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By the Committees on Innovation, Industry, and Technology; and Infrastructure and Security; and Senators Simpson, Passidomo, Hooper, Mayfield, Book, Rouson, Berman, Perry, Taddeo, and Cruz

580-02753-19

201976c2

1 A bill to be entitled
2 An act relating to driving while distracted; amending
3 s. 316.305, F.S.; revising the short title; defining
4 the term "driving while distracted"; redefining the
5 term "wireless communications device"; revising
6 legislative intent; prohibiting a person from
7 operating a motor vehicle when driving while
8 distracted; authorizing a law enforcement officer
9 during a specified period to stop motor vehicles to
10 issue warnings to persons who are driving while
11 distracted; providing for repeal of a provision;
12 authorizing a law enforcement officer, after a
13 specified date, to stop motor vehicles and issue
14 citations to persons who are driving while distracted;
15 revising exceptions to such prohibition; revising
16 crash results for which a user's billing records for a
17 wireless communications device or the testimony of or
18 written statements from certain authorities are
19 admissible as evidence; requiring that law enforcement
20 officers indicate specified information in the uniform
21 traffic citation; providing penalties for driving
22 while distracted; authorizing participation in a
23 distracted driving safety program for a first offense,
24 in lieu of specified penalties; authorizing a clerk of
25 the court to dismiss a case and assess court costs
26 under certain circumstances; requiring the deposit of
27 fines into the Emergency Medical Services Trust Fund;
28 deleting a provision requiring that enforcement of
29 this section be accomplished only as a secondary

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59 (a) "Driving while distracted" means the inattentive
60 operation of a motor vehicle while the vehicle is in motion.
61 Inattentive or distracted driving conduct includes reading,
62 writing, performing personal grooming, applying a beauty aid or
63 similar products, interacting with pets or unsecured cargo,
64 using a personal wireless communications device, or engaging in
65 any other activity, conduct, task, or action that causes
66 distraction.

67 (b) "Wireless communications device" means any handheld
68 device that is designed or intended to receive or transmit text-
69 or character-based messages, to record or view images, to access
70 or store data, or to connect to the Internet or any
71 communications service, as defined in s. 812.15, or which allows
72 text communications. The term includes, but is not limited to, a
73 cell phone, a tablet, a laptop, a two-way messaging device, or
74 an electronic game that is used or capable of being used in a
75 handheld manner. The term does not include a safety, security,
76 or convenience feature built into a motor vehicle which does not
77 require the use of a handheld device.

78 (3)(2) It is the intent of the Legislature to:

79 (a) Improve roadway safety for all vehicle operators,
80 vehicle passengers, bicyclists, pedestrians, and other road
81 users.

82 (b) Prevent crashes related to the act of driving while
83 distracted when operating text messaging while driving a motor
84 vehicle while the vehicle is in motion.

85 (c) Reduce injuries, deaths, property damage, health care
86 costs, health insurance rates, and automobile insurance rates
87 related to motor vehicle crashes.

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88 (d) Authorize law enforcement officers to stop motor
89 vehicles and issue citations ~~as a secondary offense~~ to persons
90 who are ~~texting while~~ driving while distracted as provided in
91 subsection (4).

92 ~~(4)(3)~~ (a) 1. A person may not operate a motor vehicle when
93 driving while distracted ~~while manually typing or entering~~
94 ~~multiple letters, numbers, symbols, or other characters into a~~
95 ~~wireless communications device or while sending or reading data~~
96 ~~on such a device for the purpose of nonvoice interpersonal~~
97 ~~communication, including, but not limited to, communication~~
98 ~~methods known as texting, e-mailing, and instant messaging. As~~
99 ~~used in this section, the term "wireless communications device"~~
100 ~~means any handheld device used or capable of being used in a~~
101 ~~handheld manner, that is designed or intended to receive or~~
102 ~~transmit text or character-based messages, access or store data,~~
103 ~~or connect to the Internet or any communications service as~~
104 ~~defined in s. 812.15 and that allows text communications. For~~
105 the purposes of this paragraph, a motor vehicle that is
106 stationary is not being operated and is not subject to the
107 prohibition in this paragraph.

108 2.a. During the period of October 1, 2019, through December
109 31, 2019, a law enforcement officer may stop motor vehicles to
110 issue verbal or written warnings to persons who are driving
111 while distracted for the purposes of informing and educating
112 such persons. This sub-subparagraph shall stand repealed on
113 October 1, 2020.

114 b. After December 31, 2019, a law enforcement officer may
115 stop motor vehicles and issue citations to persons who are
116 driving while distracted.

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117 (b) Paragraph (a) does not apply to a motor vehicle
118 operator who is:

119 1. Performing official duties as an operator of an
120 authorized emergency vehicle as defined in s. 322.01, a law
121 enforcement or fire service professional, or an emergency
122 medical services professional.

123 2. Reporting an emergency or criminal or suspicious
124 activity to law enforcement authorities.

125 3. Receiving messages that are:

126 a. Related to the operation or navigation of the motor
127 vehicle;

128 b. Safety-related information, including emergency,
129 traffic, or weather alerts;

130 c. Data used primarily by the motor vehicle; or

131 d. Radio broadcasts.

132 4. Using a device or system in a hands-free manner for
133 navigation purposes.

134 5. Using a wireless communications device hands-free or
135 hands-free in voice-operated mode, including, but not limited
136 to, a factory-installed or after-market Bluetooth device
137 ~~Conducting wireless interpersonal communication that does not~~
138 ~~require manual entry of multiple letters, numbers, or symbols,~~
139 ~~except to activate, deactivate, or initiate a feature or~~
140 ~~function.~~

141 ~~6. Conducting wireless interpersonal communication that~~
142 ~~does not require reading text messages, except to activate,~~
143 ~~deactivate, or initiate a feature or function.~~

144 6.7. Operating an autonomous vehicle, as defined in s.
145 316.003, in autonomous mode.

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146 (c) Only in the event of a crash resulting in death or
147 serious bodily injury, as defined in s. 316.027 ~~personal injury,~~
148 a user's billing records for a wireless communications device or
149 the testimony of or written statements from appropriate
150 authorities receiving such messages may be admissible as
151 evidence in any proceeding to determine whether a violation of
152 paragraph (a) has been committed.

153 (d) Law enforcement officers must indicate the type of
154 distraction in the comment section of the uniform traffic
155 citation.

156 (5) ~~(4)~~ (a) Any person who violates this section commits a
157 noncriminal traffic infraction, punishable as a moving
158 violation, as provided in chapter 318, and shall have 3 points
159 assessed against his or her driver license as set forth in s.
160 322.27. For a first offense under this section, in lieu of the
161 penalty specified in s. 318.18 and the assessment of points, a
162 person who violates this section may elect to participate in a
163 distracted driving safety program approved by the Department of
164 Highway Safety and Motor Vehicles. Upon completion of such
165 program, the penalty specified in s. 318.18 and associated costs
166 may be waived by the clerk of the court and the assessment of
167 points must be waived ~~Any person who violates paragraph (3)(a)~~
168 ~~commits a noncriminal traffic infraction, punishable as a~~
169 ~~nonmoving violation as provided in chapter 318.~~

170 (b) The clerk of the court may dismiss a case and assess
171 court costs in accordance with s. 318.18(11)(a) for a nonmoving
172 traffic infraction for a person who is cited for a first time
173 violation of this section if the inattentive or distracted
174 driving conduct resulting in the violation is for the use of a

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175 personal wireless communications device and the person shows the
176 clerk proof of purchase of equipment that enables his or her
177 personal wireless communications device to be used in a hands-
178 free manner ~~Any person who commits a second or subsequent~~
179 ~~violation of paragraph (3) (a) within 5 years after the date of a~~
180 ~~prior conviction for a violation of paragraph (3) (a) commits a~~
181 ~~noncriminal traffic infraction, punishable as a moving violation~~
182 ~~as provided in chapter 318.~~

183 (6)~~(5)~~ Notwithstanding s. 318.21, all proceeds collected
184 pursuant to s. 318.18 for violations of this section must be
185 remitted to the Department of Revenue for deposit into the
186 Emergency Medical Services Trust Fund of the Department of
187 Health ~~Enforcement of this section by state or local law~~
188 ~~enforcement agencies must be accomplished only as a secondary~~
189 ~~action when an operator of a motor vehicle has been detained for~~
190 ~~a suspected violation of another provision of this chapter,~~
191 ~~chapter 320, or chapter 322.~~

192 (7) When a law enforcement officer issues a citation for a
193 violation of this section, the law enforcement officer must
194 record the race and ethnicity of the violator. All law
195 enforcement agencies must maintain such information and must
196 report such information to the department in a form and manner
197 determined by the department. Beginning February 1, 2020, the
198 department shall annually report the data collected under this
199 subsection to the Governor, the President of the Senate, and the
200 Speaker of the House of Representatives. The data collected must
201 be reported at least by statewide totals for local law
202 enforcement agencies, state law enforcement agencies, and state
203 university law enforcement agencies. The statewide total for

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204 local law enforcement agencies must combine the data for the
205 county sheriffs and the municipal law enforcement agencies.

206 Section 2. (1) The Department of Highway Safety and Motor
207 Vehicles, in consultation with the Department of Transportation,
208 may implement a statewide campaign to raise awareness and
209 prevent drivers from driving while distracted. The Department of
210 Highway Safety and Motor Vehicles may use television messaging,
211 radio broadcasts, print media, digital strategies, social media,
212 and any other form of messaging deemed necessary and appropriate
213 by the department to implement the campaign.

214 (2) The Department of Highway Safety and Motor Vehicles may
215 contract with counties, local law enforcement agencies, safety
216 councils, and public schools to assist with planning and
217 conducting the statewide driving while distracted safety and
218 public awareness campaign in a manner that encourages compliance
219 with s. 316.305, Florida Statutes.

220 Section 3. Except as otherwise expressly provided in this
221 act, this act shall take effect July 1, 2019.