

|        |                                                                                              |   |       |            |                         |                |  |
|--------|----------------------------------------------------------------------------------------------|---|-------|------------|-------------------------|----------------|--|
| Tab 1  | SB 532 by Lee (CO-INTRODUCERS) Farmer; (Compare to H 00521) Wetland Mitigation               |   |       |            |                         |                |  |
| 339590 | A                                                                                            | S | RCS   | CA, Lee    | Delete L.30 - 40:       | 03/06 06:58 PM |  |
| Tab 2  | SB 310 by Perry (CO-INTRODUCERS) Broxson; (Identical to H 00659) Off-highway Vehicles        |   |       |            |                         |                |  |
| Tab 3  | CS/SB 268 by EE, Baxley; (Similar to H 00689) Voting Methods                                 |   |       |            |                         |                |  |
| 344688 | D                                                                                            | S | RCS   | CA, Baxley | Delete everything after | 03/07 11:17 AM |  |
| Tab 4  | SB 350 by Hutson (CO-INTRODUCERS) Mayfield; Impact Fees                                      |   |       |            |                         |                |  |
| 634362 | D                                                                                            | S | RCS   | CA, Hutson | Delete everything after | 03/07 02:33 PM |  |
| Tab 5  | SJR 344 by Diaz; (Identical to H 00317) Homestead Tax Exemption                              |   |       |            |                         |                |  |
| 825478 | D                                                                                            | S | L RCS | CA, Diaz   | Delete everything after | 03/07 08:04 AM |  |
| Tab 6  | SB 562 by Diaz; (Similar to H 01205) Homestead Exemptions                                    |   |       |            |                         |                |  |
| 482608 | D                                                                                            | S | L RCS | CA, Diaz   | Delete everything after | 03/07 08:04 AM |  |
| Tab 7  | CS/SB 462 by JU, Powell; (Identical to CS/H 00091) Judicial Process                          |   |       |            |                         |                |  |
| 380012 | A                                                                                            | S | RCS   | CA, Powell | btw L.168 - 169:        | 03/07 08:20 AM |  |
| Tab 8  | SB 494 by Hooper (CO-INTRODUCERS) Broxson; (Similar to H 00161) Firefighters' Bill of Rights |   |       |            |                         |                |  |
| Tab 9  | SB 436 by Hooper; (Identical to H 00529) Use of Vessel Registration Fees                     |   |       |            |                         |                |  |
| Tab 10 | SB 7014 by GO; (Similar to H 07035) Government Accountability                                |   |       |            |                         |                |  |
| 241712 | A                                                                                            | S | RCS   | CA, Hooper | Delete L.172:           | 03/07 12:12 PM |  |
| 523950 | A                                                                                            | S | RCS   | CA, Hooper | btw L.480 - 481:        | 03/07 12:12 PM |  |
| 553006 | A                                                                                            | S | RCS   | CA, Hooper | Delete L.523 - 567:     | 03/07 12:12 PM |  |
| 283582 | A                                                                                            | S | RCS   | CA, Hooper | Delete L.639 - 641.     | 03/07 12:12 PM |  |
| Tab 11 | CS/SB 246 by GO, Hooper; (Similar to CS/H 00101) Public Construction                         |   |       |            |                         |                |  |
| 772792 | A                                                                                            | S | RCS   | CA, Hooper | Delete L.183 - 187:     | 03/06 05:02 PM |  |
| Tab 12 | SB 144 by Gruters; (Similar to CS/H 00207) Impact Fees                                       |   |       |            |                         |                |  |
| Tab 13 | SB 202 by Wright; (Identical to H 00051) Property Tax Exemptions                             |   |       |            |                         |                |  |
| Tab 14 | SB 426 by Flores (CO-INTRODUCERS) Torres, Hooper; (Identical to H 00857) Firefighters        |   |       |            |                         |                |  |
| 902036 | D                                                                                            | S | RCS   | CA, Flores | Delete everything after | 03/07 02:07 PM |  |

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

**COMMUNITY AFFAIRS**  
**Senator Flores, Chair**  
**Senator Farmer, Vice Chair**

**MEETING DATE:** Tuesday, March 5, 2019**TIME:** 2:30—4:30 p.m.**PLACE:** 301 Senate Building**MEMBERS:** Senator Flores, Chair; Senator Farmer, Vice Chair; Senators Broxson, Pizzo, and Simmons

| TAB | BILL NO. and INTRODUCER                                              | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                            | COMMITTEE ACTION           |
|-----|----------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| 1   | <b>SB 532</b><br>Lee<br>(Compare H 521)                              | Wetland Mitigation; Revising the conditions under which a governmental entity may create or provide mitigation for a project other than its own under certain circumstances, etc.<br><br>CA 03/05/2019 Fav/CS<br>AEG<br>AP                                                                                  | Fav/CS<br>Yeas 5 Nays 0    |
| 2   | <b>SB 310</b><br>Perry<br>(Identical H 659)                          | Off-highway Vehicles; Redefining the terms "ATV" and "ROV" to increase the authorized width and dry weight of such vehicles; redefining the term "all-terrain vehicle" to increase the authorized width and dry weight of the vehicle, etc.<br><br>AG 02/11/2019 Favorable<br>CA 03/05/2019 Favorable<br>RC | Favorable<br>Yeas 5 Nays 0 |
| 3   | <b>CS/SB 268</b><br>Ethics and Elections / Baxley<br>(Similar H 689) | Voting Methods; Authorizing voting to be conducted using a voter interface device that produces a voter-verified paper output, etc.<br><br>EE 02/05/2019 Fav/CS<br>CA 03/05/2019 Fav/CS<br>RC                                                                                                               | Fav/CS<br>Yeas 5 Nays 0    |
| 4   | <b>SB 350</b><br>Hutson                                              | Impact Fees; Prohibiting local governments from charging impact fees for certain developments, etc.<br><br>CA 03/05/2019 Fav/CS<br>IS<br>AP                                                                                                                                                                 | Fav/CS<br>Yeas 5 Nays 0    |

**COMMITTEE MEETING EXPANDED AGENDA**

Community Affairs

Tuesday, March 5, 2019, 2:30—4:30 p.m.

| TAB | BILL NO. and INTRODUCER                                                     | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                 | COMMITTEE ACTION           |
|-----|-----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| 5   | <b>SJR 344</b><br>Diaz<br>(Identical HJR 317, Compare H 1205, Linked S 562) | Homestead Tax Exemption; Proposing amendments to the State Constitution to authorize the Legislature, by general law, to provide a homestead tax exemption from school district levies to persons 65 years of age or older who have legal or equitable title to homestead property and who have maintained permanent residence thereon for at least 25 years, and to provide an effective date, etc.<br><br>CA 03/05/2019 Fav/CS<br>FT<br>AED<br>AP                              | Fav/CS<br>Yeas 5 Nays 0    |
| 6   | <b>SB 562</b><br>Diaz<br>(Similar H 1205, Compare HJR 317, Linked SJR 344)  | Homestead Exemptions; Providing an additional homestead exemption from school district levies for certain persons age 65 or older; authorizing persons entitled to and receiving a certain homestead exemption to apply for and receive the additional exemption; requiring a property appraiser who makes a certain determination to serve upon the owner a notice of intent to record a tax lien against the property, etc.<br><br>CA 03/05/2019 Fav/CS<br>FT<br>AP            | Fav/CS<br>Yeas 5 Nays 0    |
| 7   | <b>CS/SB 462</b><br>Judiciary / Powell<br>(Identical CS/H 91)               | Judicial Process; Providing that a person who acquires for value a lien on property during the course of specified legal actions takes such lien free of claims in certain circumstances; specifying the effect of a valid, recorded notice of lis pendens in certain circumstances involving a judicial sale; revising requirements for substituted service on the spouse of the person to be served, etc.<br><br>JU 02/11/2019 Fav/CS<br>CA 03/05/2019 Fav/CS<br>RC            | Fav/CS<br>Yeas 5 Nays 0    |
| 8   | <b>SB 494</b><br>Hooper<br>(Similar H 161)                                  | Firefighters' Bill of Rights; Revising the definition of the term "interrogation" to include questioning pursuant to an informal inquiry; requiring that witnesses be interviewed and certain information be provided to a firefighter subjected to interrogation before the interrogation is conducted; prohibiting a firefighter from being threatened with certain disciplinary action during the course of an interrogation, etc.<br><br>CA 03/05/2019 Favorable<br>GO<br>RC | Favorable<br>Yeas 5 Nays 0 |

**COMMITTEE MEETING EXPANDED AGENDA**

Community Affairs

Tuesday, March 5, 2019, 2:30—4:30 p.m.

| TAB | BILL NO. and INTRODUCER                                                                                | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | COMMITTEE ACTION           |
|-----|--------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| 9   | <b>SB 436</b><br>Hooper<br>(Identical H 529)                                                           | Use of Vessel Registration Fees; Authorizing a portion of county or municipal vessel registration fees to be used for specified additional purposes, etc.<br><br>CA 03/05/2019 Favorable<br>EN<br>RC                                                                                                                                                                                                                                                                                                                                                                                                                                            | Favorable<br>Yeas 5 Nays 0 |
| 10  | <b>SB 7014</b><br>Governmental Oversight and Accountability<br>(Similar H 7035, Compare H 861, S 1616) | Government Accountability; Specifying that the Governor, the Commissioner of Education, or the designee of the Governor or of the commissioner, may notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements; specifying that any person who willfully fails or refuses to provide access to an employee, officer, or agent of an entity under audit is subject to a penalty; requiring each school district, Florida College System institution, and state university to establish and maintain certain internal controls, etc.<br><br>CA 03/05/2019 Fav/CS<br>RC | Fav/CS<br>Yeas 5 Nays 0    |
| 11  | <b>CS/SB 246</b><br>Governmental Oversight and Accountability / Hooper<br>(Similar CS/H 101)           | Public Construction; Revising the amounts of retainage that local governmental entities and contractors may withhold from progress payments for any construction services contract; revising requirements for Department of Management Services rules governing certain contracts; revising the amounts of retainage that certain public entities and contractors may withhold from progress payments for any construction services contract, etc.<br><br>GO 02/12/2019 Fav/CS<br>CA 03/05/2019 Fav/CS<br>AP                                                                                                                                    | Fav/CS<br>Yeas 5 Nays 0    |
| 12  | <b>SB 144</b><br>Gruters<br>(Similar CS/H 207, Compare S 1730)                                         | Impact Fees; Revising the minimum requirements for impact fees adopted by a local government; exempting water and sewer connection fees from the Florida Impact Fee Act, etc.<br><br>CA 02/05/2019 Temporarily Postponed<br>CA 03/05/2019 Favorable<br>FT<br>AP                                                                                                                                                                                                                                                                                                                                                                                 | Favorable<br>Yeas 5 Nays 0 |
| 13  | <b>SB 202</b><br>Wright<br>(Identical H 51)                                                            | Property Tax Exemptions; Increasing the property tax exemption for residents who are widows, widowers, blind, or totally and permanently disabled, etc.<br><br>CA 03/05/2019 Favorable<br>FT<br>AP                                                                                                                                                                                                                                                                                                                                                                                                                                              | Favorable<br>Yeas 5 Nays 0 |



**COMMITTEE MEETING EXPANDED AGENDA**

Community Affairs

Tuesday, March 5, 2019, 2:30—4:30 p.m.

| TAB | BILL NO. and INTRODUCER                      | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                          | COMMITTEE ACTION        |
|-----|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 14  | <b>SB 426</b><br>Flores<br>(Identical H 857) | Firefighters; Granting certain benefits to a firefighter upon receiving a diagnosis of cancer if certain conditions are met; requiring an employer to make certain disability payments to a firefighter in the event of a total and permanent disability; providing for death benefits to a firefighter's beneficiary if a firefighter dies as a result of cancer or cancer treatments, etc.<br><br>GO 02/19/2019 Favorable<br>CA 03/05/2019 Fav/CS<br>AP | Fav/CS<br>Yeas 5 Nays 0 |

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Other Related Meeting Documents

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

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 532

INTRODUCER: Community Affairs Committee and Senators Lee and Farmer

SUBJECT: Wetland Mitigation

DATE: March 6, 2019

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Peacock | Yeatman        | CA        | <b>Fav/CS</b> |
| 2. |         |                | AEG       |               |
| 3. |         |                | AP        |               |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 532 amends current law provisions relating to wetland mitigation banking to authorize a local government to allow permittee-responsible mitigation consisting of the restoration or enhancement of lands purchased and owned by a local government for conservation purposes, and such mitigation must conform to the permitting requirements for mitigation banks.

**II. Present Situation:**

**Background, Legislative Intent and Purpose**

Environmental mitigation, as it relates to wetlands regulatory programs, is generally defined as “the creation, restoration, preservation or enhancement of wetlands to compensate for permitted wetlands losses.”<sup>1</sup> Mitigation banking is a concept designed to increase the success of environmental mitigation efforts and reduce costs to developers of individual mitigation projects.<sup>2</sup>

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<sup>1</sup> John J. Fumero, *Environmental Law: 1994 Survey of Florida Law – At a Crossroads in Natural Resource Protection and Management in Florida*, 19 Nova L. Rev. 77, 101 (1994), available at <https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1537&context=nlr> (last visited Feb. 21, 2019).

<sup>2</sup> *Id.* at 103.

Section 404 of the federal Clean Water Act (CWA)<sup>3</sup> and early Florida law attempted to regulate wetlands impacts; however, the regulations did not specifically establish a wetlands protection program. The Florida Legislature responded to the lack of both a comprehensive policy and a regulatory framework to handle environmental mitigation efforts with passage of s. 373.4135, F.S., as part of the Florida Environmental Reorganization Act of 1993.<sup>4</sup> Section 373.4135, F.S., directs the Department of Environmental Protection (DEP)<sup>5</sup> and the water management districts (WMDs)<sup>6</sup> to participate in and encourage the establishment of private and public mitigation banks and offsite regional mitigation. The Legislature intended that the provisions for establishing mitigation banks would apply equally to both public and private entities, except for necessary variability for the DEP and each WMD to ensure the construction and perpetual protection of mitigation banks.<sup>7</sup> Section 373.4135(1), F.S., recognizes the “improved likelihood of environmental success” associated with the establishment of mitigation banks, especially favoring “the restoration and enhancement of degraded ecosystems and the preservation of uplands and wetlands as intact ecosystems . . . through restoration of ecological communities that were historically present.”

### **Mitigation Banking Process**

In 1994, rules governing the establishment and use of mitigation banks were adopted.<sup>8</sup> The substantive aspects of these rules were later codified<sup>9</sup> in s. 373.4136, F.S., and further specified in Ch. 62-342, F.A.C.

Mitigation banking is a practice in which an environmental enhancement and preservation project is conducted by a public agency or private entity (banker<sup>10</sup>) to provide mitigation for unavoidable wetland impacts within a defined region (mitigation service area). The bank is the site itself, and the currency sold by the banker to the impact permittee is a credit, which represents the wetland ecological value equivalent to the complete restoration of one acre. The number of potential credits permitted for the bank and the credit debits required for impact

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<sup>3</sup> 33 U.S.C. s. 1344. Section 404 of the CWA establishes a program to regulate the discharge of dredged or fill material into the waters of the United States, including wetlands. See U.S. Environmental Protection Agency, Section 404 Permit Program, available at <https://www.epa.gov/cwa-404/section-404-permit-program> (last visited Feb. 28, 2019).

<sup>4</sup> Fumero, *supra* note 1, at 103. Also, see Ch. 93-213, ss. 1 and 29, Laws of Fla.

<sup>5</sup> The DEP is the state’s lead agency for environmental management and stewardship, protecting the state’s air, water and land. See About DEP, available at <https://floridadep.gov/about-dep> (last visited Feb. 22, 2019). The head of DEP is the secretary appointed by the Governor, with the concurrence of three members of the Cabinet. The secretary must be confirmed by the Florida Senate and serves at the pleasure of the Governor. See s. 20.255, F.S.

<sup>6</sup> Florida’s five WMDs include the Northwest Florida Management Water District, the Suwannee River Water Management District, the St. John’s Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District. The DEP exercises general supervisory authority over the WMDs through a cooperative working relationship and guidance memos. See Florida DEP, Divisions, Office of Water Policy, Water Management Districts, available at <https://floridadep.gov/water-policy/water-policy/content/water-management-districts> (last visited Feb. 27, 2019).

<sup>7</sup> Section 373.4135(1)(a), F.S.

<sup>8</sup> The rules have been amended several times and are incorporated in Ch. 62-342, F.A.C.

<sup>9</sup> In 1996, the Legislature revised the statutes on mitigation banking and the substantive sections of the rules were placed in s. 373.4136, F.S. See Ch. 96-371, Laws of Fla.

<sup>10</sup> Rule 62-342.200(1), F.A.C., defines “banker” as an entity that creates, operates, manages, or maintains a Mitigation Bank pursuant to a Mitigation Bank Permit.

permits are determined by the permitting agencies. The Uniform Mitigation Assessment Method (UMAM)<sup>11</sup> is the method of assessment for banks established after February 2, 2004.<sup>12</sup>

A banker must apply for a mitigation bank permit before establishing and operating a mitigation bank.<sup>13</sup> To obtain a mitigation bank permit, the applicant must provide reasonable assurance that the mitigation bank will:

- Improve ecological conditions of the regional watershed;
- Provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;
- Be effectively managed in perpetuity;
- Not destroy areas with high ecological value;
- Achieve mitigation success; and
- Be adjacent to lands that will not adversely affect the long-term viability of the mitigation bank due to unsuitable land uses or conditions.<sup>14</sup>

Also, the applicant for a mitigation bank must provide reasonable assurances that:

- Any surface water management system to be constructed, altered, operated, maintained, abandoned, or removed within the mitigation bank will meet the requirements of part IV, ch. 373, F.S., and the rules adopted thereunder;
- It has sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land within a mitigation bank; and
- It can meet the financial responsibility requirements prescribed for mitigation banks.<sup>15</sup>

Mitigation banks are permitted by the DEP or one of the WMDs that has adopted rules, based on the location of the bank and activity-based considerations.<sup>16</sup> Additionally, a mitigation bank requires federal authorization in the form of a Mitigation Bank Instrument (MBI) signed by several agencies, with the U.S. Army Corps of Engineers as lead. The DEP strongly encourages the mitigation bank applicant to have at least one pre-application meeting with an Interagency Review Team (IRT), consisting of all state and federal agencies that will be involved in processing the permit. The agencies that would generally make up the IRT are:

- U.S. Army Corps of Engineers, Jacksonville District (Corps.)
- National Marine Fisheries Services (NMFS)
- U.S. Fish and Wildlife Service (FWS)
- U.S. Environmental Protection Agency (EPA)
- Florida Fish and Wildlife Conservation Commission (FWC)

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<sup>11</sup> The UMAM provides a standardized procedure for assessing the ecological values and functions of wetlands and other surface waters. See Florida DEP, Division of Water Resource Management, Submerged Lands and Environmental Resources Coordination Program, Wetlands Mitigation, available at <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation> (last visited Feb. 26, 2019).

<sup>12</sup> See Florida DEP, Division of Water Resource Management, Submerged Lands and Environmental Resources Coordination Program, Mitigation and Mitigation Banking available at <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-and-mitigation-banking> (last visited Feb. 26, 2019).

<sup>13</sup> Section 373.4136(1), F.S., and Rule 62-342.450, F.A.C.

<sup>14</sup> Section 373.4136(1), F.S., and Rule 62-342.400, F.A.C.

<sup>15</sup> *Id.* Also, see Rule 62-342.700, F.A.C.

<sup>16</sup> See Florida DEP, Division of Water Resource Management, Submerged Lands and Environmental Resources Coordination Program, Mitigation Banking Rule and Procedure Synopsis, available at <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/mitigation-banking-rule-and> (last visited Feb. 27, 2019).

- Florida Department of Environmental Protection (DEP) or
- St. Johns River Water Management District or
- South Florida Water Management District or
- Southwest Florida Water Management District.<sup>17</sup>

### ***In-Lieu-Fee Program***

In 2000,<sup>18</sup> the Legislature created an in-lieu-fee program<sup>19</sup> by amending s. 373.4135, F.S., to allow the DEP, WMDs, and local governments to sponsor regional offsite mitigation area (ROMA) projects that are paid for by monies accepted as mitigation. A memorandum of agreement is required between the sponsoring agency, and the DEP or WMD, as appropriate, for any ROMA used for five or more projects or for more than 35 acres of impact. The major difference between a ROMA and a mitigation bank is that a ROMA can include an acquisition element and does not have to provide the same financial assurances as required in a mitigation bank permit.

### ***Prohibition Under Current Law for Governmental Entities***

Prior to 2012, a governmental entity could sponsor a ROMA project paid for by monies accepted as mitigation.

In 2012, the Legislature amended s. 373.4135, F.S.,<sup>20</sup> in HB 599. This bill created a new subparagraph (b) in s. 373.4135(1), F.S., to provide that a governmental entity may not create or provide mitigation for a project other than its own unless the governmental entity uses land that was not previously purchased for conservation and unless the governmental entity provides the same financial assurances as required for mitigation banks permitted under s. 373.4136, F.S.

The change made by HB 599 applies when a governmental entity enters the market and acts similarly to a mitigation bank. The governmental entity must comply with the financial responsibility requirements in Rule 62-342.700, F.A.C.<sup>21</sup> HB 599 exempted certain mitigation banks or areas permitted or established before December 11, 2011, and other specified mitigation types from the prohibition.<sup>22</sup>

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

<sup>18</sup> Ch. 2000-133, Laws of Fla.

<sup>19</sup> In-lieu fee mitigation occurs in circumstances where a permittee provides funds to an in-lieu-fee sponsor instead of either completing project-specific mitigation or purchasing credits from a wetland mitigation bank. See Banks and Fees: The Status of Off-Site Wetland Mitigation in the United States, Environmental Law Institute (Sept. 2002), p. 95, available at [https://www.researchgate.net/profile/Christina\\_Kennedy2/publication/279516639\\_Banks\\_Fees\\_The\\_Status\\_of\\_Off-site\\_Wetland\\_Mitigation\\_in\\_the\\_US/links/559460f408ae5d8f392f675d/Banks-Fees-The-Status-of-Off-site-Wetland-Mitigation-in-the-US.pdf?origin=publication\\_detail](https://www.researchgate.net/profile/Christina_Kennedy2/publication/279516639_Banks_Fees_The_Status_of_Off-site_Wetland_Mitigation_in_the_US/links/559460f408ae5d8f392f675d/Banks-Fees-The-Status-of-Off-site-Wetland-Mitigation-in-the-US.pdf?origin=publication_detail) (last visited Feb. 28, 2019).

<sup>20</sup> Ch. 2012-174, s. 4, Laws of Fla.

<sup>21</sup> Section 373.4136(11), F.S.

<sup>22</sup> Section 373.4135(1)(b), F.S.

### Mitigation Requirements for Specified Transportation Projects

The Florida Department of Transportation (DOT) and participating transportation authorities<sup>23</sup> offset environmental impacts of transportation projects through the use of mitigation banks and other mitigation options, including the payment of funds to WMDs to develop and implement mitigation plans.<sup>24</sup> The mitigation plan is developed by the WMDs and is ultimately approved by the DEP.<sup>25</sup> The ability to exclude a project from the mitigation plan is provided to the DOT, a participating transportation authority, or a WMD.<sup>26</sup>

### III. Effect of Proposed Changes:

**Section 1** provides legislative intent and amends s. 373.4135(1), F.S., to authorize a local government, if state and federal mitigation credits are not available to offset the adverse impacts of a project, to allow permittee-responsible mitigation<sup>27</sup> on lands purchased and owned by a local government for conservation purposes. Such mitigation must conform to the mitigation bank permitting requirements in s. 373.4136, F.S.

The restrictions on mitigation projects on government-owned land in current law remains. The bill provides an exception for local governments under certain circumstances.

**Section 2** provides that 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.

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<sup>23</sup> Chapters 348 and 349, F.S.

<sup>24</sup> Section 373.4137, F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Permittee-Responsible Mitigation is the restoration, establishment, enhancement or preservation of wetlands undertaken by a permittee in order to compensate for wetland impacts resulting from a specific project. The permittee performs the mitigation after the permit is issued and is ultimately responsible for implementation and success of the mitigation. Permittee-responsible mitigation may occur at the site of the permitted impacts or at an off-site location within the same watershed. See U.S. Environmental Protection Agency, Wetlands Compensatory Mitigation, *available at* [https://www.epa.gov/sites/production/files/2015-08/documents/compensatory\\_mitigation\\_factsheet.pdf](https://www.epa.gov/sites/production/files/2015-08/documents/compensatory_mitigation_factsheet.pdf) (last visited March 6, 2019).

D. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a positive impact on the building industry, providing an alternative option for compensatory mitigation in the event that private mitigation bank credits are unavailable.

C. Government Sector Impact:

The bill eases restrictions on offsite wetland mitigation activities on lands purchased and owned by a local government for conservation purposes. The bill may have a positive fiscal impact on local governments who allow a public or private mitigation project to be created on conservation lands owned by the local government.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 373.4135 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

**CS by Community Affairs on March 5, 2019:**

The committee substitute amends s. 373.4135, F.S., authorizing a local government to allow permittee-responsible mitigation on lands purchased and owned by the local government for conservation purposes under certain circumstances.

B. Amendments:

None.

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

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339590

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 03/06/2019 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Community Affairs (Lee) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 30 - 40  
and insert:

(b) The Legislature recognizes the importance of mitigation banks as an appropriate and allowable mitigation alternative to permittee-responsible mitigation. However, the Legislature also recognizes that certain timing and geographical constraints could result in the unavailability of mitigation bank credits for a certain project upon completion of the project's



339590

application. If state and federal mitigation credits are not available to offset the adverse impacts of a project, a local government may allow permittee-responsible mitigation consisting of the restoration or enhancement of lands purchased and owned by a local government for conservation purposes, and such mitigation must conform to the permitting requirements of s. 373.4136. Except where a local government has allowed a public or private mitigation project to be created on land it has purchased for conservation purposes pursuant to this paragraph ~~Notwithstanding the provisions of this section,~~ a governmental entity may not create or provide mitigation for a project other than its own unless the governmental entity uses land that was not previously purchased for conservation and unless the governmental entity provides the same financial assurances as required for mitigation banks permitted under s. 373.4136. This paragraph does not apply to:

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

And the title is amended as follows:

Delete lines 3 - 6

and insert:

373.4135, F.S.; authorizing a local government to allow permittee-responsible mitigation on lands purchased and owned by a local government for conservation purposes under certain circumstances; requiring such mitigation to meet specified requirements; providing an effective date.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5/19  
Meeting Date

532  
Bill Number (if applicable)

Topic Crestland Migration

Amendment Barcode (if applicable)

Name Edward Briggs

Job Title Consultant

Address 113 E. College Ave.

Phone 850-933-5944

Street

Tallahassee

FL

32301

Email edward@racountyllc.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Highland Homes

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3/5/19

Bill Number (if applicable) SB 532

Topic Wetland Mitigation

Amendment Barcode (if applicable) \_\_\_\_\_

Name Nicolette Springer

Job Title Legislative Analyst, LUV

Address 10236 Charleston Circle

Phone 407 484-3656

City Orlando State FL Zip 32832

Email Nicolette@luvfl.org

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

Representing League of Women Voters 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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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-5-19

Meeting Date

532

Bill Number (if applicable)

Topic Wetlands

Amendment Barcode (if applicable)

Name Rusty Payton

Job Title CEO

Address 2600 Centennial Place

Phone 850-309-0275

Street

Tallahassee

FL

32317

City

State

Zip

Email rpayton@fhba.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Home Builders Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

## THE FLORIDA SENATE

## APPEARANCE RECORD

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

March 5, 2019

SB 532

Meeting DateBill Number (if applicable)Topic Wetlands MitigationAmendment Barcode (if applicable)Name Bob WardJob Title President & CEOAddress 400 N. Tampa St., Suite 1010Phone (813) 229-1775StreetTampaFlorida33602Email bward@fc100.orgCityStateZipSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida Council of 100Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

Meeting Date 3/5/19

532

Bill Number (if applicable)

339590

Amendment Barcode (if applicable)

Topic Wetland Mitigation

Name Frank Bernardino

Job Title Partner

Address 801 West Park Ave, Suite 100

Phone 561/718-2345

Street Tallahassee City FL State 32301 Zip

Email frank@andfieldflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Palm Beach County

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3/5/19

532

Bill Number (if applicable)

339590

Amendment Barcode (if applicable)

Topic Wetland mitigation

Name Lori Killinger

Job Title Legislative Counsel

Address 315 S. Calhoun St.

Phone 222-5702

City Tallahassee State FL Zip 32308

Email L.Killinger@flsenate.gov

Speaking: ☒ For ☐ Against ☐ Information

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

Representing amendment Florida Assn. of Mitigation Bankers

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

Meeting Date 3-5-14

532

Bill Number (if applicable)

Amendment Barcode (if applicable) 339598

Topic Withholds

Name Ruby Parham

Job Title CEC

Address 2600 Condemner Place

Phone 850-309-0225

Street

Tallahassee

FL

City

State

Zip

Email

RParham@phobias.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Home Builders Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

By Senator Lee

20-00416A-19

2019532\_\_

1 A bill to be entitled  
 2 An act relating to wetland mitigation; amending s.  
 3 373.4135, F.S.; revising the conditions under which a  
 4 governmental entity may create or provide mitigation  
 5 for a project other than its own under certain  
 6 circumstances; providing an effective date.  
 7  
 8 Be It Enacted by the Legislature of the State of Florida:  
 9  
 10 Section 1. Paragraph (b) of subsection (1) of section  
 11 373.4135, Florida Statutes, is amended to read:  
 12 373.4135 Mitigation banks and offsite regional mitigation.—  
 13 (1) The Legislature finds that the adverse impacts of  
 14 activities regulated under this part may be offset by the  
 15 creation, maintenance, and use of mitigation banks and offsite  
 16 regional mitigation. Mitigation banks and offsite regional  
 17 mitigation can enhance the certainty of mitigation and provide  
 18 ecological value due to the improved likelihood of environmental  
 19 success associated with their proper construction, maintenance,  
 20 and management. Therefore, the department and the water  
 21 management districts are directed to participate in and  
 22 encourage the establishment of private and public mitigation  
 23 banks and offsite regional mitigation. Mitigation banks and  
 24 offsite regional mitigation should emphasize the restoration and  
 25 enhancement of degraded ecosystems and the preservation of  
 26 uplands and wetlands as intact ecosystems rather than alteration  
 27 of landscapes to create wetlands. This is best accomplished  
 28 through restoration of ecological communities that were  
 29 historically present.

Page 1 of 2

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

20-00416A-19

2019532\_\_

30 (b) ~~Notwithstanding the provisions of this section,~~ A  
 31 governmental entity may ~~not~~ create or provide mitigation for a  
 32 project other than its own if the mitigation credits available  
 33 from such mitigation are only sold or used when alternative  
 34 mitigation credits are not available from a ~~unless the~~  
 35 ~~governmental entity uses land that was not previously purchased~~  
 36 ~~for conservation and unless the governmental entity provides the~~  
 37 ~~same financial assurances as required for mitigation bank banks~~  
 38 ~~permitted under s. 373.4136, as determined by the department or~~  
 39 ~~water management district. The restrictions in this paragraph do~~  
 40 ~~does~~ not apply to:  
 41 1. Mitigation banks permitted before December 31, 2011,  
 42 under s. 373.4136;  
 43 2. Offsite regional mitigation areas established before  
 44 December 31, 2011, under subsection (6);  
 45 3. Mitigation for transportation projects under ss.  
 46 373.4137 and 373.4139;  
 47 4. Mitigation for impacts from mining activities under s.  
 48 373.41492;  
 49 5. Mitigation provided for single-family lots or homeowners  
 50 under subsection (7);  
 51 6. Entities authorized in chapter 98-492, Laws of Florida;  
 52 7. Mitigation provided for electric utility impacts  
 53 certified under part II of chapter 403; or  
 54 8. Mitigation provided on sovereign submerged lands under  
 55 subsection (6).  
 56 Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

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

## The Florida Senate COMMITTEE VOTE RECORD

**COMMITTEE:** Community Affairs  
**ITEM:** SB 532  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, March 5, 2019  
**TIME:** 2:30—4:30 p.m.  
**PLACE:** 301 Senate Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

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

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

---

BILL: SB 310

INTRODUCER: Senator Perry

SUBJECT: Off-highway Vehicles

DATE: February 12, 2019

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

| ANALYST     | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------|----------------|-----------|------------------|
| 1. Akhavein | Becker         | AG        | <b>Favorable</b> |
| 2. Osborne  | Yeatman        | CA        | <b>Favorable</b> |
| 3. _____    | _____          | RC        | _____            |

---

**I. Summary:**

SB 310 redefines the terms “ATV” (all-terrain vehicle) and “ROV” (recreational off-highway vehicle) to increase the width and dry weight allowed for these vehicles. This change will allow manufacturers to meet increasing consumer and regulatory demands for safer vehicles.

**II. Present Situation:**

The 2002 Legislature found that off-highway vehicles were becoming increasingly popular in this state and that the use of these vehicles should be controlled and managed to minimize negative effects on the environment, wildlife habitats, native wildlife, and native flora and fauna.<sup>1</sup> The T. Mark Schmidt Off-Highway Vehicle Safety and Recreation Act<sup>2</sup> was passed to develop an Off-Highway Vehicle recreational system. The program provides a set of guidelines to follow for developing and maintaining state lands, as well as provides restrictions on vehicles allowed on authorized state lands.

The definitions of ATV and ROV are distinguished by width, weight, and the number of non-highway wheels. Consumers and regulators have requested safer, more comfortable, and better performing vehicles. Authorizing a wider footprint of the vehicle will allow a lower center of gravity, which greatly decreases the possibility of a rollover. Authorizing an increased weight allowance will allow wider axels, heavier roll protection, and better engine performance.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 261.03, F.S., to revise the definitions of “ATV” and “ROV” to increase the authorized width and dry weight of the vehicles.

---

<sup>1</sup> Section 261.02(1), F.S.

<sup>2</sup> Section 261.01, F.S.

**Section 2** amends s. 316.2074, F.S., to revise the definition of “all-terrain vehicle” to increase the authorized width and dry weight of the vehicle.

**Section 3** amends s. 317.0003, F.S., to revise the definitions of “ATV” and “ROV” to increase the authorized width and dry weight of the vehicles.

**Section 4** reenacts s. 316.2123(1), F.S., relating to the operation of an ATV on certain roadways.

**Section 5** reenacts s. 316.21265(1), F.S., relating to the use of certain vehicles by law enforcement agencies.

**Section 6** provides that this act shall take 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. Other Constitutional Issues:

None Identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The changes provided by the bill will allow manufacturers to build safer, more comfortable and better performing vehicles.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 261.03, 316.2074, and 317.0003  
This bill reenacts the following sections of the Florida Statutes: 316.2123 and 316.21265

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

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

None.

**B. Amendments:**

None.

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

---

THE FLORIDA SENATE  
APPEARANCE RECORD

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

Meeting Date

3-5-19

Bill Number (if applicable)

SB310

Amendment Barcode (if applicable)

Topic

Off Highway Vehicles

Name

~~Steve~~ Steven Dyer

Job Title

Address

Street

8410 Hawks Nest Ln

City

Tallahassee

State

FL

Zip

32309

Phone

850-~~880~~

510-6286

Email

SDyer@Dyer.com

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

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

Representing

Polaris

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 Perry

8-00471B-19

2019310\_\_

A bill to be entitled

An act relating to off-highway vehicles; amending ss. 261.03 and 317.0003, F.S.; redefining the terms "ATV" and "ROV" to increase the authorized width and dry weight of such vehicles; amending s. 316.2074, F.S.; redefining the term "all-terrain vehicle" to increase the authorized width and dry weight of the vehicle; reenacting s. 316.2123(1), F.S., relating to the operation of an ATV on certain roadways; reenacting s. 316.21265(1), F.S., relating to the use of certain vehicles by law enforcement agencies; providing an effective date.

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

Section 1. Subsections (2) and (8) of section 261.03, Florida Statutes, are amended to read:

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

(2) "ATV" means any motorized off-highway or all-terrain vehicle 55 50 inches or less in width which has, having a dry weight of 1,500 1,200 pounds or less, is designed to travel on three or more nonhighway tires, and is manufactured for recreational use by one or more persons.

(8) "ROV" means any motorized recreational off-highway vehicle 80 65 inches or less in width which has, having a dry weight of 2,500 2,000 pounds or less, is designed to travel on four or more nonhighway tires, and is manufactured for recreational use by one or more persons. The term "~~ROV~~" does not include a golf cart as defined in ss. 316.003 and 320.01 or a

8-00471B-19

2019310\_\_

low-speed vehicle as defined in s. 320.01.

Section 2. Subsection (2) of section 316.2074, Florida Statutes, is amended to read:

316.2074 All-terrain vehicles.—

(2) As used in this section, the term "all-terrain vehicle" means any motorized off-highway vehicle 55 50 inches or less in width which has, having a dry weight of 1,500 1,200 pounds or less, is designed to travel on three or more nonhighway tires, and is manufactured for recreational use by one or more persons. For the purposes of this section, "all-terrain vehicle" also includes a "two-rider ATV" as defined in s. 317.0003.

Section 3. Subsections (1) and (9) of section 317.0003, Florida Statutes, are amended to read:

317.0003 Definitions.—As used in this chapter, the term:

(1) "ATV" means any motorized off-highway or all-terrain vehicle 55 50 inches or less in width which has, having a dry weight of 1,500 1,200 pounds or less, is designed to travel on three or more nonhighway tires, and is manufactured for recreational use by one or more persons.

(9) "ROV" means any motorized recreational off-highway vehicle 80 65 inches or less in width which has, having a dry weight of 2,500 2,000 pounds or less, is designed to travel on four or more nonhighway tires, and is manufactured for recreational use by one or more persons. The term "~~ROV~~" does not include a golf cart as defined in ss. 316.003 and 320.01 or a low-speed vehicle as defined in s. 320.01.

Section 4. For the purpose of incorporating the amendment made by this act to section 317.0003, Florida Statutes, in a reference thereto, subsection (1) of section 316.2123, Florida



8-00471B-19

2019310\_\_

Statutes, is reenacted to read:

316.2123 Operation of an ATV on certain roadways.—

(1) The operation of an ATV, as defined in s. 317.0003, upon the public roads or streets of this state is prohibited, except that an ATV may be operated during the daytime on an unpaved roadway where the posted speed limit is less than 35 miles per hour.

Section 5. For the purpose of incorporating the amendment made by this act to section 316.2074, Florida Statutes, in a reference thereto, subsection (1) of section 316.21265, Florida Statutes, is reenacted to read:

316.21265 Use of all-terrain vehicles, golf carts, low-speed vehicles, or utility vehicles by law enforcement agencies.—

(1) Notwithstanding any provision of law to the contrary, any law enforcement agency in this state may operate all-terrain vehicles as defined in s. 316.2074, golf carts as defined in s. 320.01, low-speed vehicles as defined in s. 320.01, or utility vehicles as defined in s. 320.01 on any street, road, or highway in this state while carrying out its official duties.

Section 6. This act shall take effect July 1, 2019.

**COMMITTEE:** Community Affairs  
**ITEM:** SB 310  
**FINAL ACTION:** Favorable  
**MEETING DATE:** Tuesday, March 5, 2019  
**TIME:** 2:30—4:30 p.m.  
**PLACE:** 301 Senate Building

[illegible]

CODES: FAV=Favorable  
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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/CS/SB 268

INTRODUCER: Community Affairs Committee; Ethics and Elections Committee; and Senator Baxley

SUBJECT: Voting Methods

DATE: March 7, 2019

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

|    | ANALYST                     | STAFF DIRECTOR              | REFERENCE | ACTION                      |
|----|-----------------------------|-----------------------------|-----------|-----------------------------|
| 1. | <u>Fox</u>                  | <u>Roberts</u>              | <u>EE</u> | <b>Fav/CS</b>               |
| 2. | <u>Peacock</u>              | <u>Yeatman</u>              | <u>CA</u> | <b>Fav/CS</b>               |
| 3. | <u>                    </u> | <u>                    </u> | <u>RC</u> | <u>                    </u> |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 268 mandates that voters with disabilities cast a ballot on a voting system that produces a voter verifiable paper output (“VVPO”) for canvassing and recount purposes. In the 2018 election cycle, voters with disabilities in four counties — Glades, Jefferson, Miami-Dade, and Palm Beach — still cast ballots on older Direct Recording Equipment (“DRE”) touchscreen voting machines that only recorded the votes electronically (no paper).

The bill also authorizes the general use of such VVPO touchscreen systems by all voters, not just those with disabilities. This addresses ongoing concerns of the disability community to be able to cast ballots in the same manner as other voters, and will allow for more cost-effective use of the machines that otherwise would sit idle in many precincts for much of Election Day.

Additionally, the bill revises the definition of the term “voter interface device” (i.e., touchscreen, braille keyboard, sip-and-puff assistive technology) to ensure that such device produces a *scannable* ballot/VVPO (as opposed to something like a “paper under glass” running tally system) that can be run through an automatic tabulator.

Finally, the bill revises requirements for Department of State rules on *manual* recount of hybrid voting system ballots, to mandate the visual counting of **printed text** in lieu of using a device such as a bar code reader to determine voter intent — except where the printed is illegible.

The bill takes effect January 1, 2020.

## II. Present Situation:

The Department of State's Division of Elections (Division)<sup>1</sup> provides administrative support to the Secretary of State,<sup>2</sup> Florida's Chief Election Officer,<sup>3</sup> to ensure that Florida has fair and accurate elections.<sup>4</sup> The Division of Elections consists of three bureaus – the Bureau of Election Records, the Bureau of Voter Registration Services, and the Bureau of Voting Systems Certification. Through these bureaus and the Director's Office,<sup>5</sup> the Division ensures compliance with the elections laws, provides statewide coordination of election administration and promotes public participation in the electoral process. The Division also assists county Supervisors of Elections in their duties, including providing technical support.

A “voting system” is a method of casting and processing votes that functions wholly or partly by use of electromechanical or electronic apparatus or by use of marksense ballots and includes, but is not limited to, the procedures for casting and processing votes and the programs, operating manuals, supplies, printouts, and other software necessary for the system's operation.<sup>6</sup> A “voter interface device” is any device that communicates voting instructions and ballot information to a voter and allows the voter to select and vote for candidates and issues.<sup>7</sup>

The Division approves the voting system used in most Florida elections. The Division tests the reliability of both the hardware and software components to make sure that they meet the standards set out in law and rules. Florida's certification process is among the most comprehensive in the nation.

The law currently requires all voting by electors *without* disabilities to be done by marksense ballots that can be electronically tabulated.<sup>8</sup> Since July 1, 2008, however, counties have been allowed to use touchscreen voting equipment for voters *with* disabilities that tabulates votes electronically, without a VVPO; *ONLY* voters with disabilities may cast ballots on these accessible voting systems.<sup>9</sup> At least one piece of accessible voting equipment must be available at each precinct,<sup>10</sup> which often sits idle much of the day.

Since authorizing this “dual” voting requirement in 2007, the Legislature has three times delayed targeted statutory implementation dates (to 2012,<sup>11</sup> 2016,<sup>12</sup> and 2020<sup>13</sup>), to allow election

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<sup>1</sup> Section 20.10(2)(a), F.S.

<sup>2</sup> Section 20.10(1), F.S. The head of the Department of State is the Secretary of State. The Secretary of State is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor. The Secretary of State performs the functions conferred by the State Constitution upon the custodian of state records.

<sup>3</sup> Section 97.012, F.S. *See also* s. 97.035, F.S.

<sup>4</sup> *See* Department of State, Division of Elections, About Us, available at <https://dos.myflorida.com/elections/about-us/> (last visited on Feb. 14, 2019).

<sup>5</sup> *Id.* The mission of the Director's Office is to provide statewide coordination and direction for the interpretation and enforcement of election laws and to provide supervision to the Bureaus in the Division.

<sup>6</sup> Section 97.021(45), F.S.

<sup>7</sup> Section 97.021(41), F.S.

<sup>8</sup> Section 101.56075(1), F.S.

<sup>9</sup> Section 101.56075(2), F.S.

<sup>10</sup> Section 101.56062(2), F.S.

<sup>11</sup> Ch. 2007-30, s.6, LAWS OF FLA. (codified at s. 101.56075(3), F.S. [2007]).

<sup>12</sup> Ch. 2010-167, s.5, LAWS OF FLA. (codified at s. 101.56075(3), F.S.[2010]).

<sup>13</sup> Ch. 2013-57, s.9, LAWS OF FLA. (codified at s. 101.56075(3), F.S. (current)).

technology to catch-up with the ability to allow voters with disabilities to cast an independent ballot that is:

- Recorded on paper, for canvassing and recount purposes; and
- Cast in the same manner as voters without disabilities.

Four Florida counties — Glades, Jefferson, Miami-Dade, and Palm Beach — are still using non-VVPO legacy systems.<sup>14,15</sup> The remaining 63 counties have purchased touchscreen equipment for voters with disabilities that produces a scannable VVPO, though the printed ballot/ballot card varies in format.<sup>16</sup>

There are currently three state-certified systems for voters with disabilities:

- ES&S AutoMARK<sup>17</sup> (22 counties);
- Dominion ImageCast Evolution<sup>18</sup> (16 counties); and
- ES&S ExpressVote<sup>19</sup> (25 counties).

Generally, these systems “mark” a scannable paper ballot — a voter-verifiable paper trail that can be used for canvassing and recount purposes.<sup>20</sup> AutoMARK and ImageCast Evolution produce the familiar optical-scan ballot style; ExpressVote produces a ballot card with multiple bar codes at the top corresponding to the voters’ choices. Underneath the bar codes, the card contains the offices or amendments on the ballot, along with the voters’ choices in each contest.

These systems prevent an elector from “overvoting” (selecting more than one candidate per race) and warn or prompt the voter if he or she “undervotes” (completely skips a race). There is a summary review screen at the end of the selection process to allow a voter to go back and make or change a selection.<sup>21</sup> After the ballot is printed on an AutoMARK or ExpressVote system, voters are able to review the ballot for accuracy before depositing it themselves in an optical

<sup>14</sup> See Department of State, Division of Elections, *2019 Voting Systems* (Feb. 4, 2019 update), available at <https://dos.myflorida.com/media/695246/voting-systems-in-use-by-county.pdf> (last visited on Feb. 14, 2019).

<sup>15</sup> Palm Beach is in the process of replacing its outdated machinery with a new countywide system. Jeff Ostrowski, Palm Beach Post, *After Election Debacle, Palm Beach County to Spend \$16M on Voting Machines for 2020* (Feb. 5, 2019), available at <https://www.palmbeachpost.com/news/20190205/after-election-debacle-palm-beach-county-to-spend-16m-on-voting-machines-for-2020> (last visited on Feb. 6, 2019).

<sup>16</sup> DOS, *2019 Voting Systems*.

<sup>17</sup> This system marks the same type of optical scan ballot design familiar to voters, effectively serving as an electronic “pen.” See Verified Voting, ES&S AutoMARK Description and Instructional Video, available at <https://www.verifiedvoting.org/resources/voting-equipment/ess/automark/> (last visited on Feb. 18, 2019).

<sup>18</sup> ImageCast Evolution is a second-generation system similar to AutoMARK in that it marks a typical optical scan ballot using the voter’s electronic selections. Evolution goes a step further, however, by *automatically* forwarding the marked ballot into the tabulator — especially helpful for voters with certain physical limitations. See Dominion Voting, ImageCast Evolution, available at <https://www.dominionvoting.com/products> (last visited on Feb. 18, 2019).

<sup>19</sup> The ExpressVote produces a ballot card with multiple bar codes at the top corresponding to the voter’s choices. Underneath the bar codes, the card contains the offices or amendments on the ballot, along with the voter’s choice in each contest. See Verified Voting, ES&S ExpressVote Description and Instructional Video, available at <https://www.verifiedvoting.org/resources/voting-equipment/ess/expressvote/> (last visited on Feb. 18, 2019).

<sup>20</sup> About two-thirds of Florida’s counties (47/67) currently use either the ES&S AutoMark or ExpressVote systems for disabled voters. See *supra* note 12.

<sup>21</sup> Voters can return to a contest selection *for any reason*, not just because they left a race blank, or undervoted, and change a selection.

scanner; the ImageCast Evolution system automatically deposits the optical-scan ballot into the ballot box for the voter.

## Recounts

The preliminary results of an extremely close election may warrant a statutory *machine* and/or *manual* recount, depending on the margin of victory. The recount occurs *before* the election results are certified. The purpose of the recount is to determine *who won an election*. The State Elections Canvassing Commission, in the case of federal, state, and multicounty races, and the local county canvassing board in most other elections, must certify the results by the 9<sup>th</sup> day after a primary election and the 14<sup>th</sup> day after a general election.<sup>22</sup>

The current recount framework, with only a few minor modifications for peripheral issues, has been in effect since the Legislature enacted the Florida Election Reform Act of 2001 — which completely overhauled the State’s outdated recount process after the 2000 U.S. presidential recount.

### Machine Recounts

If the *first* set of unofficial results<sup>23</sup> indicate that the margin of victory in any race is one-half of one percent or less, each canvassing board must run the marksense ballots through the *voting system’s* automatic tabulating equipment for every affected precinct.<sup>24</sup> During this machine recount process, the tabulators sort out the overvotes and undervotes, in case the results are close enough to warrant a manual recount of overvotes and undervotes. Touchscreen ballots for disabled voters are recounted by examining and reconciling discrepancies in the precinct tabulator counters. There are also requirements for canvassing boards to perform L & A (“logic and accuracy”) tests on the tabulation equipment prior to re-tabulation, duplicating damaged ballots, and addressing voting discrepancies.

### Manual Recounts

If the machine recount results comprising the *second* set of unofficial results<sup>25</sup> indicate a margin of victory of one-quarter of one percent or less, the county canvassing board generally must conduct a manual recount of the *overvotes* and *undervotes*.<sup>26</sup> Section 102.166(4)(b), F.S., requires the Department of State’s Division of Elections to adopt rules for the federal write-in absentee ballot and for each certified voting system prescribing what constitutes a “clear

---

<sup>22</sup> Section 102.111(2), F.S. County canvassing boards must submit final returns to the Department of State for races certified by the Elections Canvassing Commission no later than 5:00 p.m. on the 7<sup>th</sup> day after a primary election and by noon on the 12<sup>th</sup> day after a general election. Section 102.112(1),(2), F.S.

<sup>23</sup> County canvassing boards must report the first set of unofficial results in federal, statewide, state or multicounty office or ballot measure to the Department of State by noon of the third day after a primary election and noon of the 4<sup>th</sup> day after a general election. Section 102.141(5), F.S.

<sup>24</sup> Section 102.141(7), F.S. A losing candidate within one-half of one percent or less can waive the automatic recount in writing. *Id.*

<sup>25</sup> County canvassing boards must report the second set of unofficial results in federal, statewide, state or multicounty office or ballot measure to the Department of State by 3:00 p.m. of the 5<sup>th</sup> day after a primary election and 3:00 p.m. of the 9<sup>th</sup> day after a general election. Section 102.141(7)(c), F.S.

<sup>26</sup> Section 102.166(1), F.S. A manual recount is not required if the losing candidate waives the recount or if the number of overvotes and undervotes to be recounted is fewer than the number of votes needed to change the election outcome. *Id.*

indication on the ballot that the voter has made a definite choice.” The Division of Elections promulgated Rule 1S-2.207, F.A.C., entitled Standards for Determining Voter’s Choice on Ballot.

The majority of the manual recount process involves teams of two electors (preferably from opposing parties) reviewing marksense paper ballots to determine whether there is a “clear indication on the ballot that the voter has made a definite choice” — a very detailed process in the case of some markings.<sup>27</sup> If a team cannot agree, the ballot is “bumped up” to the canvassing board for a final determination.<sup>28</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 97.021(41), F.S., to revise the definition of “voter interface device” to stipulate that a voter interface device may not be used to tabulate votes, and any vote tabulation must be based upon a subsequent scan of the marked marksense ballot or the voter-verifiable paper output after the voter interface device process has been completed.

**Section 2** amends s. 101.56075, F.S., and provides that, for the purpose of designating ballot selections, all voting must be done by marksense ballot using a marking device (i.e., ink pen) or voter interface device (i.e., touchscreen) that produces a voter verified paper output. *All* voters, those with disabilities and those without, will be able to cast *paper ballots* on the *same* certified voting equipment — thereby fulfilling a promise that the Legislature made to the disability community back in 2007.

The bill effectively puts the ExpressVote ballot card on a par with the more familiar optical scan ballot for purposes of canvassing and recounts. This will save millions of dollars in equipment upgrades in the 25 counties currently using ExpressVote for voters with disabilities. In order to meet the 2020 disability implementation deadline, however, the four Florida counties still recording votes on legacy direct recording electronic (DRE), non-VVPO touchscreen systems— Glades, Jefferson, Miami-Dade, and Palm Beach — will have to purchase at least one new piece of disability voting equipment per polling place.

Also, allowing *any* elector, not just voters with disabilities, to use touchscreen VVPO systems will mean fewer idle machines at the polls and possibly shorter lines at certain polling places.

**Section 3** amends s. 102.166(4)(b), F.S., to revise requirements for Department of State rules concerning manual recounts of overvotes and undervotes. The Department of State’s rules may not authorize the use of an electronic or electromechanical reading device to review a hybrid voting system ballot that is produced using a voter interface device and contains both machine-readable fields and machine-printed text of the contest titles and voter selections, unless the printed text is illegible.

**Section 4** provides that the bill takes effect January 1, 2020.

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<sup>27</sup> Section 102.166(4)(b), F.S. *Also, see* Rule 1S-2.027, F.A.C.

<sup>28</sup> Section 102.166(5)(c), F.S.

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Local supervisors of elections typically purchase voting equipment using county funds or, occasionally, federal grant money. There is no anticipated impact on state revenues or expenditures.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 97.021, 101.56075, and 102.166 of the Florida Statutes.



**IX. Additional Information:**

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

**CS/CS by Community Affairs on March 5, 2019:**

The committee substitute:

- Revises the definition of the term “voter interface device.”
- Revises requirements for Department of State rules regarding manual recount of certain ballots.

**CS by Ethics and Elections on February 5, 2019:**

Technical and structural amendment moving the 2020 effective date out of the substantive statutes (s. 101.56075, F.S.), and making conforming changes.

- B. **Amendments:**

None.



344688

LEGISLATIVE ACTION

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

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The Committee on Community Affairs (Baxley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (41) of section 97.021, Florida  
Statutes, is amended to read:

97.021 Definitions.—For the purposes of this code, except  
where the context clearly indicates otherwise, the term:

(41) "Voter interface device" means any device that  
communicates voting instructions and ballot information to a



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voter and allows the voter to select and vote for candidates and issues. A voter interface device may not be used to tabulate votes. Any vote tabulation must be based upon a subsequent scan of the marked marksense ballot or the voter-verifiable paper output after the voter interface device process has been completed.

Section 2. Section 101.56075, Florida Statutes, is amended to read:

101.56075 Voting methods.—For the purpose of designating ballot selections,

~~(1) Except as provided in subsection (2), all voting must shall be by marksense ballot, using utilizing a marking device or a voter interface device that produces a voter-verifiable paper output and for the purpose of designating ballot selections.~~

~~(2) Persons with disabilities may vote on a voter interface device that meets the voting system accessibility requirements for individuals with disabilities pursuant to s. 301 of the federal Help America Vote Act of 2002 and s. 101.56062.~~

~~(3) By 2020, persons with disabilities shall vote on a voter interface device that meets the voter accessibility requirements for individuals with disabilities under s. 301 of the federal Help America Vote Act of 2002 and s. 101.56062 which are consistent with subsection (1) of this section.~~

Section 3. Paragraph (b) of subsection (4) of section 102.166, Florida Statutes, is amended to read:

102.166 Manual recounts of overvotes and undervotes.—

(4)

(b) The Department of State shall adopt specific rules for



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the federal write-in absentee ballot and for each certified voting system prescribing what constitutes a "clear indication on the ballot that the voter has made a definite choice." The rules shall be consistent, to the extent practicable, and may not:

1. Authorize the use of any electronic or electromechanical reading device to review a hybrid voting system ballot that is produced using a voter interface device and that contains both machine-readable fields and machine-printed text of the contest titles and voter selections, unless the printed text is illegible;

2. Exclusively provide that the voter must properly mark or designate his or her choice on the ballot; or

~~3.2.~~ Contain a catch-all provision that fails to identify specific standards, such as "any other mark or indication clearly indicating that the voter has made a definite choice."

Section 4. This act shall take effect January 1, 2020.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to voting methods; amending s. 97.021, F.S.; revising the definition of the term "voter interface device"; amending s. 101.56075, F.S.; authorizing voting to be conducted using a voter interface device that produces a voter-verifiable paper output; amending s. 102.166, F.S.; revising



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69 requirements for Department of State rules regarding  
70 manual recounts of certain ballots; providing an  
71 effective date.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5/19

Meeting Date

SB 268

Bill Number (if applicable)

344688

Amendment Barcode (if applicable)

Topic Voting Systems

Name French Brown

Job Title Lobbyist

Address 215 S. Monroe St. Suite 815

Street

Alhambra CA 92321

City

State

Zip

Phone 850-459-0922

Email fbrown@brownlead.com

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Verified Voting

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

Meeting Date 3/5/19

Bill Number (if applicable)  
SB268

Topic Voting Methods / Devices

Amendment Barcode (if applicable)  
344688

Name Michele Springer

Job Title Legislative Analyst, LWV

Address Street Phone 407484 3656

City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters 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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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810

Phone 305-979-7110

Street

MIAMI

FL

33128

Email JMM2@MIAMIDADE.GOV

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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



THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3.5.19

Bill Number (if applicable) 268

Topic Voting Methods

Amendment Barcode (if applicable) \_\_\_\_\_

Name Albert Ballido

Job Title \_\_\_\_\_

Address 201 W Park Ave Ste 100

Phone 562 257 3440

Street Tall. City FL State 32301

Email Albert@unfieldfloridacur

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

Representing Southern Privacy Law Center (SPLC)

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

Street

City

State

Zip

Email

Speaking:



Waive Speaking:



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

Representing

Appearing at request of Chair:



Lobbyist registered with Legislature:



While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

Meeting Date 3/5/19

Bill Number (if applicable) SB268

Topic Voting Methods / Devices

Amendment Barcode (if applicable) \_\_\_\_\_

Name Nicole Springer

Job Title Legislative Analyst, LWV

Address \_\_\_\_\_  
Street \_\_\_\_\_

Phone 407 484 3656

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email NicoleHe@lwwfl.org

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

Representing League of Women Voters 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.

THE FLORIDA SENATE

APPEARANCE RECORD

03/05/2019

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

268

Meeting Date

Bill Number (if applicable)

Topic Voting Methods

Amendment Barcode (if applicable)

Name Michael Daniels

Job Title Executive Director

Address 820 E Park Ave

Phone 850-487-3278

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☒ For ☐ Against ☒ Information

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

Representing

The Florida Alliance for Assistive Services and Technology (FAAST, the state's assistive technology program)

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 Ethics and Elections; and Senator Baxley

582-02185-19

2019268c1

A bill to be entitled

An act relating to voting methods; amending s.  
101.56075, F.S.; authorizing voting to be conducted  
using a voter interface device that produces a voter-  
verified paper output; providing an effective date.

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

Section 1. Section 101.56075, Florida Statutes, is amended  
to read:

101.56075 Voting methods.—For the purpose of designating  
ballot selections,

~~(1) Except as provided in subsection (2), all voting must  
shall be by marksense ballot using utilizing a marking device or  
a voter interface device that produces a voter-verified paper  
trail and for the purpose of designating ballot selections.~~

~~(2) Persons with disabilities may vote on a voter interface  
device that meets the voting system accessibility requirements  
for individuals with disabilities pursuant to s. 301 of the  
federal Help America Vote Act of 2002 and s. 101.56062.~~

~~(3) By 2020, persons with disabilities shall vote on a  
voter interface device that meets the voter accessibility  
requirements for individuals with disabilities under s. 301 of  
the federal Help America Vote Act of 2002 and s. 101.56062 which  
are consistent with subsection (1) of this section.~~

Section 2. This act shall take effect January 1, 2020.

## The Florida Senate COMMITTEE VOTE RECORD

**COMMITTEE:** Community Affairs  
**ITEM:** CS/SB 268  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, March 5, 2019  
**TIME:** 2:30—4:30 p.m.  
**PLACE:** 301 Senate Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

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

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 350

INTRODUCER: Community Affairs Committee; and Senators Hutson and Mayfield

SUBJECT: Affordable Housing

DATE: March 6, 2019

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Toman   | Yeatman        | CA        | <b>Fav/CS</b> |
| 2. |         |                | IS        |               |
| 3. |         |                | AP        |               |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 350 authorizes and establishes a number of provisions related to affordable housing. Local governments are authorized to waive or exempt impact fees for affordable housing and would be required to report specified data on any impact fees they charge. The bill also provides a new local permit approval process for affordable housing and revises features of the Community Workforce Housing Innovation Loan Pilot Program. Provisions for local government contributions and local housing incentive strategies related to affordable housing are also outlined.

**II. Present Situation:**

**Local Government Authority**

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>1</sup> Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.<sup>2</sup> Likewise, municipalities have those governmental, corporate, and proprietary powers

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<sup>1</sup> FLA. CONST. art. VIII, s. 1(f).

<sup>2</sup> FLA. CONST. art. VIII, s. 1(g).

that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.<sup>3</sup>

Unlike counties or municipalities, independent special districts do not possess home rule power. Therefore, the powers possessed by independent special districts are those expressly provided by, or which can be reasonably implied from, the special district's charter or by general law.<sup>4</sup>

### **Local Government Revenue Sources Based on Home Rule Authority<sup>5</sup>**

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,<sup>6</sup> regulatory fees, and special assessments<sup>7</sup> to pay the cost of providing a facility or service or regulating an activity. Each fee imposed under a local government's home rule powers should be analyzed in the context of requirements established in Florida case law that are applicable to its validity.

Regulatory fees are home rule revenue sources that may be imposed pursuant to a local government's police powers in the exercise of a sovereign function. Examples of regulatory fees include building permit fees, impact fees, inspection fees, and storm water fees. Two principles guide the application and use of regulatory fees. The fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.

Special districts do not possess home rule powers; therefore, special districts may impose only those taxes, assessments, or fees authorized by special or general law.<sup>8</sup>

### **Impact Fees**

As one type of regulatory fee, impact fees are charges imposed by local governments against new development to provide for capital facilities' costs made necessary by such growth.<sup>9</sup> Examples of capital facilities include the provision of additional water and sewer systems, schools,<sup>10</sup> libraries, parks and recreational facilities. Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the

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<sup>3</sup> FLA. CONST. art. VIII, s. 2(b). See also s. 166.021(1), F.S.

<sup>4</sup> Section 189.031, F.S. See also *State ex rel. City of Gainesville v. St. Johns River Water Mgmt. Dist.*, 408 So. 2d 1067 (Fla. 1st DCA 1982).

<sup>5</sup> Office of Economic and Demographic Research, The Florida Legislature, *2018 Local Government Financial Handbook*, 9-13, available at <http://edr.state.fl.us/Content/local-government/reports/lgh18.pdf> (last visited Feb. 26, 2019).

<sup>6</sup> Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees.

<sup>7</sup> Special assessments are typically used to construct and maintain capital facilities or to fund certain services.

<sup>8</sup> See ch. 189, F.S. See also State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *The Local Government Formation Handbook 2018-2020*, 70, available at <http://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=3025> (last visited Feb. 26, 2019).

<sup>9</sup> See *supra* note 5.

<sup>10</sup> *Id.* With respect to a school impact fee, the fee is imposed by the respective board of county commissioners at the request of the school board. The fee amount is usually determined after a study of the actual impact/costs of new residential construction on the school district has been made.



full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

In 2017, the most recent year for which the Office of Economic and Demographic Research (EDR) has impact fee data, 35 counties reported impact fee revenues totaling \$629.1 million, 194 cities reported impact fee revenues of \$279.7 million, and 28 school districts reported impact fee revenues of 329.7 million.<sup>11</sup>

### **Florida Impact Fee Act**

In response to local governments' reliance on impact fees and the growth of impact fee collections, the Legislature adopted the Florida Impact Fee Act in 2006, which requires local governing authorities to satisfy certain requirements when imposing impact fees.<sup>12</sup> The Act was amended in 2009 to impose new restrictive rules on impact fees by requiring local governments to shoulder the burden of proof when an impact fee is challenged in court and prohibiting the judiciary from giving deference to local government impact fee determinations.<sup>13</sup>

Section 163.31801(3), F.S., provides requirements and procedures for the adoption of an impact fee. An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

- Require that the calculation of the impact fee be based on the most recent and localized data;
- Provide for accounting and reporting of impact fee collections and expenditures. If a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund;
- Limit administrative charges for the collection of impact fees to actual costs; and
- Require that notice be provided at least 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.

### **Dual Rational Nexus Test**

While s. 163.31801, F.S., outlines many characteristics and limitations of impact fees, case law serves an integral role in the impact fee process in Florida. As developed under case law, an impact fee imposed by a local government should meet the 'dual rational nexus test' in order to withstand legal challenge.<sup>14</sup> A number of court decisions have addressed the dual rational nexus test and challenges to the legality of impact fees.<sup>15</sup>

In *Hollywood, Inc. v. Broward County*,<sup>16</sup> the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to

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<sup>11</sup> Office of Economic and Demographic Research, The Florida Legislature, *Impact Fees*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm> (last visited Feb. 26, 2019).

<sup>12</sup> Section 163.31801, F.S.

<sup>13</sup> Chapter 2009-49, L.O.F., creates a "preponderance of the evidence" standard of review placing the burden of proof on the local government to show that the imposition or amount of an impact fee meets the requirement of case law and s. 163.31801, F.S.

<sup>14</sup> See *supra* note 4.

<sup>15</sup> See, e.g., *Contractors & Builders Ass'n v. City of Dunedin*, 329 So.2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So.2d 140 (Fla. 4th DCA 1983).

<sup>16</sup> *Hollywood, Inc. v. Broward County*, 431 So.2d 606 (Fla. 4th DCA 1983).

dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if (1) it offsets reasonable needs that are sufficiently attributable to the new development and (2) the fees collected are adequately earmarked for the acquisition of capital assets that will benefit the residents of the new development.<sup>17</sup> In order to show the impact fee meets those requirements, the local government must demonstrate a rational relationship between the need for additional capital facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.<sup>18</sup>

In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when a residential development has no potential to increase school enrollment, public school impact fees may not be imposed.<sup>19</sup> The county in that case had imposed a school impact fee on a deed-restricted community for adults 55 years old and older. In *City of Zephyrhills v. Wood*, the Second District Court of Appeal upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.<sup>20</sup>

As developed under case law, an impact fee must have the following characteristics to be legal:

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for public facilities;
- The fee represents a proportionate share of the cost of public facilities needed to serve new development;
- The fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- The fee is a one-time charge, although collection may be spread over a period of time;
- The fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions toward the cost of the increased capacity for public facilities.<sup>21</sup>

### **Affordable Housing**

Affordable housing is generally defined in relation to the annual area median income of the household living in the housing adjusted for family size. Section 420.9071(2), F.S., within the State Housing Initiatives Partnership (SHIP)<sup>22</sup> Program defines “affordable” to mean that monthly rents or monthly mortgage payments, including taxes and insurance, do not exceed 30 percent of that amount which represents the percentage of the median annual gross income for:

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<sup>17</sup> *Id.* at 611.

<sup>18</sup> *Id.* at 611-12.

<sup>19</sup> *Volusia County v. Aberdeen at Ormond Beach*, 760 So.2d 126, 134 (Fla. 2000).

<sup>20</sup> *City of Zephyrhills v. Wood*, 831 So.2d 223, 225 (Fla. 2d DCA 2002).

<sup>21</sup> Committee on Community Affairs, The Florida Senate, *Impact Fees*, 4 (Issue Brief 2010-310) (Sept. 2009), available at [http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-310ca.pdf](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-310ca.pdf) (last visited Feb. 26, 2019).

<sup>22</sup> See ss. 420.907-420.9089, F.S. Administered by Florida Housing Finance Corporation, the SHIP Program provides funds to all 67 counties and Florida's larger cities on a population based formula to finance and preserve affordable housing for very low, low, and moderate income families based on locally adopted housing plans.

- Very-low-income households, i.e., total annual gross household income does not exceed 50 percent of the median annual income for the area;<sup>23</sup>
- Low-income households, i.e., total annual gross household income does not exceed 80 percent of the median annual income for the area;<sup>24</sup>
- Moderate-income households, i.e., total annual gross household income does not exceed 120 percent of the median annual income for the area.<sup>25</sup>

With respect to rental units, a household's annual income at initial occupancy may not exceed the three threshold percentages above. While occupying the unit, the household's annual income may increase to an amount not to exceed 140 percent.<sup>26</sup>

### **SHIP Program - Affordable Housing Incentive Strategies related to Impact Fees**

Administered by the Florida Housing Finance Corporation, the SHIP Program provides funds to all 67 counties and Florida's larger cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans.<sup>27</sup> Funds are expended per each local government's adopted Local Housing Assistance Plan which details the housing strategies they will use.<sup>28</sup> Local governments must appoint members to an Affordable Housing Advisory Committee (AHAC) to review and recommend strategies to reduce barriers to and incentivize the development of affordable housing.<sup>29</sup> Section 420.9076(4)(b), F.S., requires AHACs to provide their local governing bodies with an affordable housing strategy recommendation on the modification of impact fee requirements, including reduction or waiver of fees and alternative methods of fee payment for affordable housing.

Pursuant to s. 420.531, F.S., the Affordable Housing Catalyst Program (Catalyst) provides community-based organizations and state and local governments with technical assistance to meet affordable housing needs.<sup>30</sup> A 2017 Catalyst-funded guidebook reviews commonly implemented local government strategies to incentivize affordable housing within the SHIP program including the strategy linked to impact fee modifications, waivers, or reimbursement.<sup>31</sup>

In the guidebook, among the issues local governments are advised to consider related to the impact fee strategy is "assurance that any waiver or modification of impact fees will result in greater affordability to the consumer, not greater profitability to the developer."<sup>32</sup> In addition, the

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<sup>23</sup> Section 420.9071(28), F.S.

<sup>24</sup> Section 420.9071(19), F.S.

<sup>25</sup> Section 420.9071(20), F.S.

<sup>26</sup> See ss. 420.9071(19), (20), and (28), F.S.

<sup>27</sup> See ss. 420.907-420.9089, F.S.

<sup>28</sup> Section 420.9075, F.S.

<sup>29</sup> Section 420.9076, F.S.

<sup>30</sup> Florida Housing Finance Corporation operates and administers Catalyst. Presently, Florida Housing contracts with the Florida Housing Coalition to provide training and technical assistance.

<sup>31</sup> See Florida Housing Coalition, *Affordable Housing Incentive Strategies: A Guidebook for Affordable Housing Advisory Committee Members and Local Government Staff*, 27-31, available at <http://www.flhousing.org/wp-content/uploads/2012/03/AHAC-Guidebook-2017.pdf> (last visited Feb. 27, 2019).

<sup>32</sup> *Id.* at 31.

guidebook states that “some legal advisors take the position that waiving impact fees is not permissible. In these cases, it is possible for the fee to be paid, but by other sources.”<sup>33</sup>

### **2017 Affordable Housing Workgroup - Findings on Impact Fees**

Chapter 2017-071, Laws of Florida, created a statewide Affordable Housing Workgroup (workgroup).<sup>34</sup> The legislation charged the 14-member body with developing recommendations to address the state’s affordable housing needs and to develop strategies and pathways for low-income housing in the state.<sup>35</sup> In its final report, the workgroup characterized its investigation and deliberations of impact fees with the following:

“One way impact fees often intersect with affordable housing is through the granting of fee waivers or deferrals. These waivers or deferrals essentially represent a local government’s commitment to subsidize and thereby incentivize the production of affordable housing. Though common, waivers for affordable housing are not ubiquitous. Like all issues related to impact fees, decisions to grant waivers for affordable housing are jurisdiction-specific and subject to local circumstances, vetting (including legal interpretation) and control.”<sup>36</sup>

The workgroup’s final report also included the following paired finding and recommendation related to impact fees:<sup>37</sup>

Finding: The workgroup’s review and discussion of impact fee processes across the state confirmed the location-specific character of fees as provided for through home rule powers. In areas where impact fees are waived in some manner for affordable housing, the waivers can act as catalysts for affordable housing by mitigating development costs.

Recommendation: The workgroup recommends that local governments assessing impact fees either waive fees outright for affordable housing or establish local dedicated funds to make such affordable housing waivers possible.

### **Local Government Annual Financial Audit Reports**

Sections 218.32 and 218.39, F.S., provide requirements for local governments regarding submissions of annual financial reports and audits. Local governments must

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<sup>33</sup> *Id.* at 32.

<sup>34</sup> Legislation creating the workgroup designated Florida Housing Finance Corporation as the administering entity. Workgroup meeting agendas, research materials and other information is available at <https://www.floridahousing.org/about-florida-housing/workgroup-on-affordable-housing> (last visited Feb. 26, 2019)

<sup>35</sup> Chapter 2017-071, s. 46, Laws of Fla.

<sup>36</sup> Affordable Housing Workgroup, *Final Report 2017*, 25-26, available at [http://www.floridahousing.org/docs/default-source/aboutflorida/august2017/ahwg-report\\_2017-web-print.pdf?sfvrsn=2](http://www.floridahousing.org/docs/default-source/aboutflorida/august2017/ahwg-report_2017-web-print.pdf?sfvrsn=2) (last visited Feb. 26, 2019). As part of the workgroup’s research, Florida Housing staff informally surveyed all SHIP program administrators regarding impact fee calculations and waivers in their locales. Over 80 local governments responded and nearly 30 percent cited mechanisms to waive fees in part or whole for affordable housing. The appendix of the final report provides all responses received.

<sup>37</sup> *Id.* at 6.

submit an annual financial report to the Department of Financial Services (DFS) covering their operations for the preceding fiscal year.<sup>38</sup> Each local governmental entity's website must provide a link to the DFS website to view the entity's submitted financial report.<sup>39</sup> If the local government does not have an official website, the county government's website must provide the required link.<sup>40</sup>

### **Building Permit Approval Processes**

Local governments may enforce requirements to obtain building or development permits, including processing applications and granting building permits.<sup>41</sup> A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.<sup>42</sup> A certificate of occupancy is required before a building or structure may be used or occupied.<sup>43</sup> The certificate is issued by the appropriate local building official after completion of all work and a final inspection of the building or structure shows no violations of the Florida Building Code or other applicable laws.<sup>44</sup>

Counties, municipalities, and most special districts are not required to comply with the notice and procedural requirements of ch. 120, F.S., the Administrative Procedure Act.<sup>45</sup> For certain types of building permit applications,<sup>46</sup> the local government must meet certain deadlines:

- Within 10 days of the application being submitted, the local government must inform the applicant in writing of what information is needed to complete the application, if any.
- If no written notice of deficiency is provided, the application is deemed properly completed and accepted.
- Within 45 days of receiving a completed application, the local government must notify the applicant if additional information is needed to determine whether the application is sufficient.
- Within 120 days after receiving a completed application, the local government must approve, approve with conditions, or deny the application.<sup>47</sup>

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<sup>38</sup> 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 Section 218.39(1)(g), F.S.

<sup>39</sup> Section 218.32(1)(g), F.S.

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

<sup>41</sup> Sections 553.79 and 553.792, F.S.

<sup>42</sup> Section 163.3164(16), F.S.

<sup>43</sup> Section 111.1, Florida Building Code – Building (6th ed. 2017), at <https://codes.iccsafe.org/public/document/FBC2017/chapter-1-scope-and-administration> (last visited March 7, 2019).

<sup>44</sup> Section 111.2, Florida Building Code – Building (6th ed. 2017). See also Broward County Amendments to the 5<sup>th</sup> Edition (2014) Florida Building Code (Effective June 30, 2015, with amendments through March 2017), s. 110, “Inspections,” p. 1.38, at <http://www.broward.org/CodeAppeals/AboutUs/Documents/ch%201-5thEdition%20-PAssed%2003-09-2017.pdf> (last visited March 7, 2019).

<sup>45</sup> See s. 120.52(1), F.S.

<sup>46</sup> The list includes permits for the following types of construction: accessory structure, alarm, nonresidential buildings less than 25,000 square feet, electric, irrigation, landscaping, mechanical, plumbing, residential units other than a single family unit, multifamily residential not exceeding 50 units, roofing, signs, site-plan approvals and subdivision plats not requiring public hearings or public notice, and lot grading and site alteration associated with the application. See s. 553.792(2), F.S.

<sup>47</sup> Section 553.792(1), F.S.

### **State Apartment Incentive Loan Program Local Government Contribution**

The State Apartment Incentive Loan (SAIL) Program provides low-interest loans on a competitive basis to affordable housing developers each year. This money often serves to bridge the gap between the primary financing and the total cost of the development. SAIL dollars are available to individuals, public entities, nonprofit organizations, or for-profit organizations that propose the construction or substantial rehabilitation of multifamily units affordable to very low income individuals and families.<sup>48</sup>

Florida Housing administers the SAIL program and is required to establish a review committee for the competitive evaluation and selection of applications submitted. The evaluation criteria include local government contributions and local government comprehensive planning and activities that promote affordable housing.<sup>49</sup>

### **Community Workforce Housing Innovation Pilot Program**

Established by ch. 2006-69, Laws of Florida, the Community Workforce Housing Innovation Pilot Program (CWHIP) was created for the purpose of providing affordable rental and home ownership community workforce housing for essential services personnel with medium incomes in high-cost and high-growth counties. Designed to use regulatory incentives and state and local funds to promote local public-private partnerships and to leverage government and private sources, Florida Housing administered the program in 2006 and 2007.<sup>50</sup>

CWHIP targeted households earning higher incomes than traditionally served through other affordable housing programs to create homeowner or rental housing for persons such as teachers, firefighters, healthcare providers and others as defined by local governments. Households earning up to 140 percent of AMI could be served through the program with that provision rising up to 150 percent of AMI in the Florida Keys.<sup>51</sup>

CWHIP provided priority funding consideration to projects in counties where the disparity between the AMI and the median sales price for a single family home was greatest. Priority funding consideration was specified where:

- The local jurisdiction established local incentives such as expedited reviews of development orders and permits and supported development near transportation hubs;
- Financial strategies like tax increment financing were utilized; and
- Projects set aside at least 80% of units for workforce housing and at least 50% for essential services personnel.

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<sup>48</sup> Florida Housing Finance Corporation, *State Apartment Incentive Loan, Background*, available at <http://www.floridahousing.org/programs/developers-multifamily-programs/state-apartment-incentive-loan> (last visited March 6, 2018).

<sup>49</sup> Section 420.5087(6)(c), F.S.

<sup>50</sup> Section 420.5095(2), F.S.

<sup>51</sup> Section 420.5095(3)(a), F.S.



CWHIP loans were awarded with a 1 to 3% interest rate and could be forgiven where long-term affordability was provided and where at least 80% of the units are set aside for workforce housing and at least 50% of the units are set aside for essential services.<sup>52</sup>

Florida Housing administered two rounds of funding for CWHIP: \$50 million in October of 2006 and \$62.4 million in December of 2007.<sup>53</sup>

### **Local Housing Incentive Strategies**

Section 420.9071, F.S., defines “local housing incentive strategies” to mean local regulatory reform or incentive programs to encourage or facilitate affordable housing production, which include at a minimum, assurance that permits for affordable housing projects are expedited to a greater degree than other projects. Local housing incentive strategies are included in SHIP Program local housing assistance plans and must be included in various other reports as required in the SHIP program provisions in part VII, ch. 420, F.S.

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

**Section 1** amends s. 163.31801, F.S., to authorize a local government to provide a waiver or exception to an impact fee for housing defined as affordable. The local government does not have to use other revenues to offset such an action. The section also requires local governments, in addition to items reported in the annual financial reports under s. 218.32, F.S., to report the following information pertaining to impact fees imposed:

- The specific purpose of each impact fee, including the specific infrastructure need to be met, such as transportation, parks, water, sewer, and schools;
- The impact fee schedule policy, describing the method of calculating impact fees, such as flat fee, tiered scale based on number of bedrooms, and tiered scale based on square footage;
- The amount assessed for each purpose and type of dwelling;
- The total amount of impact fees charged by type of dwelling; and
- Each exception and waiver provided for affordable housing developments.

**Section 2** creates s. 420.0007, F.S. to establish a new process for local government permit approval for affordable housing. A local government has 15 days after receiving an application for a development permit, construction permit, or certificate of occupancy for affordable housing to examine the application, notify the applicant of any apparent errors or omissions, and request any additional information the local government is authorized by law to require.

The local government may require any additional required information to be submitted within 10 days after the date it gives notice to the applicant. The local government must grant a request for an extension of time for submitting the additional information for good cause.

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<sup>52</sup> Section 5095(11), F.S.

<sup>53</sup> See Florida Housing Finance Corporation, *2007 Annual Report* and *2008 Annual Report*, available at <http://www.floridahousing.org/docs/default-source/data-docs-and-reports/annual-reports/2007AnnualReport.pdf> and [http://www.floridahousing.org/docs/default-source/data-docs-and-reports/annual-reports/2008AnnualReport\\_CDfile.pdf](http://www.floridahousing.org/docs/default-source/data-docs-and-reports/annual-reports/2008AnnualReport_CDfile.pdf) (last visited March 6, 2019).

If a local government does not timely request additional information, it may not deny the development permit, construction permit, or certificate of occupancy for affordable housing if the applicant fails to correct an error or omission or to supply additional information.

An application is complete when the local government has received all of the requested information and the correction of any error or omission as necessary or when the time for notification has expired.

The local government must approve or deny an application for a development permit, construction permit, or certificate of occupancy for affordable housing within 60 days after receipt of a completed application, unless a shorter period of time for local government is provided by law. If the local government does not approve or deny within the time period, the application is considered approved, and the local government must issue the development permit, construction permit, or certificate of occupancy.

An applicant for a development permit, construction permit, or certificate of occupancy seeking to receive a permit by default must notify the local government in writing of its intent to rely upon the default approval. However, the applicant may not take any action based upon the default development permit, construction permit, or certificate of occupancy until the applicant receives notification or a receipt acknowledging that the local government received the notice. The applicant must retain the notification or receipt.

**Section 3** amends provisions of the SAIL Program in s. 420.5087, F.S., to require the evaluation of additional components related to local government contributions, including policies that promote access to public transportation, reduce the need for on-site parking where appropriate, and expedite permits for affordable housing projects.

**Section 4** amends s. 420.5095, F.S., to transition the “pilot” features of a workforce housing program into the Community Workforce Housing Loan Program, administered by Florida Housing. Workforce housing is defined as housing affordable to persons of families whose total annual income does not exceed 80 percent of the area median income or 120 percent of the area median income, adjusted for household size in specified areas of critical concern. Florida Housing shall establish a loan application process pursuant to SAIL Program provisions under s. 420.5087, F.S., and award loans at a 1 percent interest rate for a term not to exceed 15 years. Projects must be given priority if they set aside not more than 50 percent of units for workforce housing.

**Section 5** amends s. 420.9071, F.S., to revise the definition of “local housing incentive strategies” to include expediting permits for affordable housing projects as provided in Section 2 of the bill.

**Section 6** reenacts s. 193.018, F.S., relating to land owned by a community trust used to provide affordable housing, to incorporate the amendment made to s. 420.5095, F.S., in the bill.

**Section 7** 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 identified.

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

The Revenue Estimating Committee has not yet determined the impact of CS/SB 350.

**B. Private Sector Impact:**

The possible waiver or exemption of impact fees for housing defined as affordable may act as an incentive for additional private sector development of various types of affordable housing. Similarly, the loans possible through the Community Workforce Housing Loan Program may incentivize development of additional affordable workforce housing. The expedited permitting process for affordable housing could lead to quicker construction of such developments.

**C. Government Sector Impact:**

Local governments would experience tighter time frames by which to process and approve affordable housing permits.

**VI. Technical Deficiencies:**

The sponsor may want to provide clarity on lines 46-61 regarding whether or not the newly required data on impact fee charges are to be reported within the local government annual financial reports under s. 218.32, F.S.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 163.31801, 420.5087, 420.5095, and 420.9071.

This bill creates section 420.0007 of the Florida Statutes.

This bill reenacts section 193.018 of the Florida Statutes.

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

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

**CS by Community Affairs on March 5, 2019:**

- Changes the bill title to an act relating to affordable housing.
- Authorizes local governments to provide a waiver or exception to an impact fee for housing defined as affordable. The local government does not have to use other revenues to offset such an action.
- Requires local governments to report specified information on imposed impact fees.
- Establishes a new process for local government permit approval for affordable housing in ch. 420, F.S.
- Repurposes the Community Workforce Housing Loan Program by revising the program's qualifying resident AMI levels and its project loan interest rate structures and priority considerations.
- Revises the definition of "local housing incentive strategies" to include expediting permits for affordable housing projects.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

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|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 03/07/2019 | . |       |
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The Committee on Community Affairs (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsections (6) and (7) are added to section  
163.31801, Florida Statutes, to read:

163.31801 Impact fees; short title; intent; definitions;  
ordinances levying impact fees.—

(6) A county, municipality, or special district may provide  
an exception or waiver for an impact fee for the development or



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11 construction of housing that is affordable, as defined in s.  
12 420.9071. If a county, municipality, or special district  
13 provides such an exception or waiver, it is not required to use  
14 any revenues to offset the impact.

15 (7) In addition to the items that must be reported in the  
16 annual financial reports under s. 218.32, counties,  
17 municipalities, and special districts must report all of the  
18 following data on all impact fees charged:

19 (a) The specific purpose of the impact fee, including the  
20 specific infrastructure needs to be met, such as transportation,  
21 parks, water, sewer, and schools.

22 (b) The impact fee schedule policy describing the method of  
23 calculating impact fees, such as flat fees, tiered scales based  
24 on number of bedrooms, or tiered scales based on square footage.

25 (c) The amount assessed for each purpose and for each type  
26 of dwelling.

27 (d) The total amount of impact fees charged by type of  
28 dwelling.

29 (e) Each exception and each waiver provided for affordable  
30 housing developments.

31 Section 2. Section 420.0007, Florida Statutes, is created  
32 to read:

33 420.0007 Local permit approval process for affordable  
34 housing.—

35 (1) A local government has 15 days after the date it  
36 receives an application for a development permit, a construction  
37 permit, or a certificate of occupancy for affordable housing to  
38 examine the application and notify the applicant of any apparent  
39 errors or omissions and to request any additional information



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that the local government is authorized by law to require.

(2) If a local government does not request additional information within the timeframe specified in subsection (1), the local government may not deny a development permit, construction permit, or certificate of occupancy for affordable housing if the applicant has failed to correct the error or the omission or to supply additional information.

(3) The local government may require any additional requested information to be submitted not later than 10 days after the date of the notice specified in subsection (1).

(4) For good cause shown, the local government shall grant a request for an extension of time for submitting the additional information.

(5) An application is complete upon receipt of all requested information and upon the correction of any error or omission for which the applicant was timely notified or when the time for notification has expired.

(6) The local government shall approve or deny an application for a development permit, a construction permit, or a certificate of occupancy for affordable housing within 60 days after receipt of a completed application unless a shorter period of time for action by local government is provided by law.

(7) If the local government does not approve or deny an application for a development permit, a construction permit, or a certificate of occupancy for affordable housing within the 60-day, or a shorter, time period, the permit is considered approved and the local government shall issue the development permit, the construction permit, or the certificate of occupancy, which may include reasonable conditions as authorized



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by law.

(8) An applicant for a development permit, a construction permit, or a certificate of occupancy seeking to receive a permit by default under this section must notify the local government in writing of the intent to rely upon the default approval provision of this section but may not take any action based upon the default development permit, construction permit, or certificate of occupancy until the applicant receives notification or a receipt that the local government received the notice. The applicant must retain the notification or the receipt.

Section 3. Paragraph (c) of subsection (6) of section 420.5087, Florida Statutes, is amended to read:

420.5087 State Apartment Incentive Loan Program.—There is hereby created the State Apartment Incentive Loan Program for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.

(6) On all state apartment incentive loans, except loans made to housing communities for the elderly to provide for lifesafety, building preservation, health, sanitation, or security-related repairs or improvements, the following provisions shall apply:

(c) The corporation shall provide by rule for the establishment of a review committee for the competitive evaluation and selection of applications submitted in this program, including, but not limited to, the following criteria:

1. Tenant income and demographic targeting objectives of



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the corporation.

2. Targeting objectives of the corporation which will ensure an equitable distribution of loans between rural and urban areas.

3. Sponsor's agreement to reserve the units for persons or families who have incomes below 50 percent of the state or local median income, whichever is higher, for a time period that exceeds the minimum required by federal law or this part.

4. Sponsor's agreement to reserve more than:

a. Twenty percent of the units in the project for persons or families who have incomes that do not exceed 50 percent of the state or local median income, whichever is higher; or

b. Forty percent of the units in the project for persons or families who have incomes that do not exceed 60 percent of the state or local median income, whichever is higher, without requiring a greater amount of the loans as provided in this section.

5. Provision for tenant counseling.

6. Sponsor's agreement to accept rental assistance certificates or vouchers as payment for rent.

7. Projects requiring the least amount of a state apartment incentive loan compared to overall project cost, except that the share of the loan attributable to units serving extremely-low-income persons must be excluded from this requirement.

8. Local government contributions and local government comprehensive planning and activities that promote affordable housing and policies that promote access to public transportation, reduce the need for onsite parking, and expedite permits for affordable housing projects as provided in s.



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420.0007.

9. Project feasibility.

10. Economic viability of the project.

11. Commitment of first mortgage financing.

12. Sponsor's prior experience.

13. Sponsor's ability to proceed with construction.

14. Projects that directly implement or assist welfare-to-work transitioning.

15. Projects that reserve units for extremely-low-income persons.

16. Projects that include green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.

17. Job-creation rate of the developer and general contractor, as provided in s. 420.507(47).

Section 4. Section 420.5095, Florida Statutes, is amended to read:

420.5095 Community Workforce Housing Loan ~~Innovation Pilot~~ Program.—

(1) The Legislature finds and declares that recent rapid increases in the median purchase price of a home and the cost of rental housing have far outstripped the increases in median income in the state, preventing essential services personnel from living in the communities where they serve and thereby creating the need for innovative solutions for the provision of housing opportunities for essential services personnel.

(2) The Community Workforce Housing Loan ~~Innovation Pilot~~ Program is created to provide ~~affordable rental and home ownership community~~ workforce housing for essential services





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personnel affected by the high cost of housing, ~~using regulatory incentives and state and local funds to promote local public-private partnerships and leverage government and private resources.~~

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

~~(a) "workforce housing" means housing affordable to natural persons or families whose total annual household income does not exceed 80 ~~140~~ percent of the area median income, adjusted for household size, or 120 ~~150~~ percent of area median income, adjusted for household size, in areas of critical state concern designated under s. 380.05, for which the Legislature has declared its intent to provide affordable housing, and areas that were designated as areas of critical state concern for at least 20 consecutive years prior to removal of the designation.~~

~~(b) "Essential services personnel" means persons in need of affordable housing who are employed in occupations or professions in which they are considered essential services personnel, as defined by each county and eligible municipality within its respective local housing assistance plan pursuant to s. 420.9075(3)(a).~~

~~(c) "Public-private partnership" means any form of business entity that includes substantial involvement of at least one county, one municipality, or one public sector entity, such as a school district or other unit of local government in which the project is to be located, and at least one private sector for-profit or not-for-profit business or charitable entity, and may be any form of business entity, including a joint venture or contractual agreement.~~

(4) The Florida Housing Finance Corporation is authorized



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185 to provide loans under the ~~Community Workforce Housing~~  
186 ~~Innovation Pilot~~ program loans to applicants ~~an applicant~~ for  
187 construction ~~or rehabilitation~~ of workforce housing in eligible  
188 areas. ~~This funding is intended to be used with other public and~~  
189 ~~private sector resources.~~

190 (5) The corporation shall establish a loan application  
191 process under s. 420.5087 ~~by rule which includes selection~~  
192 ~~criteria, an application review process, and a funding process.~~  
193 ~~The corporation shall also establish an application review~~  
194 ~~committee that may include up to three private citizens~~  
195 ~~representing the areas of housing or real estate development,~~  
196 ~~banking, community planning, or other areas related to the~~  
197 ~~development or financing of workforce and affordable housing.~~

198 ~~(a) The selection criteria and application review process~~  
199 ~~must include a procedure for curing errors in the loan~~  
200 ~~applications which do not make a substantial change to the~~  
201 ~~proposed project.~~

202 ~~(b) To achieve the goals of the pilot program, the~~  
203 ~~application review committee may approve or reject loan~~  
204 ~~applications or responses to questions raised during the review~~  
205 ~~of an application due to the insufficiency of information~~  
206 ~~provided.~~

207 ~~(c) The application review committee shall make~~  
208 ~~recommendations concerning program participation and funding to~~  
209 ~~the corporation's board of directors.~~

210 ~~(d) The board of directors shall approve or reject loan~~  
211 ~~applications, determine the tentative loan amount available to~~  
212 ~~each applicant, and rank all approved applications.~~

213 ~~(e) The board of directors shall decide which approved~~



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~~applicants will become program participants and determine the maximum loan amount for each program participant.~~

~~(6) The corporation shall provide incentives for local governments in eligible areas to use local affordable housing funds, such as those from the State Housing Initiatives Partnership Program, to assist in meeting the affordable housing needs of persons eligible under this program. Local governments are authorized to use State Housing Initiative Partnership Program funds for persons or families whose total annual household income does not exceed:~~

~~(a) One hundred and forty percent of the area median income, adjusted for household size; or~~

~~(b) One hundred and fifty percent of the area median income, adjusted for household size, in areas that were designated as areas of critical state concern for at least 20 consecutive years prior to the removal of the designation and in areas of critical state concern, designated under s. 380.05, for which the Legislature has declared its intent to provide affordable housing.~~

~~(7) Funding shall be targeted to innovative projects in areas where the disparity between the area median income and the median sales price for a single-family home is greatest, and where population growth as a percentage rate of increase is greatest. The corporation may also fund projects in areas where innovative regulatory and financial incentives are made available. The corporation shall fund at least one eligible project in as many counties and regions of the state as is practicable, consistent with program goals.~~

~~(6)(8)~~ Projects must be given shall receive priority



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consideration for funding if ~~where~~:

(a) The local jurisdiction has adopted, or is committed to adopting, appropriate regulatory incentives, ~~or the local jurisdiction or public-private partnership has adopted or is committed to adopting~~ local contributions or financial strategies, or other funding sources to promote the development and ongoing financial viability of such projects. Local incentives include such actions as expediting review of development orders and permits, supporting development near transportation hubs and major employment centers, and adopting land development regulations designed to allow flexibility in densities, use of accessory units, mixed-use developments, and flexible lot configurations. Financial strategies include such actions as promoting employer-assisted housing programs, providing tax increment financing, and providing land.

~~(b) Projects are innovative and include new construction or rehabilitation; mixed-income housing; commercial and housing mixed-use elements; innovative design; green building principles; storm-resistant construction; or other elements that reduce long-term costs relating to maintenance, utilities, or insurance and promote homeownership. The program funding may not exceed the costs attributable to the portion of the project that is set aside to provide housing for the targeted population.~~

(b)(e) ~~The projects that~~ set aside not more than 50 at ~~least 80~~ percent of units for workforce housing ~~and at least 50 percent for essential services personnel and for projects that require the least amount of program funding compared to the overall housing costs for the project.~~

~~(9) Notwithstanding s. 163.3184(4) (b)-(d), any local~~



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~~government comprehensive plan amendment to implement a Community Workforce Housing Innovation Pilot Program project found consistent with this section shall be expedited as provided in this subsection. At least 30 days prior to adopting a plan amendment under this subsection, the local government shall notify the state land planning agency of its intent to adopt such an amendment, and the notice shall include its evaluation related to site suitability and availability of facilities and services. The public notice of the hearing required by s. 163.3184(11)(b)2. shall include a statement that the local government intends to use the expedited adoption process authorized by this subsection. Such amendments shall require only a single public hearing before the governing board, which shall be an adoption hearing as described in s. 163.3184(4)(c). Any further proceedings shall be governed by s. 163.3184(5)-(13).~~

~~(10) The processing of approvals of development orders or development permits, as defined in s. 163.3164, for innovative community workforce housing projects shall be expedited.~~

~~(7)(11) The corporation shall award loans with a interest rates set at 1 to 3 percent interest rate for a term that does not exceed 15 years, which may be made forgivable when long-term affordability is provided and when at least 80 percent of the units are set aside for workforce housing and at least 50 percent of the units are set aside for essential services personnel.~~

~~(12) All eligible applications shall:~~

~~(a) For home ownership, limit the sales price of a detached unit, townhome, or condominium unit to not more than 90 percent~~



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~~of the median sales price for that type of unit in that county,  
or the statewide median sales price for that type of unit,  
whichever is higher, and require that all eligible purchasers of  
home ownership units occupy the homes as their primary  
residence.~~

~~(b) For rental units, restrict rents for all workforce  
housing serving those with incomes at or below 120 percent of  
area median income at the appropriate income level using the  
restricted rents for the federal low-income housing tax credit  
program and, for workforce housing units serving those with  
incomes above 120 percent of area median income, restrict rents  
to those established by the corporation, not to exceed 30  
percent of the maximum household income adjusted to unit size.~~

~~(c) Demonstrate that the applicant is a public-private  
partnership in an agreement, contract, partnership agreement,  
memorandum of understanding, or other written instrument signed  
by all the project partners.~~

~~(d) Have grants, donations of land, or contributions from  
the public-private partnership or other sources collectively  
totaling at least 10 percent of the total development cost or \$2  
million, whichever is less. Such grants, donations of land, or  
contributions must be evidenced by a letter of commitment,  
agreement, contract, deed, memorandum of understanding, or other  
written instrument at the time of application. Grants, donations  
of land, or contributions in excess of 10 percent of the  
development cost shall increase the application score.~~

~~(e) Demonstrate how the applicant will use the regulatory  
incentives and financial strategies outlined in subsection (8)  
from the local jurisdiction in which the proposed project is to~~



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~~be located. The corporation may consult with the Department of Economic Opportunity in evaluating the use of regulatory incentives by applicants.~~

~~(f) Demonstrate that the applicant possesses title to or site control of land and evidences availability of required infrastructure.~~

~~(g) Demonstrate the applicant's affordable housing development and management experience.~~

~~(h) Provide any research or facts available supporting the demand and need for rental or home ownership workforce housing for eligible persons in the market in which the project is proposed.~~

~~(13) Projects may include manufactured housing constructed after June 1994 and installed in accordance with mobile home installation standards of the Department of Highway Safety and Motor Vehicles.~~

~~(8)(14)~~ The corporation may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

~~(15) The corporation may use a maximum of 2 percent of the annual program appropriation for administration and compliance monitoring.~~

~~(16) The corporation shall review the success of the Community Workforce Housing Innovation Pilot Program to ascertain whether the projects financed by the program are useful in meeting the housing needs of eligible areas and shall include its findings in the annual report required under s. 420.511(3).~~

Section 5. Subsection (16) of section 420.9071, Florida Statutes, is amended to read:



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420.9071 Definitions.—As used in ss. 420.907-420.9079, the term:

(16) "Local housing incentive strategies" means local regulatory reform or incentive programs to encourage or facilitate affordable housing production, which include at a minimum, expediting development permits, as defined in s. 163.3164, for affordable housing projects as provided in s. 420.0007 ~~assurance that permits for affordable housing projects are expedited to a greater degree than other projects, as provided in s. 163.3177(6)(f)3.~~; an ongoing process for review of local policies, ordinances, regulations, and plan provisions that increase the cost of housing prior to their adoption; and a schedule for implementing the incentive strategies. Local housing incentive strategies may also include other regulatory reforms, such as those enumerated in s. 420.9076 or those recommended by the affordable housing advisory committee in its triennial evaluation of the implementation of affordable housing incentives, and adopted by the local governing body.

Section 6. For the purpose of incorporating the amendment made by this act to section 420.5095, Florida Statutes, in a reference thereto, subsection (2) of section 193.018, Florida Statutes, is reenacted to read:

193.018 Land owned by a community land trust used to provide affordable housing; assessment; structural improvements, condominium parcels, and cooperative parcels.—

(2) A community land trust may convey structural improvements, condominium parcels, or cooperative parcels, that are located on specific parcels of land that are identified by a legal description contained in and subject to a ground lease





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having a term of at least 99 years, for the purpose of providing affordable housing to natural persons or families who meet the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, or the income limits for workforce housing, as defined in s. 420.5095(3). A community land trust shall retain a preemptive option to purchase any structural improvements, condominium parcels, or cooperative parcels on the land at a price determined by a formula specified in the ground lease which is designed to ensure that the structural improvements, condominium parcels, or cooperative parcels remain affordable.

Section 7. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to affordable housing; amending s. 163.31801, F.S.; authorizing local governments to provide exceptions or waivers for impact fees for affordable housing developments; requiring that certain data relating to impact fees be included in the annual financial reports for specified entities; creating s. 420.0007, F.S.; providing a local permit approval process; amending s. 420.5087, F.S.; revising the criteria used by a review committee when evaluating and selecting specified applications for state apartment incentive loans; amending s. 420.5095,



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F.S.; creating the Community Workforce Housing Loan Program in the place of the Community Workforce Housing Innovation Pilot Program to provide workforce housing for essential services personnel affected by the high cost of housing; redefining the term "workforce housing"; deleting definitions; authorizing the Florida Housing Finance Corporation to provide loans under the program to applicants for construction of workforce housing; requiring the corporation to establish a certain loan application process; requiring projects to receive priority consideration under certain circumstances; requiring that the corporation award loans at a specified interest rate and for a limited term; amending s. 420.9071, F.S.; revising the definition of the term "local housing incentive strategies"; reenacting s. 193.018(2), F.S., relating to land owned by a community land trust used to provide affordable housing, to incorporate the amendment made to s. 420.5095, F.S., in a reference thereto; providing an effective date.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date 3/5/2019

Bill Number (if applicable) 350

Topic Impact Fees

Amendment Barcode (if applicable) \_\_\_\_\_

Name Jeff Branch

Job Title Legislative Aide

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street Tallahassee State FL  
City Zip

Email jb@branchsolutions.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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

03/05/2019

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

350

*Meeting Date*

*Bill Number (if applicable)*

Topic Impact Fees

*Amendment Barcode (if applicable)*

Name Warren Husband

Job Title \_\_\_\_\_

Address PO Box 10909

Phone (850) 205-9000

*Street*

Tallahassee

FL

32302

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Associated General Contractors Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3-5-19

Bill Number (if applicable) 350

Topic Affordable Housing

Amendment Barcode (if applicable) \_\_\_\_\_

Name Ricky Rayton

Job Title CEO

Address 2600 Candlenut Parkway

Phone 850-309-075

City Tallahassee State FL Zip \_\_\_\_\_

Email XRayton@hba.com

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

Representing Florida Home Builders Association

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

By Senator Hutson

7-00529A-19

2019350\_\_

1                   A bill to be entitled  
2       An act relating to impact fees; amending s. 163.31801,  
3       F.S.; prohibiting local governments from charging  
4       impact fees for certain developments; providing an  
5       effective date.  
6  
7   Be It Enacted by the Legislature of the State of Florida:  
8  
9       Section 1. Subsection (6) is added to section 163.31801,  
10   Florida Statutes, to read:  
11       163.31801 Impact fees; short title; intent; definitions;  
12   ordinances levying impact fees.—  
13       (6) Beginning July 1, 2019, a local government may not  
14   charge an impact fee for the development or construction of  
15   housing that is affordable, as defined in s. 420.9071.  
16       Section 2. This act shall take effect July 1, 2019.

## The Florida Senate COMMITTEE VOTE RECORD

**COMMITTEE:** Community Affairs  
**ITEM:** SB 350  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, March 5, 2019  
**TIME:** 2:30—4:30 p.m.  
**PLACE:** 301 Senate Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

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

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SJR 344

INTRODUCER: Community Affairs Committee and Senator Diaz

SUBJECT: Homestead Assessments

DATE: March 6, 2019

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Toman   | Yeatman        | CA        | <b>Fav/CS</b> |
| 2. |         |                | FT        |               |
| 3. |         |                | AED       |               |
| 4. |         |                | AP        |               |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SJR 344 proposes an amendment to the Florida Constitution to prohibit increases in the assessed value of homestead property for school district levy purposes to a person who is at least 65 years of age, has held legal or equitable title to the property, and has maintained permanent residence on the property for at least twenty-five years.

CS/SJR 344 will require approval by a three-fifths vote of the membership of each house of the Legislature for passage. If adopted by the Legislature, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election in November 2020.

If approved by at least 60 percent of the electors, the proposed amendment will take effect on January 1, 2021.

**II. Present Situation:**

**General Overview of Property Taxation**

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of



January 1 of each year.<sup>1</sup> The property appraiser annually determines the assessed or “just value”<sup>2</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>3</sup> Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes<sup>4</sup> and limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.<sup>5</sup>

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;<sup>6</sup> however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes;<sup>7</sup> land used for conservation purposes;<sup>8</sup> historic properties when authorized by the county or municipality;<sup>9</sup> and certain working waterfront property.<sup>10</sup>

## **Major Property Tax Exemptions Available to Seniors and Assessment Limitations**

### ***Statewide Homestead Exemption***

Every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate (homestead property) is eligible for a \$25,000 tax exemption applicable to all ad valorem tax levies, including levies by school districts.<sup>11</sup> An additional \$25,000 exemption applies to homestead property value between \$50,000 and \$75,000. This exemption does not apply to ad valorem taxes levied by school districts.

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<sup>1</sup> Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>2</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>3</sup> *See* s. 192.001(2) and (16), F.S.

<sup>4</sup> FLA. CONST. art. VII, s. 1(a).

<sup>5</sup> *See* FLA. CONST. art. VII, s. 4.

<sup>6</sup> Section 193.011(2), F.S.

<sup>7</sup> FLA. CONST. art. VII, s. 4(a).

<sup>8</sup> FLA. CONST. art. VII, s. 4(b).

<sup>9</sup> FLA. CONST. art. VII, s. 4(e).

<sup>10</sup> FLA. CONST. art. VII, s. 4(j).

<sup>11</sup> FLA. CONST. art VII, s. 6(a).

***Additional Homestead Exemptions for Certain Persons 65 years of Age or Older***

The Florida Constitution also authorizes the Legislature to allow counties and municipalities to grant two additional homestead property tax exemptions for persons aged 65 years or over whose household income does not exceed \$20,000 (low-income seniors).<sup>12</sup> The income limitation is adjusted each year according to changes in the consumer price index. The 2019 household income threshold for these exemptions is \$30,174.<sup>13</sup> The exemptions require the owner to hold legal or equitable title to the real estate and maintain thereon their permanent residence. The two additional exemptions are:

*\$50,000 Additional Exemption.* Since 1999, counties and municipalities have been authorized to grant an additional homestead exemption not exceeding \$50,000 for low-income seniors.<sup>14</sup>

*Long-term, Low-Income Seniors with Homesteads under \$250,000.* Since 2013, counties and municipalities have been authorized to also exempt the entire assessed value of a low-income senior's homestead with a just value less than \$250,000 if the low-income senior has maintained that homestead for not less than 25 years.<sup>15</sup>

A county or municipality may grant either or both of the additional exemptions and must do so by ordinance pursuant to the procedures prescribed in chapters 125 and 166, F.S.<sup>16</sup> The ordinance must specify that the exemption applies only to taxes levied by the unit of government granting the exemption.<sup>17</sup>

For purposes of the exemption, "household income" means "the adjusted gross income, as defined in s. 62 of the United States Internal Revenue Code, of all members of a household."<sup>18</sup> The term "household" means "a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling."<sup>19</sup>

***Save Our Homes Assessment Limitation and Portability***

In 1992, Florida voters approved an amendment to the Florida Constitution known as the Save Our Homes amendment.<sup>20</sup> Article VII, section 4(d) of the Florida Constitution limits the amount that the assessed value of a homestead property may increase annually to the lesser of 3 percent or the percentage increase in the Consumer Price Index (CPI).<sup>21</sup> The accumulated difference between the assessed value and the just value is the Save Our Homes Benefit. The assessed value

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<sup>12</sup> FLA. CONST. art. VII, s. 6(d)(1) and (2).

<sup>13</sup> Florida Department of Revenue, *Two Additional Homestead Exemptions for Persons 65 and Older* (Revised January 2019) available at <http://floridarevenue.com/property/Documents/AdditionalHomesteadExemptions.pdf> (last visited Feb. 20, 2019).

<sup>14</sup> FLA. CONST. art. VII, s. 6(d)(1) and s. 196.075(2), F.S.

<sup>15</sup> FLA. CONST. art. VII, s. 6(d)(2).

<sup>16</sup> Section 196.075(4)(a), F.S.

<sup>17</sup> Because the exemption applies only to taxes levied by the county or municipality that enacts the exemption, it does not apply to taxes levied by school districts or other taxing authorities. See s. 196.075, F.S.

<sup>18</sup> Section 196.075(1)(b), F.S.

<sup>19</sup> Section 196.075(1)(a), F.S.

<sup>20</sup> The Florida Legislature implemented the Saves Our Homes amendment in s. 193.155, F.S.

<sup>21</sup> FLA. CONST. art. VII, s. 4(d).

may increase even if the value of the home decreases, but only by this limited amount. In addition, the assessed value of a homestead property will never be more than the just value.

In 2008, Florida voters approved an additional amendment to Article VII, section 4(d) of the Florida Constitution to provide for the portability of the accrued benefit under the Save Our Homes assessment limitation.<sup>22</sup> This amendment allows homestead property owners who relocate to a new homestead to transfer, or “port,” up to \$500,000 of the accrued benefit to the new homestead. To transfer the Save Our Homes benefit, you must establish a homestead exemption for the new home within 2 years of January 1 of the year you abandoned the old homestead (not 2 years after the sale).<sup>23</sup>

### **School District Ad Valorem Taxes**

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes.<sup>24</sup> The levy of nonvoted ad valorem tax levies for school purposes is restricted to ten mills.<sup>25</sup> The voted levies, which are constitutionally available to counties and municipalities as well as school districts, do not count toward the ten-mill cap. School district millage rates are composed of five categories:<sup>26</sup>

- Nonvoted required school operating millage necessary to meet Required Local Effort (RLE) is determined by the Commissioner of Education and set by the school board. For operating purposes, it is imposed pursuant to s. 1011.60(6), F.S., and reflects the minimum financial effort required for support of the Florida Education Finance Program (FEFP) as prescribed in the current year’s General Appropriations Act.
- Nonvoted discretionary school operating millage is the rate set by the school board for operating purposes other than the RLE millage rate imposed pursuant to s. 1011.60(6), F.S., and the nonvoted capital improvement millage rate imposed pursuant to s. 1011.71(2), F.S. The Legislature annually prescribes in the General Appropriations Act the maximum amount of millage a district may levy.<sup>27</sup>
- Nonvoted district school capital improvement millage is the rate set by the school board for capital improvements as authorized in s. 1011.71(2), F.S. General law limits the maximum rate at 1.5 mills.<sup>28</sup> However, a district school board is authorized to levy an additional millage of up to 0.25 mills for fixed capital outlay under certain circumstances.<sup>29</sup>
- Voted district school operating millage is the rate set by the school board for current operating purposes as authorized by a vote of the electors pursuant to Article VII, section 9(b) of the Florida Constitution.

<sup>22</sup> The Florida Legislature implemented the Saves Our Homes amendment in s. 193.155(8), F.S.

<sup>23</sup> See Florida Department of Revenue, *Save Our Homes Assessment Limitation and Portability Transfer* (July, 2018), available at <http://floridarevenue.com/property/Documents/pt112.pdf> (last visited Mar. 6, 2019).

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

<sup>25</sup> FLA. CONST. art. VII, s. 9(b). Counties, municipalities, and school districts may levy taxes in excess of the ten-mill limit to pay bonds or for periods no longer than two years when authorized by a vote of the electorate, pursuant to FLA. CONST. art. VII, s. 9(b). In addition, statutorily authorized voted millage lasting no more than four years may be levied under the ten-mill limitation, pursuant to s. 1011.71(9), F.S.

<sup>26</sup> Section 200.001(3), F.S.

<sup>27</sup> Section 1011.71(1), F.S.

<sup>28</sup> Section 1011.71(2), F.S.

<sup>29</sup> Section 1011.71(3), F.S.

- Voted district school debt service millage is the rate set by the school board as authorized by a vote of the electors pursuant to Article VII, section 12 of the Florida Constitution.

The Florida Department of Education's *2017-18 Funding for Florida School Districts* provides an overview of school district funding and discussion of school district millages.<sup>30</sup> According to the report, school districts in Fiscal Year 2015-16 received 40.39 percent of their financial support from state sources, 48.00 percent from local sources (including the RLE portion of the FEFP) and 11.61 percent from federal sources.<sup>31</sup>

### III. Effect of Proposed Changes:

The joint resolution proposes to create subsection (k) in Article VII, section 4 of the Florida Constitution. This amendment authorizes the Legislature, by general law, for school district levy purposes, to prohibit increases in the assessed value of property for a homestead exemption, if the legal and equitable title to the property is held by a person who is at least 65 years of age and who has held legal or equitable title to the property and maintained permanent residence thereon for at least 25 years.

If adopted by a three-fifths vote of the membership of each house of the Legislature, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election in November 2020.

If approved by at least 60 percent of the electors, the proposed amendment will take effect on January 1, 2021.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

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

None.

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<sup>30</sup> Florida Department of Education, *2017-18 Funding for Florida School Districts*, available at <http://fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf> (last visited Feb.20, 2019).

<sup>31</sup> *Id.* at 2.

**E. Other Constitutional Issues:**

Article XI, Section 1 of the Florida Constitution authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. Article XI, Section 5(a) of the Florida Constitution requires the amendment be placed before the electorate at the next general election<sup>32</sup> held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose. Section 101.161(1), F.S., requires constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”<sup>33</sup>

Article XI, Section 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the 6th week immediately preceding the week the election is held.

Article XI, Section 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet determined the impact of CS/SJR 344.

**B. Private Sector Impact:**

If the proposed amendment is approved by a 60 percent vote of the electors, qualifying homestead property owners will have their assessed values frozen for school district levy purposes.

**C. Government Sector Impact:**

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The

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<sup>32</sup> Section 97.012(16), F.S., defines “general election” as an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law.

<sup>33</sup> *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments. According to the Division, the cost to advertise constitutional amendments for the 2018 primary and general election cycle was \$92.93 per word.

If the proposed amendment is approved by a 60 percent vote of the electors, the Department of Revenue may need to amend certain forms. However, it is likely the department could implement those changes with existing fiscal resources.

If the proposed amendment is approved by a 60 percent vote of the electors, local school districts will receive less ad valorem tax revenue.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

CS/SB 562 provides a general law to implement the provisions of this joint resolution.

**VIII. Statutes Affected:**

This bill substantially amends Article VII, section 4 of the Florida Constitution. This bill creates a new section in Article XII of the Florida Constitution.

**IX. Additional Information:**

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

**CS by Community Affairs on March 5, 2019:**

Provides an amendment to the Florida Constitution limiting the assessed value of homestead property of certain persons age 65 and older for purposes of their school district levies.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

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

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The Committee on Community Affairs (Diaz) recommended the following:

**Senate Amendment (with ballot and title amendments)**

Delete everything after the resolving clause  
and insert:

That the following amendment to Section 4 of Article VII  
and the creation of a new section in Article XII of the State  
Constitution are agreed to and shall be submitted to the  
electors of this state for approval or rejection at the next  
general election or at an earlier special election specifically  
authorized by law for that purpose:



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ARTICLE VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.—

By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or





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successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (8) apply. Thereafter, the homestead shall be assessed as provided in this subsection.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead, unless the provisions of paragraph (8) apply. That assessment shall only change as provided in this subsection.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(8)a. A person who establishes a new homestead as of January 1, 2009, or January 1 of any subsequent year and who has received a homestead exemption pursuant to Section 6 of this Article as of January 1 of either of the two years immediately



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preceding the establishment of the new homestead is entitled to have the new homestead assessed at less than just value. If this revision is approved in January of 2008, a person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007. The assessed value of the newly established homestead shall be determined as follows:

1. If the just value of the new homestead is greater than or equal to the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of \$500,000 or the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this subsection.

2. If the just value of the new homestead is less than the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the prior homestead and multiplied by the assessed value of the prior homestead.

However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this sub-subparagraph is greater than \$500,000, the assessed value of the new homestead shall be increased so that the difference between the just value and the assessed value equals \$500,000. Thereafter, the homestead shall be assessed as



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provided in this subsection.

b. By general law and subject to conditions specified therein, the legislature shall provide for application of this paragraph to property owned by more than one person.

(e) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(f) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

(g) For all levies other than school district levies, assessments of residential real property, as defined by general law, which contains nine units or fewer and which is not subject



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to the assessment limitations set forth in subsections (a) through (d) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) After a change of ownership or control, as defined by general law, including any change of ownership of a legal entity that owns the property, such property shall be assessed at just value as of the next assessment date. Thereafter, such property shall be assessed as provided in this subsection.

(4) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(h) For all levies other than school district levies, assessments of real property that is not subject to the assessment limitations set forth in subsections (a) through (d) and (g) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) The legislature must provide that such property shall be assessed at just value as of the next assessment date after a qualifying improvement, as defined by general law, is made to



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such property. Thereafter, such property shall be assessed as provided in this subsection.

(4) The legislature may provide that such property shall be assessed at just value as of the next assessment date after a change of ownership or control, as defined by general law, including any change of ownership of the legal entity that owns the property. Thereafter, such property shall be assessed as provided in this subsection.

(5) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property:

(1) Any change or improvement to real property used for residential purposes made to improve the property's resistance to wind damage.

(2) The installation of a solar or renewable energy source device.

(j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:

a. Land used predominantly for commercial fishing purposes.

b. Land that is accessible to the public and used for vessel launches into waters that are navigable.

c. Marinas and drystacks that are open to the public.

d. Water-dependent marine manufacturing facilities,



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commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

(2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.

(k) By general law, and subject to conditions specified therein, the legislature may, for school district levy purposes, prohibit increases in the assessed value of property qualifying for a homestead exemption under section 6 of this article, if the legal or equitable title to the property is held by a person who:

(1) Has attained age sixty-five; and

(2) Has held legal or equitable title to the property and maintained permanent residence thereon for at least twenty-five years.

## ARTICLE XII

### SCHEDULE

Assessment limitation for school district levy purposes for certain persons who have attained age sixty-five.—This section and the amendment to Section 4 of Article VII authorizing the legislature, for school district levy purposes, to prohibit increases in the assessed value of homestead property if the legal or equitable title to the property is held by a person who has attained age sixty-five and if he or she has held legal or equitable title to the property and maintained permanent residence thereon for at least twenty-five years, shall take effect January 1, 2021.

===== B A L L O T   S T A T E M E N T   A M E N D M E N T =====



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And the ballot statement is amended as follows:

Delete everything after the resolving clause  
and insert:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 4

ARTICLE XII

HOMESTEAD ASSESSMENT LIMITATION FOR SCHOOL DISTRICT LEVY  
PURPOSES FOR CERTAIN PERSONS AGE 65 OR OLDER.—Authorizes the  
Legislature, by general law, to prohibit increases in the  
assessed value of homestead property, for school district levy  
purposes, if the legal or equitable title to the property is  
held by a person who is 65 years of age or older and if he or  
she has held such title and maintained permanent residence on  
the property for at least 25 years. This amendment takes effect  
January 1, 2021.

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

And the title is amended as follows:

Delete everything before the resolving clause  
and insert:

Senate Joint Resolution

A joint resolution proposing an amendment to Section 4  
of Article VII and the creation of a new section in  
Article XII of the State Constitution to authorize the  
Legislature, by general law, to prohibit increases in  
the assessed value of homestead property, for school  
district levy purposes, if the legal or equitable  
title to the property is held by a person who is 65  
years of age or older and if he or she has held such



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243 title and maintained permanent residence on the  
244 property for at least 25 years, and to provide an  
245 effective date.



THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3/5/19

Bill Number (if applicable) SSR 344

Topic Constitutional Amendment: Homestead

Amendment Barcode (if applicable) \_\_\_\_\_

Name Nicolete Springer

Job Title Legislative Analyst

Address \_\_\_\_\_  
Street \_\_\_\_\_

Phone 4074843656

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters 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.

By Senator Diaz

36-00634A-19

2019344\_\_

Senate Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII and the creation of a new section in Article XII of the State Constitution to authorize the Legislature, by general law, to provide a homestead tax exemption from school district levies to persons 65 years of age or older who have legal or equitable title to homestead property and who have maintained permanent residence thereon for at least 25 years, and to provide an effective date.

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

That the following amendment to Section 6 of Article VII and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand

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

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dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to this Article which provides for the assessment of homestead property at less than just value.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(d) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant either or both of the following additional homestead tax exemptions:

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(1) An exemption not exceeding fifty thousand dollars to a person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, who has attained age sixty-five, and whose household income, as defined by general law, does not exceed twenty thousand dollars; or

(2) An exemption equal to the assessed value of the property to a person who has the legal or equitable title to real estate with a just value less than two hundred and fifty thousand dollars, as determined in the first tax year that the owner applies and is eligible for the exemption, and who has maintained thereon the permanent residence of the owner for not less than twenty-five years, who has attained age sixty-five, and whose household income does not exceed the income limitation prescribed in paragraph (1).

The general law must allow counties and municipalities to grant these additional exemptions, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

(e) Each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property the veteran owns and resides in if the disability was combat related and the veteran was honorably discharged upon separation from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States

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Department of Veterans Affairs. To qualify for the discount granted by this subsection, an applicant must submit to the county property appraiser, by March 1, an official letter from the United States Department of Veterans Affairs stating the percentage of the veteran's service-connected disability and such evidence that reasonably identifies the disability as combat related and a copy of the veteran's honorable discharge. If the property appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply. The Legislature may, by general law, waive the annual application requirement in subsequent years. This subsection is self-executing and does not require implementing legislation.

(f) By general law and subject to conditions and limitations specified therein, the Legislature may provide ad valorem tax relief equal to the total amount or a portion of the ad valorem tax otherwise owed on homestead property to:

(1) The surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces.

(2) The surviving spouse of a first responder who died in the line of duty.

(3) A first responder who is totally and permanently disabled as a result of an injury or injuries sustained in the line of duty. Causal connection between a disability and service in the line of duty shall not be presumed but must be determined as provided by general law. For purposes of this paragraph, the term "disability" does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty

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117 was the sole cause of the chronic condition or chronic disease.

118  
119 As used in this subsection and as further defined by general  
120 law, the term "first responder" means a law enforcement officer,  
121 a correctional officer, a firefighter, an emergency medical  
122 technician, or a paramedic, and the term "in the line of duty"  
123 means arising out of and in the actual performance of duty  
124 required by employment as a first responder.

125 (g) In addition to any other exemption provided or  
126 authorized in this section, the legislature may, by general law,  
127 provide an exemption from school district levies to a person who  
128 has attained age sixty-five, who has legal or equitable title to  
129 homestead property, and who has maintained permanent residence  
130 thereon for at least twenty-five years.

## ARTICLE XII

## SCHEDULE

133 Homestead tax exemption from school district levies for  
134 certain persons who have attained age sixty-five.--This section  
135 and the amendment to Section 6 of Article VII, authorizing the  
136 legislature to provide a homestead tax exemption from school  
137 district levies to a person who has attained age sixty-five, who  
138 has legal or equitable title to homestead property, and who has  
139 maintained permanent residence thereon for at least twenty-five  
140 years, shall take effect January 1, 2021.

141 BE IT FURTHER RESOLVED that the following statement be  
142 placed on the ballot:

## CONSTITUTIONAL AMENDMENT

## ARTICLE VII, SECTION 6

## ARTICLE XII

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

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146 HOMESTEAD TAX EXEMPTION FROM SCHOOL DISTRICT LEVIES FOR  
147 CERTAIN PERSONS AGE 65 OR OLDER.--Proposing an amendment to the  
148 State Constitution to authorize the Legislature, by general law,  
149 to provide a homestead tax exemption from school district levies  
150 to persons 65 years of age or older who have legal or equitable  
151 title to homestead property and who have maintained permanent  
152 residence thereon for at least 25 years. This amendment takes  
153 effect January 1, 2021.

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

**COMMITTEE:** Community Affairs  
**ITEM:** SJR 344  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, March 5, 2019  
**TIME:** 2:30—4:30 p.m.  
**PLACE:** 301 Senate Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

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

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 562

INTRODUCER: Community Affairs Committee and Senator Diaz

SUBJECT: Homestead Assessments

DATE: March 6, 2019

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Toman   | Yeatman        | CA        | Fav/CS |
| 2. |         |                | FT        |        |
| 3. |         |                | AP        |        |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 562 is the implementing bill for CS/SJR 344 which proposes an amendment to the Florida Constitution to prohibit increases in the assessed value of homestead property for school district levy purposes to a person who is at least 65 years of age, has held legal or equitable title to the property, and has maintained permanent residence on the property for at least 25 years.

**II. Present Situation:**

**General Overview of Property Taxation**

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.<sup>1</sup> The property appraiser annually determines the assessed or “just value”<sup>2</sup> of property within the taxing authority and then applies relevant exclusions, assessment

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<sup>1</sup> Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>2</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

limitations, and exemptions to determine the property's "taxable value."<sup>3</sup> Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes<sup>4</sup> and limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.<sup>5</sup>

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;<sup>6</sup> however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes;<sup>7</sup> land used for conservation purposes;<sup>8</sup> historic properties when authorized by the county or municipality;<sup>9</sup> and certain working waterfront property.<sup>10</sup>

### **Major Property Tax Exemptions Available to Seniors and Assessment Limitations**

#### ***Statewide Homestead Exemption***

Every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate (homestead property) is eligible for a \$25,000 tax exemption applicable to all ad valorem tax levies, including levies by school districts.<sup>11</sup> An additional \$25,000 exemption applies to homestead property value between \$50,000 and \$75,000. This exemption does not apply to ad valorem taxes levied by school districts.

#### ***Additional Homestead Exemptions for Certain Persons 65 years of Age or Older***

The Florida Constitution also authorizes the Legislature to allow counties and municipalities to grant two additional homestead property tax exemptions for persons aged 65 years or over whose household income does not exceed \$20,000 (low-income seniors).<sup>12</sup> The income limitation is adjusted each year according to changes in the consumer price index. The 2019 household income threshold for these exemptions is \$30,174.<sup>13</sup> The exemptions require the owner to hold

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<sup>3</sup> See s. 192.001(2) and (16), F.S.

<sup>4</sup> FLA. CONST. art. VII, s. 1(a).

<sup>5</sup> See FLA. CONST. art. VII, s. 4.

<sup>6</sup> Section 193.011(2), F.S.

<sup>7</sup> FLA. CONST. art. VII, s. 4(a).

<sup>8</sup> FLA. CONST. art. VII, s. 4(b).

<sup>9</sup> FLA. CONST. art. VII, s. 4(e).

<sup>10</sup> FLA. CONST. art. VII, s. 4(j).

<sup>11</sup> FLA. CONST. art. VII, s. 6(a).

<sup>12</sup> FLA. CONST. art. VII, s. 6(d)(1) and (2).

<sup>13</sup> Florida Department of Revenue, *Two Additional Homestead Exemptions for Persons 65 and Older* (Revised January 2019) available at <http://floridarevenue.com/property/Documents/AdditionalHomesteadExemptions.pdf> (last visited Feb. 20, 2019).

legal or equitable title to the real estate and maintain thereon their permanent residence.<sup>14</sup> The two additional exemptions are:

*\$50,000 Additional Exemption.* Since 1999, counties and municipalities have been authorized to grant an additional homestead exemption not exceeding \$50,000 for low-income seniors.<sup>15</sup>

*Long-term, Low-Income Seniors with Homesteads under \$250,000.* Since 2013, counties and municipalities have been authorized to also exempt the entire assessed value of a low-income senior's homestead with a just value less than \$250,000 if the low-income senior has maintained that homestead for not less than 25 years.<sup>16</sup>

A county or municipality may grant either or both of the additional exemptions and must do so by ordinance pursuant to the procedures prescribed in chapters 125 and 166, F.S.<sup>17</sup> The ordinance must specify that the exemption applies only to taxes levied by the unit of government granting the exemption.<sup>18</sup>

For purposes of the exemption, "household income" means "the adjusted gross income, as defined in s. 62 of the United States Internal Revenue Code, of all members of a household."<sup>19</sup> The term "household" means "a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling."<sup>20</sup>

### ***Save Our Homes Assessment Limitation and Portability***

In 1992, Florida voters approved an amendment to the Florida Constitution known as the Save Our Homes amendment.<sup>21</sup> Article VII, section 4(d) of the Florida Constitution limits the amount that the assessed value of a homestead property may increase annually to the lesser of 3 percent or the percentage increase in the Consumer Price Index (CPI).<sup>22</sup> The accumulated difference between the assessed value and the just value is the Save Our Homes Benefit. The assessed value may increase even if the value of the home decreases, but only by this limited amount. In addition, the assessed value of a homestead property will never be more than the just value.

In 2008, Florida voters approved an additional amendment to Article VII, section 4(d) of the Florida Constitution to provide for the portability of the accrued benefit under the Save Our Homes assessment limitation.<sup>23</sup> This amendment allows homestead property owners who relocate to a new homestead to transfer, or "port," up to \$500,000 of the accrued benefit to the

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<sup>14</sup> Section 196.075(8), F.S., provides that a spouse may receive the amount of either additional homestead exemption if title is held jointly with right of survivorship.

<sup>15</sup> FLA. CONST. art. VII, s. 6(d)(1) and s. 196.075(2), F.S.

<sup>16</sup> FLA. CONST. art. VII, s. 6(d)(2).

<sup>17</sup> Section 196.075(4)(a), F.S.

<sup>18</sup> Because the exemption applies only to taxes levied by the county or municipality that enacts the exemption, it does not apply to taxes levied by school districts or other taxing authorities. See s. 196.075, F.S.

<sup>19</sup> Section 196.075(1)(b), F.S.

<sup>20</sup> Section 196.075(1)(a), F.S.

<sup>21</sup> The Florida Legislature implemented the Saves Our Homes amendment in s. 193.155, F.S.

<sup>22</sup> FLA. CONST. art. VII, s. 4(d).

<sup>23</sup> The Florida Legislature implemented the Saves Our Homes amendment in s. 193.155(8), F.S.



new homestead. To transfer the Save Our Homes benefit, you must establish a homestead exemption for the new home within 2 years of January 1 of the year you abandoned the old homestead (not 2 years after the sale).<sup>24</sup>

### ***Improperly Granted Homestead Exemptions***

Section 196.161, F.S., provides a mechanism for recovery of taxes from persons improperly granted a homestead exemption. Section 196.161(1)(b), F.S., provides that if the property appraiser determines that a person was not entitled to a homestead exemption for any time within the prior 10 years, then the property appraiser must record a tax lien against the property. In addition to the property being liable for all taxes exempt, there is a penalty of 50 percent of the unpaid taxes for each year, plus 15 percent interest per year. However, penalties and interest are not due when the exemption was improperly granted as a result of a clerical error or an omission by the property appraiser.

### **School District Ad Valorem Taxes**

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes.<sup>25</sup> The levy of nonvoted ad valorem tax levies for school purposes is restricted to ten mills.<sup>26</sup> The voted levies, which are constitutionally available to counties and municipalities as well as school districts, do not count toward the ten-mill cap. School district millage rates are composed of five categories:<sup>27</sup>

- Nonvoted required school operating millage necessary to meet Required Local Effort (RLE) is determined by the Commissioner of Education and set by the school board. For operating purposes, it is imposed pursuant to s. 1011.60(6), F.S., and reflects the minimum financial effort required for support of the Florida Education Finance Program (FEFP) as prescribed in the current year's General Appropriations Act.
- Nonvoted discretionary school operating millage is the rate set by the school board for operating purposes other than the RLE millage rate imposed pursuant to s. 1011.60(6), F.S., and the nonvoted capital improvement millage rate imposed pursuant to s. 1011.71(2), F.S. The Legislature annually prescribes in the General Appropriations Act the maximum amount of millage a district may levy.<sup>28</sup>
- Nonvoted district school capital improvement millage is the rate set by the school board for capital improvements as authorized in s. 1011.71(2), F.S. General law limits the maximum rate at 1.5 mills.<sup>29</sup> However, a district school board is authorized to levy an additional millage of up to 0.25 mills for fixed capital outlay under certain circumstances.<sup>30</sup>

<sup>24</sup> See Florida Department of Revenue, *Save Our Homes Assessment Limitation and Portability Transfer* (July, 2018), available at <http://floridarevenue.com/property/Documents/pt112.pdf> (last visited Mar. 6, 2019).

<sup>25</sup> FLA. CONST. art. VII, s. 1(a).

<sup>26</sup> FLA. CONST. art. VII, s. 9(b). Counties, municipalities, and school districts may levy taxes in excess of the ten-mill limit to pay bonds or for periods no longer than two years when authorized by a vote of the electorate, pursuant to FLA. CONST. art. VII, s. 9(b). In addition, statutorily authorized voted millage lasting no more than four years may be levied under the ten-mill limitation, pursuant to s. 1011.71(9), F.S.

<sup>27</sup> Section 200.001(3), F.S.

<sup>28</sup> Section 1011.71(1), F.S.

<sup>29</sup> Section 1011.71(2), F.S.

<sup>30</sup> Section 1011.71(3), F.S.

- Voted district school operating millage is the rate set by the school board for current operating purposes as authorized by a vote of the electors pursuant to Article VII, section 9(b) of the Florida Constitution.
- Voted district school debt service millage is the rate set by the school board as authorized by a vote of the electors pursuant to Article VII, section 12 of the Florida Constitution.

The Florida Department of Education's *2017-18 Funding for Florida School Districts* provides an overview of school district funding and discussion of school district millages.<sup>31</sup> According to the report, school districts in Fiscal Year 2015-16 received 40.39 percent of their financial support from state sources, 48.00 percent from local sources (including the RLE portion of the FEFP) and 11.61 percent from federal sources.<sup>32</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 193.626, F.S., to provide a homestead assessment limitation for school district levy purposes for a person 65 years or older. For purposes of school district levies, the assessed value of homestead property shall not increase above the assessed value on the January 1 immediately following the date the property owner becomes eligible. Eligible property owners are those who are at least 65 years old, have held legal or equitable title to the property and have maintained permanent residence on the property for at least 25 years. If title is held jointly with rights of survivorship, the person entitled to the assessment limitation may receive the entire assessment limitation.

Consequences for an assessment limitation improperly granted are provided in a manner similar to those found in s. 196.161, F.S., for improperly granted statewide homestead exemptions. Specifically, if a property appraiser determines that a person received an unentitled assessment limitation within the previous 10 years, the property appraiser must serve a notice of tax lien against any property owned by that person in the county. Any of the taxpayer's property in the state is subject to taxes limited by the improper assessment limitation, plus a penalty of 50 percent of the unpaid taxes for each year and a 15 percent interest rate per year. Improperly granted assessment limitations caused by a property appraiser's clerical error or omission are not subject to the penalty and interest. An owner has 30 days to pay the taxes, penalties and interest before a lien may be filed subject to the procedures in s. 196.161(3), F.S. The assessment limitation created by the bill first applies to the 2021 property tax roll.

**Section 2** provides that the bill shall take effect on the effective date of the amendment to the State Constitution proposed by SJR 344 or a similar joint resolution approved at the general election held in November 2020.

### IV. Constitutional Issues:

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

None.

<sup>31</sup> Florida Department of Education, *2017-18 Funding for Florida School Districts*, available at <http://fldoe.org/core/fileparse.php/7507/urlt/Fefpdist.pdf> (last visited Feb.20, 2019).

<sup>32</sup> *Id.* at 2.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None identified.

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

The Revenue Estimating Conference has not yet determined the impact of CS/SJR 344.

**B. Private Sector Impact:**

If the proposed amendment in CS/SJR 344 is approved by a 60 percent vote of the electors, qualifying homestead property owners will have their assessed values frozen for school district levy purposes.

**C. Government Sector Impact:**

If the proposed amendment in CS/SJR 344 is approved by a 60 percent vote of the electors, local school districts will receive less ad valorem tax revenue.

If the proposed amendment is approved by a 60 percent vote of the electors, the Department of Revenue may need to amend certain forms. However, it is likely the department could implement those changes with existing fiscal resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the section 196.626 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Community Affairs on March 5, 2019:**

Provides a homestead assessment limitation for school district levy purposes for certain persons age 65 year or older which first applies to the 2021 property tax roll.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

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

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The Committee on Community Affairs (Diaz) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 193.626, Florida Statutes, is created to  
read:

193.626 Homestead assessment limitation for school district  
levy purposes for certain persons age 65 years or older.—

(1) For purposes of school district levies, the assessed  
value of real estate used as a homestead by a person age 65



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years or older who has legal or equitable title to the property and who has held legal or equitable title to the property and maintained permanent residence thereon for at least 25 years shall not increase above the assessed value on the January 1 immediately following the date the property owner becomes eligible for treatment under this section.

(2) Those persons entitled to and receiving the homestead exemption under s. 196.031 may apply for and receive the assessment limitation provided under this section.

(3) If title is held jointly with right of survivorship, the person residing on the property and otherwise qualifying may receive the entire amount of the assessment limitation provided under this section.

(4) If a property appraiser determines that, for any year within the immediately previous 10 years, a person who was not entitled to the assessment limitation under this section was granted such limitation, the property appraiser shall serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, which property must be identified in the notice of tax lien. Any property that is owned by the taxpayer and that is situated in this state is subject to the taxes limited by the improper assessment limitation, plus a penalty of 50 percent of the unpaid taxes for each year and interest at a rate of 15 percent per annum. However, if such assessment limitation is improperly granted as a result of a clerical error or omission by the property appraiser, the person who improperly received the limitation may not be assessed the penalty and interest. Before any such lien is filed, the owner



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must be given 30 days within which to pay the taxes, penalties,  
and interest. Such a lien is subject to the procedures and  
provisions set forth in s. 196.161(3).

(5) This section first applies to the 2021 property tax  
roll.

Section 2. This act shall take effect on the effective date  
of the amendment to the State Constitution proposed by SJR 344  
or a joint resolution having substantially the same specific  
intent and purpose, if such amendment to the State Constitution  
is approved at the general election held in November 2020 or at  
an earlier special election specifically authorized by law for  
that purpose.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to homestead assessments; creating s.  
193.626, F.S.; providing a homestead assessment  
limitation for the purpose of school district levies  
to certain persons age 65 years or older; authorizing  
persons entitled to and receiving a certain homestead  
exemption to apply for and receive the limitation;  
authorizing specified other persons to receive the  
limitation; requiring a property appraiser who makes a  
certain determination to serve upon the owner a notice  
of intent to record a tax lien against the property;  
providing that such property is subject to certain



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69 taxes, penalties, and interest; providing an exception  
70 from such penalties and interest; providing that an  
71 owner must be given a specified timeframe to pay  
72 taxes, penalties, and interest before a lien is filed;  
73 providing requirements for such a lien; providing  
74 applicability; providing a contingent effective date.



THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3/5/14

Bill Number (if applicable) SB 562

Topic Homestead Exemption

Amendment Barcode (if applicable) \_\_\_\_\_

Name Nicole Springer

Job Title Legislative Analyst

Address \_\_\_\_\_

Phone 4074843656

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email \_\_\_\_\_

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

Representing League of Women Voters 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.

By Senator Diaz

36-00746-19

2019562\_\_

1 A bill to be entitled  
 2 An act relating to homestead exemptions; creating s.  
 3 196.076, F.S.; providing an additional homestead  
 4 exemption from school district levies for certain  
 5 persons age 65 or older; authorizing persons entitled  
 6 to and receiving a certain homestead exemption to  
 7 apply for and receive the additional exemption;  
 8 authorizing specified other persons to receive the  
 9 exemption; requiring a property appraiser who makes a  
 10 certain determination to serve upon the owner a notice  
 11 of intent to record a tax lien against the property;  
 12 providing that such property is subject to certain  
 13 taxes, penalties, and interest; providing an exception  
 14 from such penalties and interest; providing that an  
 15 owner must be given a specified timeframe to pay  
 16 taxes, penalties, and interest before a lien is filed;  
 17 providing requirements for such a lien; providing  
 18 applicability; providing a contingent effective date.  
 19  
 20 Be It Enacted by the Legislature of the State of Florida:  
 21  
 22 Section 1. Section 196.076, Florida Statutes, is created to  
 23 read:  
 24 196.076 Exemption from school district levies for certain  
 25 persons age 65 or older.—  
 26 (1) Any real estate that is used as a homestead by a person  
 27 age 65 or older who has legal or equitable title to the property  
 28 and who has maintained permanent residence thereon for at least  
 29 25 years is exempt from school district levies.

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

36-00746-19

2019562\_\_

30 (2) Those persons entitled to and receiving the homestead  
 31 exemption under s. 196.031 may apply for and receive an  
 32 additional homestead exemption pursuant to this section.  
 33 (3) If title is held jointly with right of survivorship,  
 34 the person residing on the property and otherwise qualifying may  
 35 receive the entire amount of the exemption under this section.  
 36 (4) If a property appraiser determines that for any year  
 37 within the immediately previous 10 years a person who was not  
 38 entitled to the homestead exemption under this section was  
 39 granted such an exemption, the property appraiser shall serve  
 40 upon the owner a notice of intent to record in the public  
 41 records of the county a notice of tax lien against any property  
 42 owned by that person in the county, and that property must be  
 43 identified in the notice of tax lien. Any property that is owned  
 44 by the taxpayer and is situated in this state is subject to the  
 45 taxes exempted by the improper homestead exemption, plus a  
 46 penalty of 50 percent of the unpaid taxes for each year and  
 47 interest at a rate of 15 percent per annum. However, if such an  
 48 exemption is improperly granted as a result of a clerical error  
 49 or omission by the property appraiser, the person who improperly  
 50 received the exemption may not be assessed a penalty and  
 51 interest. Before any such lien may be filed, the owner must be  
 52 given 30 days within which to pay the taxes, penalties, and  
 53 interest. Such a lien is subject to the procedures and  
 54 provisions set forth in s. 196.161(3).  
 55 Section 2. Section 196.076, Florida Statutes, as created by  
 56 this act, first applies to the 2021 property tax roll.  
 57 Section 3. This act shall take effect on the effective date  
 58 of the amendment to the State Constitution proposed by SJR 344

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

36-00746-19

2019562\_\_

59 or a similar joint resolution having substantially the same  
60 specific intent and purpose, if such amendment to the State  
61 Constitution is approved at the general election held in  
62 November 2020.

**COMMITTEE:** Community Affairs  
**ITEM:** SB 562  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, March 5, 2019  
**TIME:** 2:30—4:30 p.m.  
**PLACE:** 301 Senate Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

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

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/CS/SB 462

INTRODUCER: Community Affairs Committee; Judiciary Committee; and Senator Powell

SUBJECT: Judicial Process

DATE: March 6, 2019

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

| ANALYST           | STAFF DIRECTOR | REFERENCE | ACTION        |
|-------------------|----------------|-----------|---------------|
| 1. <u>Cibula</u>  | <u>Cibula</u>  | <u>JU</u> | <b>Fav/CS</b> |
| 2. <u>Peacock</u> | <u>Yeatman</u> | <u>CA</u> | <b>Fav/CS</b> |
| 3. _____          | _____          | <u>RC</u> | _____         |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 462 amends statutes relating to notices of lis pendens and service of process, which are judicial processes governed by ch. 48, F.S.

The changes to the lis pendens statute clarify how long a notice of lis pendens bars the enforcement of liens or other interests on a property that is sold in a judicial sale. As clarified, a notice of lis pendens bars the enforcement of liens or other interests on the property until the instrument transferring title to the property is recorded. This change is a response to a recent appellate court opinion that could be read to make a purchaser of property at a foreclosure sale responsible for liens recorded on the property after the sale but before the new title is recorded.

The changes to the statutes regulating service of process allow:

- A certified process server to serve, with respect to civil process, any nonenforceable civil process.
- A process server to serve the spouse of the person to be served in any county of the state, not just the county of their shared residence.
- A process server to serve a limited liability company at additional types of addresses used as a business address, including the address of a virtual office, executive office, or mini suite.
- Any process server to electronically sign return-of-service forms that document the date and time of service, which is a convenience currently reserved for process servers employed by a sheriff.

- The attachment of dark window tinting material to the side and back windows of a vehicle owned or leased by a certified process server.

## II. Present Situation:

A notice of lis pendens,<sup>1</sup> upon recording in the official records of the county, provides notice that a property is the subject of litigation. The notice essentially warns parties who are not involved in the litigation, such as subsequent purchasers or encumbrancers, that any interest they acquire in the property while the litigation is pending may be adversely affected by the outcome of the case.<sup>2</sup> In other words, the notice of lis pendens helps potential purchasers or encumbrancers of a property avoid becoming embroiled in the dispute, and protects the plaintiff from intervening liens and interests that would impair any property rights claimed.<sup>3</sup>

### The Lis Pendens Statute

The lis pendens statute provides, in part, that “[a]n action in any of the state or federal courts in this state operates as a lis pendens on any real or personal property involved therein or to be affected thereby *only if a notice of lis pendens is recorded in the official records of the county where the property is located . . .*”<sup>4</sup>

The notice of lis pendens must contain the following:

- The names of the parties to the lawsuit.
- The date that the lawsuit was filed, the date of the clerk’s electronic receipt, or the case number of the lawsuit.
- The name of the court in which the suit is pending.
- A description of the property involved or to be affected.
- A statement of the relief sought as to the property.<sup>5</sup>

Once a lis pendens is filed, a holder of an unrecorded interest or lien who fails to timely intervene in the proceedings may lose the right to those interests as noted in s. 48.23(1)(d), F.S., that provides, in part:

[T]he recording of such notice of lis pendens . . . constitutes a bar to the enforcement against the property described in the notice of all interests and liens, including, but not limited to, federal tax liens and levies, unrecorded at the time of recording the notice unless the holder of any such unrecorded interest or lien intervenes in such proceedings within 30 days after the recording of the notice. If the holder of any such unrecorded interest or lien does not intervene in the proceedings and *if such proceedings are prosecuted to a judicial sale of the*

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<sup>1</sup> “Lis pendens” is Latin for a pending lawsuit. BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>2</sup> *Chiusolo v. Kennedy*, 614 So. 2d 491, 492 (Fla. 1993).

<sup>3</sup> *Id.* at n. 1. (Thus, lis pendens exists at least in part to prevent third-party purchasers from “buying” a lawsuit when they purchase the property.)

<sup>4</sup> Section 48.23(1)(a), F.S. The current statutory scheme regulating the procedural requirements and effect of notices of lis pendens has its origins in common law.

<sup>5</sup> Section 48.23(1)(c), F.S.

*property described in the notice, the property shall be forever discharged from all such unrecorded interests and liens . . .*

## **The Ober Opinions**

### ***Ober I, the Withdrawn Opinion***

On August 24, 2016, the Fourth District Court of Appeal issued an opinion in *Ober v. Town of Lauderdale-by-the-Sea*, which was later withdrawn and replaced with a substitute opinion.<sup>6</sup> The issue in the opinions required the court to interpret the meaning of the foregoing portions of the lis pendens statute. Specifically, the court sought to determine whether the statute bars the enforcement of liens recorded after a final judgment of foreclosure but before a judicial sale of the property.

Under the facts of the case, a bank recorded a notice of lis pendens on a property as part of a foreclosure proceeding that it initiated on November 26, 2007. Nearly a year later, on September 22, 2008, the bank obtained a foreclosure judgment on the property. Then, between July 13, 2009, and October 27, 2011, the Town of Lauderdale-by-the-Sea recorded seven code enforcement liens. Finally, the property was sold at a judicial sale to James Ober on September 27, 2012, more than 4 years after the foreclosure judgment. After purchasing the property, Mr. Ober filed suit to quiet title and the town counterclaimed to foreclose on its liens.

In its first *Ober* decision, the district court recognized that the lis pendens statute “does not provide an end date for the lis pendens.”<sup>7</sup> Then the court sought to identify an end date to “avoid the absurd result of a lis pendens precluding any lien from ever being placed on the property in perpetuity.”

Upon reviewing the portion of the lis pendens statute which states, “[a]n action in any of the state or federal courts in this state operates as a lis pendens . . . only if a notice of lis pendens is recorded,”<sup>8</sup> the *Ober 1* court declared that the

plain meaning of [the] provision indicates that the action itself is the actual lis pendens, which takes effect if and when a notice is filed. The lis pendens therefore logically must terminate along with the action. The “action” in this case was the foreclosure action initiated by the non-party bank, which terminated thirty days after the court’s issuance of a final judgment.<sup>9</sup>

The *Ober 1* court ultimately held that “a lis pendens bars liens only through final judgment, and does not affect the validity of liens after that date, even if they are before the actual sale of the property.”<sup>10</sup> The court went on to state that the *Ober 1* “case appears to reveal a misstatement of the law” in the Final Judgment of Foreclosure form incorporated into the Florida Rules of Civil

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<sup>6</sup> *Ober v. Town of Lauderdale-by-the-Sea* No. 4D14-4597 (Fla. 4th DCA 2016), opinion withdrawn and superseded on reh’g., 218 So. 3d 952 (Fla. 4th DCA 2017). The withdrawn opinion is no longer available on Westlaw, but it is available without reference, pages, or volume numbers at findlaw.com at <http://caselaw.findlaw.com/fl-district-court-of-appeal/1746796.html>.

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

<sup>8</sup> Section 48.23(1)(a), F.S.

<sup>9</sup> See *Ober1*, *supra* note 6.

<sup>10</sup> *Id.*

Procedure. The form, according to the *Ober 1* court, incorrectly suggests that “all liens from the filing of the lis pendens until the certificate of sale<sup>11</sup> is filed are discharged.”

### ***Ober II, the Substitute Opinion***

The Fourth District Court of Appeal’s first *Ober* opinion “shocked the mortgage lending community by holding that the protections traditionally afforded by the recordation of a lis pendens terminated 30 days after the entry of final judgment of foreclosure even when the sale had not yet occurred.”<sup>12</sup> The opinion, going against the traditional understanding of the statute, was expected to disrupt the sale of title insurance, the real estate market, and reduce bids on properties at foreclosure sales, which would result in more foreclosed property owners facing liability for deficiency judgments.<sup>13</sup>

However, the court granted *Ober*’s motion for rehearing and issued a substitute opinion, essentially reversing its initial opinion.<sup>14</sup> In the substitute opinion, the *Ober II* court stated:

We reject the Town’s argument that the statute applies only to liens existing or accruing prior to the date of the final judgment. The language of the statute is broad, applying to “all interests and liens.” Significantly, the statute expressly contemplates that its preclusive operation continues through a “judicial sale.” This is consistent with how foreclosure suits operate in the real world.<sup>15</sup>

The *Ober II* court’s opinion also indicates that several groups that are active participants in real estate transactions filed amicus briefs in opposition to the court’s initial decision. The Florida Bankers Association advised the court that foreclosure suits are “unlike many civil lawsuits in that ‘much remains to be accomplished after entry of final judgment, including the foreclosure sale, the issuance of certificates of sale and title, and, in many instances, the prosecution of a deficiency claim, all under court supervision.’”<sup>16</sup> The court also noted that the Business Law Section of The Florida Bar explained that the statement of law in the Final Judgment of Foreclosure form, which the court previously criticized, “reflects the common understanding of the operation of the lis pendens statute.”<sup>17</sup>

In concluding its substitute opinion, the *Ober II* court recognized that precluding the enforcement of local code enforcement liens between a final judgment of foreclosure and the judicial sale of a foreclosed property presents the practical problem of collecting fines for code violations. This problem, according to the court, is in the province of the Legislature.<sup>18</sup>

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<sup>11</sup> A certificate of sale is a document that the clerk of court will file and serve on the affected parties after the judicial sale of the property. The certificate will identify when notices of the sale were published in a newspaper and identify the purchaser and the amount paid for the property. Afterwards, the clerk will record a certificate of title transferring title of the property to the purchaser. Section 45.031(4) and (6), F.S.

<sup>12</sup> Lauren Reynolds, *The Resurrection of Lis Pendens: Ober Reversed on Rehearing*, 20 No. 17 CONSUMER FIN. SERVICES L. REP. 26 (Feb. 28, 2017).

<sup>13</sup> *Id.*

<sup>14</sup> *Ober v. Town of Lauderdale-by-the-Sea*, 218 So. 3d 952 (Fla. 4th DCA 2017), *cert. denied*, 2017 WL 3883662 (Fla. 2017).

<sup>15</sup> *Id.* at 954.

<sup>16</sup> *Id.*

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

<sup>18</sup> *Id.* at 954-55.



## Real Property Probate & Trust Law Section of The Florida Bar

Although, the Fourth District Court of Appeal reversed itself, the Real Property, Probate, and Trust Law Section of The Florida Bar is pursuing legislative changes to the lis pendens statute.<sup>19</sup> The wording of the court’s substitute opinion in *Ober II* described the preclusive effect of a notice of lis pendens as continuing “through a ‘judicial sale.’”<sup>20</sup> As such, the court may have inadvertently created a gap between a judicial sale and the recording of a certificate of title during which liens may attach to a foreclosed property. This gap, in some cases, may last “days, weeks, or months.”<sup>21</sup>

Accordingly, the changes pursued by the bar Section are intended to “preserve the widely understood interpretation of the statute, that . . . a lis pendens remains in effect through the recording of an instrument transferring title pursuant to a judicial sale.”<sup>22</sup> This change will “provide the purchaser [of foreclosed property] with title free and clear of intervening subordinate interests or liens.”<sup>23</sup>

## Service of Process

Service of process involves the delivery of papers such as pleadings, complaints, and subpoenas in connection with judicial proceedings. These documents must be delivered by a process server who is disinterested in the outcome of the case. There are four types of individuals who are authorized to serve process: sheriffs’ officers, special process servers, certified process servers, and those authorized to serve civil witness subpoenas under the rules of civil procedure.<sup>24</sup> Certified process servers may serve “initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses.”<sup>25</sup>

Typically, personal service is accomplished by personal delivery of the process to its intended recipient.<sup>26</sup> In some cases, however, the statutes allow for service on others in place of the intended recipient. For example, process may be made on the intended recipient’s spouse “if the cause of action is not an adversary proceeding between the spouse and the person to be served, if the spouse requests such service, and if the spouse and person to be served are residing together in the same dwelling.”<sup>27</sup>

Substitute service is also allowed if the only address discoverable through public records for the person to be served is a private mailbox, a virtual office, or an executive office or mini suite.<sup>28</sup> In

<sup>19</sup> Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: Proposal to Amend Section 48.23, Fla. Stat. (Lis Pendens)* (Oct. 10, 2017) (On file with the Senate Committee on Judiciary).

<sup>20</sup> *Ober*, 218 So. 3d at 954.

<sup>21</sup> Real Property, Probate and Trust Law Section, *supra* note 19.

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

<sup>23</sup> *Id.*

<sup>24</sup> See ss. 48.021(1), 48.27, F.S., and Fla.R.Civ.P. 1.070.

<sup>25</sup> Sections 48.021(1) and 48.27(2), F.S.

<sup>26</sup> Section 48.031(1)(a), F.S.

<sup>27</sup> Section 48.031(2)(a), F.S.

<sup>28</sup> Section 48.031(6)(a), F.S. A virtual office is “an office that provides communications services, such as telephone or facsimile services, and address services without providing dedicated office space, and where all communications are routed through a common receptionist.” Section 48.031(6)(b), F.S. An executive office or mini suite is “an office that provides

these instances, substitute service may be made by leaving a copy of the process with the person in charge of the facility.

Similarly, service may be made on a limited liability company by serving the process on its registered agent.<sup>29</sup> The agent's business address for service of process must be the same as the agent's registered office, but this address may be a residence or a private mailbox.<sup>30</sup>

When a process server serves process, the process server must place "on the first page of at least one of the processes served, the date and time of service and his or her identification number and initials for all service of process."<sup>31</sup> The process server must also sign a return-of-service form identifying all the initial pleadings delivered and served with the process. If the process server is employed by a sheriff, he or she may sign the form with an electronic signature.<sup>32</sup> The person who requested service or the person authorized to serve the process must file the form with the court.<sup>33</sup>

When service of process must be made on a person who is outside this state, the statutes state that the process "shall be made . . . by any officer authorized to serve process in the state where the person is served."<sup>34</sup> The statutes further provide that the officer's affidavit, which identifies the time, manner, and place of service, should be filed with the court.

### **Motor Vehicle Sunscreening Material**

Sections 316.2951 – 316.2956, F.S., prohibit certain sunscreening material<sup>35</sup> from being attached to the windshield and windows of motor vehicles operated on public highways, roads, and streets. Individuals are permitted to attach sunscreening material to "a strip at the top of a windshield, so long as such material is transparent and does not encroach upon the driver's direct forward viewing area."<sup>36</sup> Generally, sunscreening material may not be attached to any side windows or windows behind the driver if the material "has the effect of making the window nontransparent or would alter the window's color, increase its reflectivity, or reduce its light transmittance..."<sup>37</sup>

Section 316.29545, F.S., requires the Department of Highway Safety and Motor Vehicles to exempt law enforcement vehicles used in undercover or canine operations and individuals with certain medical conditions from the window sunscreening limitations in ss. 316.2951-316.2957, F.S. This section also exempts vehicles that are owned or leased by private investigators or

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communications services, such as telephone and facsimile services, a dedicated office space, and other supportive services, and where all communications are routed through a common receptionist." *Id.*

<sup>29</sup> Section 48.062, F.S.

<sup>30</sup> Sections 605.0113(1)(a) and 48.062(4), F.S.

<sup>31</sup> Section 48.031(5), F.S.

<sup>32</sup> Section 48.21(1), F.S.

<sup>33</sup> Section 48.031(5), F.S.

<sup>34</sup> Section 48.194(1), F.S.

<sup>35</sup> "Sunscreening material" is a product or material, including film, glazing, and perforated sunscreening, which, when applied to the windshield or windows of a motor vehicle, reduces the effect of the sun with respect to light reflectance or transmittance. *See s. 316.2951(4)*, F.S.

<sup>36</sup> Section 316.2952(2)(b), F.S.

<sup>37</sup> Sections 316.2953 and 316.2954, F.S.

private investigative agencies licensed under ch. 493, F.S., from the window sunscreening limitations under ss. 316.2953, 316.2954, and 316.2956.

### III. Effect of Proposed Changes:

#### Notices of Lis Pendens

A notice of lis pendens is notice recorded in the official records of a county warning that the outcome of litigation involving the property may affect the interests of future purchasers or encumbrancers, such as those who may enforce a lien against the property. This bill clarifies that a notice of lis pendens precludes the enforcement of liens or other interests against a foreclosed property until the instrument transferring title to the property is recorded. This clarification to the lis pendens statute, according to the Real Property, Probate, and Trust Law Section of The Florida Bar, is consistent with “the long established and accepted understanding of the lis pendens statute.”<sup>38</sup>

The bill is a response to a 2017 appellate court opinion<sup>39</sup> interpreting the current lis pendens statute. Due to its particular wording, the opinion could be read to allow liens to be enforced against a foreclosed property after the property is sold at a judicial sale but before the date the title is recorded.

The bill declares that, because of its clarifying nature, the changes to the lis pendens statute apply to actions pending on its effective date.<sup>40</sup>

#### Service of Process

This bill allows certified process servers to serve a wider variety of process. Under current law, these process servers, with respect to civil process, may serve only the initial nonenforceable civil process. Under the bill, they may serve any nonenforceable civil process.

The bill also allows for substituted service on a spouse in any county, not just the county of residence of the spouse and person to be served as provided in current law.

Under the bill, a limited liability company may be served at additional types of business addresses. Existing law contemplates that a limited liability company will be served at the address for a registered agent or a member or manager if the address is a private mailbox or

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<sup>38</sup> See *supra*, note 19.

<sup>39</sup> See *supra*, note 14.

<sup>40</sup> Courts presume that when the Legislature amends a statute, a change in the meaning of the statute is intended. *Hill v. State*, 143 So. 3d 981, 986 (Fla. 4th DCA 2014) However, courts also “recognize that, at times, a mere change in the language of a statute ‘does not necessarily indicate an intent to change the law’ because the intent may be to clarify what was doubtful and to erase misapprehension as to existing law.” *Id.* (quoting *State ex rel. Szabo Food Servs., Inc. of N.C. v. Dickinson*, 286 So. 2d 529, 531 (Fla.1973)). Similarly, “if the Legislature amends a statute shortly after a controversy arises with respect to the interpretation of the statute, then the amendment may be considered to be a legislative interpretation of the original statute rather than a substantive change to the statute.” *Leftwich v. Florida Dept. of Corr.*, 148 So. 3d 79, 83 (Fla. 2014) (citing *Lowry v. Parole & Prob. Comm’n*, 473 So. 2d 1248, 1250 (Fla. 1985)). Accordingly, these interpretive principles support the assertion in the bill that it clarifies existing law and that the bill may apply to pending actions without violating the constitutional restrictions on retroactive laws.

home. The bill allows a limited liability company to also be served at a virtual office, executive office, or mini suite.

The bill allows out-of-state service of process to be made by any person authorized to serve process in that state. In contrast, current law requires that out-of-state service of process be made by an officer authorized to serve process in the state.

Under the bill, any process server may sign return of service forms with an electronic signature. Under current law, this convenience is reserved for process servers employed by a sheriff.

Finally, the bill adds vehicles that are owned or leased by certified process servers to the window sunscreening exemption under s. 316.2956(3), F.S., allowing specified individuals to apply dark window tint to the side and back windows of their motor vehicle. Currently, only vehicles used by private investigators, those with a medical exemption, and law enforcement agencies may use dark window tinting.

#### **Effective Date**

The bill takes effect upon becoming a law.

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

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

Because the bill clarifies existing law, it likely does not constitute a mandate subject to the requirements of article VII, section 18 of the Florida Constitution. However, if the changes to the lis pendens statute can properly be viewed as a limit on the authority of a local government to raise revenue by limiting the enforcement of code violations, the bill must be approved by a two-thirds vote of each house of the Legislature.

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

None.

##### **C. Trust Funds Restrictions:**

None.

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

None.

##### **E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

By precluding the enforcement of liens or other interests to a foreclosed property between the judicial sale and the transfer of title to the new purchaser, the bill may simplify or prevent complications in the completion of real estate transactions.

**C. Government Sector Impact:**

This bill may limit the ability of local governments to collect fines for code violations by ensuring that local governments cannot enforce a lien against a foreclosed property between the date of the foreclosure sale and the date the title to the property is transferred to the purchaser.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 48.021, 48.031, 48.062, 48.194, 48.21, 48.23, and 316.29545.

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

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

**CS/CS by Community Affairs on March 5, 2019:**

The committee substitute amends s. 316.29545, F.S., to exempt certified process servers from certain window sunscreening restrictions.

**CS by Judiciary on February 11, 2019:**

The original bill amended a statute relating to notice of lis pendens. The committee substitute also makes changes to the statutes governing process servers and service of process.

**B. Amendments:**

None.

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

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380012

LEGISLATIVE ACTION

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

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The Committee on Community Affairs (Powell) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 168 and 169  
insert:

Section 8. Section 316.29545, Florida Statutes, is amended  
to read:

316.29545 Window sunscreening exclusions; medical  
exemption; certain law enforcement vehicles, process server  
vehicles, and private investigative service vehicles exempt.—

(1) The department shall issue medical exemption



380012

certificates to persons who are afflicted with Lupus, any autoimmune disease, or other medical conditions which require a limited exposure to light, which certificates shall entitle the person to whom the certificate is issued to have sunscreening material on the windshield, side windows, and windows behind the driver which is in violation of the requirements of ss.

316.2951-316.2957. The department shall consult with the Medical Advisory Board established in s. 322.125 for guidance with respect to the autoimmune diseases and other medical conditions which shall be included on the form of the medical certificate authorized by this section. At a minimum, the medical exemption certificate shall include a vehicle description with the make, model, year, vehicle identification number, medical exemption decal number issued for the vehicle, and the name of the person or persons who are the registered owners of the vehicle. A medical exemption certificate shall be nontransferable and shall become null and void upon the sale or transfer of the vehicle identified on the certificate.

(2) The department shall exempt all law enforcement vehicles used in undercover or canine operations from the window sunscreening requirements of ss. 316.2951-316.2957.

(3) The department shall exempt from the window sunscreening restrictions of ss. 316.2953, 316.2954, and 316.2956 vehicles that are owned or leased by process servers certified pursuant to s. 48.29 or by private investigators or private investigative agencies licensed under chapter 493.

(4) The department may charge a fee in an amount sufficient to defray the expenses of issuing a medical exemption certificate as described in subsection (1).





380012

(5) The department is authorized to promulgate rules for  
the implementation of this section.

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

And the title is amended as follows:

Delete line 25

and insert:

service forms; amending s. 316.29545, F.S.; exempting  
certified process servers from certain window  
sunscreening restrictions; providing an effective  
date.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date 3/5/19

Bill Number (if applicable) 462

Topic Service of Process

Amendment Barcode (if applicable) \_\_\_\_\_

Name Brittany Finkbeiner

Job Title \_\_\_\_\_

Address 215 S. Monroe St. Ste. 815

Phone 999-4100

City Tallahassee State FL Zip 32301

Email binkbeiner@deannet.com

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

Representing Real Property, Probate + Trust Law Section of Fla. Bar

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date March 5, 2019

Bill Number (if applicable) 38462

Topic Process Servers

Amendment Barcode (if applicable) \_\_\_\_\_

Name MARTY BARDEN

Job Title \_\_\_\_\_

Address 108 E. Jefferson

Phone 880-228-3904

City JACKSONVILLE State FL Zip 32201

Email mbarden@jmi.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Assoc of Prof Process Servers

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date 3/5/19

Bill Number (if applicable) SB 462

Topic Process Service

Amendment Barcode (if applicable) \_\_\_\_\_

Name Michael Leighton

Job Title \_\_\_\_\_

Address 224 Starkey Mill Rd  
City Lawfordville FL State 32327

Phone 850-933-9333

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Assoc of Prof. P.S. - FA 7925

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☐ No

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date 3/5/2019

Bill Number (if applicable) 424

Topic Public Construction

Amendment Barcode (if applicable) \_\_\_\_\_

Name Edward G. Lebrador

Job Title Legislative Counsel

Address Main Library 8<sup>th</sup> Floor, 100 S. Andrews Avenue

Phone 954-826-1155

City Fort Lauderdale State FL Zip 33301

Email elbrador@flsenate.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Broward County

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

By the Committee on Judiciary; and Senator Powell

590-02331-19

2019462c1

A bill to be entitled

An act relating to judicial process; amending s. 48.23, F.S.; providing that a person who acquires for value a lien on property during the course of specified legal actions takes such lien free of claims in certain circumstances; specifying the effect of a valid, recorded notice of lis pendens in certain circumstances involving a judicial sale; providing applicability; amending s. 48.021, F.S.; revising authority of special process servers; revising a cross-reference; requiring that civil witness subpoenas be served by certain persons; amending s. 48.031, F.S.; revising requirements for substituted service on the spouse of the person to be served; revising requirements for documenting service of process; conforming terminology; amending s. 48.062, F.S.; revising requirements for service on limited liability companies; amending s. 48.194, F.S.; revising provisions specifying who may serve process outside of the state; revising requirements for documenting that service has been properly made outside the state; amending s. 48.21, F.S.; revising requirements for return-of-service forms; authorizing certain persons to electronically sign return-of-service forms; providing an effective date.

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

Section 1. Paragraphs (b) and (d) of subsection (1) of

Page 1 of 6

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

590-02331-19

2019462c1

section 48.23, Florida Statutes, are amended to read:

48.23 Lis pendens.—

(1)

(b)1. An action that is filed for specific performance or that is not based on a duly recorded instrument has no effect, except as between the parties to the proceeding, on the title to, or on any lien upon, the real or personal property unless a notice of lis pendens has been recorded and has not expired or been withdrawn or discharged.

2. Any person acquiring for value an interest in, or lien upon, the real or personal property during the pendency of an action described in subparagraph 1., other than a party to the proceeding or the legal successor by operation of law, or personal representative, heir, or devisee of a deceased party to the proceeding, shall take such interest or lien exempt from all claims against the property that were filed in such action by the party who failed to record a notice of lis pendens or whose notice expired or was withdrawn or discharged, and from any judgment entered in the proceeding, notwithstanding the provisions of s. 695.01, as if such person had no actual or constructive notice of the proceeding or of the claims made therein or the documents forming the causes of action against the property in the proceeding.

(d) Except for the interest of persons in possession or easements of use, the recording of such notice of lis pendens, provided that during the pendency of the proceeding it has not expired pursuant to subsection (2) or been withdrawn or discharged, constitutes a bar to the enforcement against the property described in the notice of all interests and liens,

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

590-02331-19

2019462c1

including, but not limited to, federal tax liens and levies, unrecorded at the time of recording the notice unless the holder of any such unrecorded interest or lien intervenes in such proceedings within 30 days after the recording of the notice. If the holder of any such unrecorded interest or lien does not intervene in the proceedings and if such proceedings are prosecuted to a judicial sale of the property described in the notice, the property shall be forever discharged from all such unrecorded interests and liens. A valid recorded notice of lis pendens of such proceedings prosecuted to a judicial sale remains in effect through the recording of any instrument transferring title to the property pursuant to the final judgment unless it expires, is withdrawn, or it is otherwise discharged. If the notice of lis pendens expires or is withdrawn or discharged, the expiration, withdrawal, or discharge of the notice does not affect the validity of any unrecorded interest or lien.

Section 2. The changes made by this act to s. 48.23, Florida Statutes, are intended to clarify existing law and shall apply to actions pending on the effective date of this act.

Section 3. Subsection (1) of section 48.021, Florida Statutes, is amended to read:

48.021 Process; by whom served.—

(1) All process shall be served by the sheriff of the county where the person to be served is found, except ~~initial~~ nonenforceable civil process, criminal witness subpoenas, and criminal summonses may be served by a special process server appointed by the sheriff as provided ~~for~~ in this section or by a certified process server as provided ~~for~~ in s. 48.27 ~~ss. 48.25-~~

590-02331-19

2019462c1

~~48.31.~~ Civil witness subpoenas shall ~~may~~ be served by any person authorized by rules of civil procedure.

Section 4. Subsections (2) and (5) and paragraph (a) of subsection (6) of section 48.031, Florida Statutes, are amended to read:

48.031 Service of process generally; service of witness subpoenas.—

(2) (a) Substituted ~~Substitute~~ service ~~may be made~~ on the spouse of the person to be served may be made at any place in a ~~the~~ county by an individual authorized under s. 48.021 or s. 48.27 to serve process in that county, if the cause of action is not an adversarial ~~adversary~~ proceeding between the spouse and the person to be served, if the spouse requests such service or the spouse is also a party to the action, and if the spouse and person to be served reside ~~are residing~~ together in the same dwelling, regardless of whether such dwelling is located in the county where substituted service is made.

(b) Substituted ~~Substitute~~ service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service if two attempts to serve the owner are ~~have been~~ made at the place of business.

(5) A person serving process shall place, on the first page only of at least one of the processes served, the date and time of service, his or her initials or signature, and, if applicable, his or her identification number and initials for all service of process. ~~The person serving process shall list on the return-of-service form all initial pleadings delivered and~~

590-02331-19

2019462c1

117 ~~served along with the process.~~ The person requesting service or  
 118 the person authorized to serve the process shall file the  
 119 return-of-service form with the court.

120 (6) (a) If the only address for a person to be served which  
 121 is discoverable through public records is a private mailbox, a  
 122 virtual office, or an executive office or mini suite,  
 123 ~~substituted~~ substitute service may be made by leaving a copy of  
 124 the process with the person in charge of the private mailbox,  
 125 virtual office, or executive office or mini suite, but only if  
 126 the process server determines that the person to be served  
 127 maintains a mailbox, a virtual office, or an executive office or  
 128 mini suite at that location.

129 Section 5. Subsection (4) of section 48.062, Florida  
 130 Statutes, is amended to read:

131 48.062 Service on a limited liability company.—

132 (4) If the address ~~provided~~ for the registered agent,  
 133 member, or manager is a residence, a ~~or~~ private mailbox, a  
 134 virtual office, or an executive office or mini suite, service on  
 135 the domestic or foreign limited liability company, ~~domestic or~~  
 136 ~~foreign,~~ may be made by serving the registered agent, member, or  
 137 manager in accordance with s. 48.031.

138 Section 6. Subsection (1) of section 48.194, Florida  
 139 Statutes, is amended to read:

140 48.194 Personal service outside state.—

141 (1) Except as otherwise provided herein, service of process  
 142 on persons outside of this state shall be made in the same  
 143 manner as service within this state by any person officer  
 144 authorized to serve process in the state where the person is  
 145 served. No order of court is required. A ~~An affidavit of the~~

590-02331-19

2019462c1

146 ~~officer shall be filed, stating the time, manner, and place of~~  
 147 ~~service.~~ The court may consider the return-of-service form  
 148 described in s. 48.21 affidavit, or any other competent  
 149 evidence, in determining whether service has been properly made.  
 150 Service of process on persons outside the United States may be  
 151 required to conform to the provisions of the Hague Convention on  
 152 the Service Abroad of Judicial and Extrajudicial Documents in  
 153 Civil or Commercial Matters.

154 Section 7. Subsection (1) of section 48.21, Florida  
 155 Statutes, is amended to read:

156 48.21 Return of execution of process.—

157 (1) Each person who effects service of process shall note  
 158 on a return-of-service form attached thereto, the date and time  
 159 when it comes to hand, the date and time when it is served, the  
 160 manner of service, the name of the person on whom it was served,  
 161 and, if the person is served in a representative capacity, the  
 162 position occupied by the person. The return-of-service form must  
 163 list all pleadings served and be signed by the person who  
 164 effects the service of process. However, a person who is  
 165 authorized under this chapter to serve process and ~~employed by a~~  
 166 ~~sheriff~~ who effects such the service of process may sign the  
 167 return-of-service form using an electronic signature ~~certified~~  
 168 ~~by the sheriff.~~

169 Section 8. This act shall take effect upon becoming a law.



**COMMITTEE:** Community Affairs  
**ITEM:** CS/SB 462  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, March 5, 2019  
**TIME:** 2:30—4:30 p.m.  
**PLACE:** 301 Senate Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
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TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

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

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 494

INTRODUCER: Senator Hooper

SUBJECT: Firefighters' Bill of Rights

DATE: February 28, 2019

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Peacock | Yeatman        | CA        | <b>Favorable</b> |
| 2. |         |                | GO        |                  |
| 3. |         |                | RC        |                  |

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## **I. Summary:**

The Firefighters' Bill of Rights provides specific rights when a firefighter is under investigation and subject to interrogation for a reason which could lead to disciplinary action.

SB 494 amends the Firefighters' Bill of Rights and revises the definition of the term "interrogation" to include questioning pursuant to an informal inquiry. The bill requires all identifiable witnesses be interviewed before the beginning of an interrogation of a firefighter, when possible, and specified information must be provided to the firefighter before an interrogation is conducted. The bill authorizes a firefighter to provide a voluntary statement at any time after being informed of right to review witness statements and prohibits a firefighter from being threatened with disciplinary action during the course of an interrogation.

SB 494 requires that the firefighter be provided with a copy of the interrogation within a specified time frame, upon request. A firefighter must be notified and provided certain information before disciplinary actions are taken and be given an opportunity to address the findings.

## **II. Present Situation:**

### **Division of the State Fire Marshal**

Chapter 633, F.S., provides state law on fire prevention and control. Section 633.104(1), F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal (Division).<sup>1</sup> Pursuant to this authority, the State Fire Marshal:

- Regulates, educates or trains, and certifies fire service personnel;<sup>2</sup>

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<sup>1</sup> The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS. See s. 20.121, F.S.

<sup>2</sup> Section 633.128(1), F.S. Also see ch. 633, part IV: Fire Standards and Training, F.S.

- Investigates the causes of fires;<sup>3</sup>
- Enforces arson laws;<sup>4</sup>
- Regulates the installation and maintenance of fire equipment;<sup>5</sup>
- Conducts firesafety inspections of state buildings;<sup>6</sup>
- Develops firesafety standards;<sup>7</sup>
- Provides facilities for the analysis of fire debris;<sup>8</sup> and
- Operates the Florida State Fire College.<sup>9</sup>

Additionally, the Division adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.<sup>10</sup>

The Division consists of the two bureaus: the Bureau of Fire Standards and Training (BFST), and the Bureau of Fire Prevention.<sup>11</sup> The Florida Fire College, part of the BFST, trains over 6,000 students per year.<sup>12</sup> The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the Division's annual report.<sup>13</sup>

### **Firefighters Employment, Standards, and Training Council**

The Firefighters Employment, Standards, and Training Council (Council) is housed within the DFS and consists of 14 members.<sup>14</sup> The Council is authorized to make recommendations for adoption by the Division on:

- Uniform minimum standards for the employment and training of firefighters and training of volunteer firefighters.
- Minimum curriculum requirements for schools operated by or for any fire service provider<sup>15</sup> for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters.
- Matters relating to the funding, general operation, and administration of the Bureau of Fire Standards and Training (Florida State Fire College), including, but not limited to, all

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<sup>3</sup> Sections 633.104(2)(e), F.S.

<sup>4</sup> Section 633.104(2)(e), F.S.

<sup>5</sup> Section 633.104(2)(b), F.S. *Also see* s. 633.104(2)(c), F.S., and ch. 633, part III: Fire Protection and Suppression, F.S.

<sup>6</sup> Section 633.218, F.S.

<sup>7</sup> Chapter 633, part II: Fire Safety and Prevention, F.S.

<sup>8</sup> Section 633.432, F.S.

<sup>9</sup> Section 633.128(1)(h)–(q), F.S. *Also see* ss. 633.428–633.434, F.S.

<sup>10</sup> Section 633.202(1), F.S.

<sup>11</sup> See <https://www.myfloridacfo.com/Division/sfm/> (last visited on Feb. 13, 2019).

<sup>12</sup> See Division of State Fire Marshal, *About the Florida State Fire Marshal*, <http://www.myfloridacfo.com/division/sfm/AbouttheStateFireMarshal.htm> (last visited on Feb. 13, 2019).

<sup>13</sup> *Id.*

<sup>14</sup> Section 633.402(1), F.S.

<sup>15</sup> Section 633.102(13), F.S., defines “fire service provider” as a municipality or county, the state, the division, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.

standards, training, curriculum, and the issuance of any certificate of competency required by ch. 633, F.S.<sup>16</sup>

The Council may also make or support studies on any aspect of firefighting employment, education, and training or recruitment.<sup>17</sup>

### **Curriculum Requirements for Firefighters**

A person applying for certification as a firefighter must:

- Be a high school graduate or the equivalent and at least 18 years of age;
- Not have been convicted of a misdemeanor relating to the certification or to perjury or false statements, a felony, a crime punishable by imprisonment of one year or more or be dishonorably discharged from the Armed Forces of the United States;
- Submit a set of fingerprints to the division with a current processing fee;
- Have a good moral character;
- Be in good physical condition as determined by a medical examination; and
- Be a nonuser of tobacco or tobacco products for at least one year immediately preceding application.<sup>18</sup>

The Division is responsible for establishing a Minimum Standards Course as the training and educational curriculum required in order for a firefighter to obtain a Firefighter Certificate of Compliance (FCOC).<sup>19</sup> A FCOC is issued by the Division to an individual who does all of the following:

- Satisfactorily completes the Minimum Standards Course or has satisfactorily completed training for firefighters in another state which has been determined by the Division to be at least the equivalent of the training required for the Minimum Standards Course;
- Passes the Minimum Standards Course examination within 12 months after completing the required courses; and
- Meets the character and fitness requirements in s. 633.412, F.S.<sup>20</sup>

In order for a firefighter to retain or renew his or her FCOC, every four years he or she must:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the four-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the Division;
- Within six months before the four-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule; and
- Within six months before the four-year period expires, successfully retake and pass the Minimum Standards Course examination.<sup>21</sup>

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<sup>16</sup> Section 633.402(9), F.S.

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

<sup>18</sup> Section 633.412, F.S.

<sup>19</sup> Section 633.408(1)(a), F.S.

<sup>20</sup> Section 633.408(4), F.S.

<sup>21</sup> Section 633.414(1), F.S.

## Firefighters' Bill of Rights

The Firefighters' Bill of Rights provides specific rights when a firefighter is under investigation and subject to interrogation for a reason which could lead to disciplinary action, including reprimand, suspension or dismissal.<sup>22</sup> There is a similar law for law enforcement and correctional officers known as the Law Enforcement Officers' Bill of Rights.<sup>23</sup>

The Firefighters' Bill of Rights contains the following definitions:<sup>24</sup>

- "Firefighter" means a person who is certified in compliance with s. 633.408, F.S., and who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.
- "Employing agency" means any municipality or the state or any political subdivision thereof, including authorities and special districts, which employs firefighters.
- "Informal inquiry" means a meeting by supervisory or management personnel with a firefighter about whom an allegation of misconduct has come to the attention of such supervisory or management personnel, the purpose of which meeting is to mediate a complaint or discuss the facts to determine whether a formal investigation should be commenced.
- "Formal investigation" means the process of investigation ordered by supervisory personnel, after the supervisory personnel have previously determined that the firefighter shall be reprimanded, suspended, or removed, during which the questioning of a firefighter is conducted for the purpose of gathering evidence of misconduct.
- "Administrative proceeding" means any nonjudicial hearing which may result in the recommendation, approval, or order of disciplinary action against, or suspension or discharge of, a firefighter.
- "Interrogation" means the questioning of a firefighter by an employing agency in connection with a formal investigation or an administrative proceeding but shall not include arbitration or civil service proceedings. Questioning pursuant to an informal inquiry shall not be deemed to be an interrogation.

An interrogation of a firefighter must be conducted pursuant to the following terms:<sup>25</sup>

- The interrogation shall take place at the facility where the investigating officer is assigned, or at the facility which has jurisdiction over the place where the incident under investigation allegedly occurred, as designated by the investigating officer.
- No firefighter shall be subjected to interrogation without first receiving written notice of sufficient detail of the investigation in order to reasonably apprise the firefighter of the nature of the investigation. The firefighter shall be informed beforehand of the names of all complainants.

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<sup>22</sup> Part VIII, Ch. 112, F.S.

<sup>23</sup> Part VI, Ch. 112, F.S.

<sup>24</sup> Section 112.81, F.S.

<sup>25</sup> Section 112.82, F.S.

- All interrogations shall be conducted at a reasonable time of day, preferably when the firefighter is on duty, unless the importance of the interrogation or investigation is of such a nature that immediate action is required.
- The firefighter under investigation shall be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogators, and all persons present during any interrogation.
- Interrogation sessions shall be of reasonable duration and the firefighter shall be permitted reasonable periods for rest and personal necessities.
- The firefighter being interrogated shall not be subjected to offensive language or offered any incentive as an inducement to answer any questions.
- A complete record of any interrogation shall be made, and if a transcript of such interrogation is made, the firefighter under investigation shall be entitled to a copy without charge. Such record may be electronically recorded.
- An employee or officer of an employing agency may represent the agency, and an employee organization may represent any member of a bargaining unit desiring such representation in any proceeding to which this part applies. If a collective bargaining agreement provides for the presence of a representative of the collective bargaining unit during investigations or interrogations, such representative shall be allowed to be present.
- No firefighter shall be discharged, disciplined, demoted, denied promotion or seniority, transferred, reassigned, or otherwise disciplined or discriminated against in regard to his or her employment, or be threatened with any such treatment as retaliation for or by reason solely of his or her exercise of any of the rights granted or protected by this part.

### **Public Records Exemption for Agency Investigations of Employee Misconduct**

Current law provides a public records exemption for agency<sup>26</sup> investigations into complaints of employee misconduct.<sup>27</sup> A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint, either personally or by mail, that the agency has either:

- Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or
- Concluded the investigation with a finding to proceed with disciplinary action or file charges.<sup>28</sup>

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<sup>26</sup> 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.

<sup>27</sup> Section 119.071(2)(k), F.S.

<sup>28</sup> *Id.*

### III. Effect of Proposed Changes:

**Section 1** amends the Firefighters' Bill of Rights including the definition of "interrogation" contained in s. 112.81(6), F.S., to stipulate that questioning pursuant to an informal inquiry is considered an interrogation.

This amendment eliminates an employing agency's ability to meet with a firefighter in an informal inquiry to mediate a complaint or discuss facts to determine whether a formal investigation should be initiated.

**Section 2** amends s. 112.82(2), F.S., concerning the rights of firefighters to require all identifiable witnesses be interviewed before the beginning of an interrogation of a firefighter, when possible. The complaint, all witness statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to each firefighter who is the subject of a complaint before he or she is interrogated. A firefighter may waive the rights provided under this section and provide a voluntary statement at any time after being informed of his or her right to review witness statements.

Section 112.82(6), F.S., is amended to prohibit a firefighter from being threatened with transfer, dismissal, or disciplinary action during an interrogation.

Section 112.82(7), F.S., is amended to require a copy of the interrogation transcript, if made, be provided to a firefighter under investigation, upon request, without charge. If the firefighter requests a copy of the transcript, it must be provided within 72 hours, excluding weekends and holidays, after the interrogation.

**Section 3** creates s. 112.825, F.S., entitled notice of disciplinary action, providing additional protections for firefighters. A dismissal, demotion, transfer, reassignment, or other disciplinary action that might result in loss of pay or benefits or that might otherwise be considered a punitive measure may not be taken against a firefighter unless the firefighter is notified of the action and the reason for the action before the effective date of the action.

A firefighter who is subject to disciplinary action that consists of suspension with loss of pay, demotion, or dismissal, or his or her representative, must, upon request, be given a complete copy of the investigative file, including the final investigative report and all evidence, by the employing agency. The firefighter must be given the opportunity to address the findings in the final investigative report with the employing agency before such disciplinary action is taken. The contents of the complaint and all information obtained pursuant to the subsequent investigation must remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution as provided under s. 119.071(2)(k), until such time as the employing agency makes a final determination as to whether to issue a notice of disciplinary action that consists of suspension with loss of pay, demotion, or dismissal.

**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. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

An employing agency may have to amend internal policies and procedures, which will likely be a minimal impact to their resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 112.81 and 112.82 of the Florida Statutes. This bill also creates section 112.825 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.

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Bill Number (if applicable)

Topic FE BUDGETS

Amendment Barcode (if applicable)

Name OMAR BLAND

Job Title President Local 1403

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

Appearing at request of Chair:

☐ Yes

☐ No

Lobbyist registered with Legislature:

☐ Yes

☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

Meeting Date 3/5/19

Bill Number (if applicable) 494

Topic Firefighter Bill of Rights Amendment Barcode (if applicable) \_\_\_\_\_

Name Jim Tolley

Job Title President

Address 343 West Madison St Phone 850 224 7333

City Tallahassee State FL Zip 32301

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Professional Firefighters

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 Hooper

16-00789-19

2019494\_\_

A bill to be entitled

An act relating to the Firefighters' Bill of Rights; amending s. 112.81, F.S.; revising the definition of the term "interrogation" to include questioning pursuant to an informal inquiry; amending s. 112.82, F.S.; requiring that witnesses be interviewed and certain information be provided to a firefighter subjected to interrogation before the interrogation is conducted; authorizing a firefighter to provide a voluntary statement at any time after being informed of a certain right; prohibiting a firefighter from being threatened with certain disciplinary action during the course of an interrogation; requiring that a copy of the interrogation be provided to a firefighter within a specified timeframe, upon request; creating s. 112.825, F.S.; requiring that a firefighter be notified and provided certain information before certain disciplinary actions are taken; requiring that a firefighter be given the opportunity to address certain findings; requiring that certain information be kept confidential and exempt until a final determination is made, in accordance with existing law; providing an effective date.

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

Section 1. Subsection (6) of section 112.81, Florida Statutes, is amended to read:

Page 1 of 4

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

16-00789-19

2019494\_\_

112.81 Definitions.—As used in this part:

(6) "Interrogation" means the questioning of a firefighter by an employing agency in connection with a formal investigation or an administrative proceeding but ~~does shall~~ not include arbitration or civil service proceedings. Questioning pursuant to an informal inquiry is considered ~~shall not be deemed to be~~ an interrogation for purposes of this part.

Section 2. Subsections (2), (6), (7), and (9) of section 112.82, Florida Statutes, are amended to read:

112.82 Rights of firefighters.—Whenever a firefighter is subjected to an interrogation, such interrogation shall be conducted pursuant to the terms of this section.

(2) ~~A No~~ firefighter may not shall be subjected to interrogation without first receiving written notice in of sufficient detail of the investigation in order to reasonably apprise the firefighter of the nature of the investigation. The firefighter must shall be informed beforehand of the names of all complainants. All identifiable witnesses must be interviewed before the beginning of the interrogation of the firefighter, when possible. The complaint, all witness statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to each firefighter who is the subject of the complaint before he or she is interrogated. A firefighter may waive the rights provided under this section and provide a voluntary statement at any time after being informed of his or her right to review witness statements.

(6) The firefighter being interrogated may shall not be

Page 2 of 4

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

16-00789-19

2019494

59 subjected to offensive language; threatened with transfer,  
 60 dismissal, or disciplinary action; or offered any incentive as  
 61 an inducement to answer any questions.

62 (7) A complete record of any interrogation ~~must shall~~ be  
 63 made. ~~Such record may be electronically recorded. and~~ If a  
 64 transcript of ~~the such~~ interrogation is made, the firefighter  
 65 under investigation must receive a copy, upon request, without  
 66 charge. If the firefighter requests a copy of the transcript, it  
 67 must be provided within 72 hours, excluding weekends and  
 68 holidays, after the interrogation shall be entitled to a copy  
 69 without charge. Such record may be electronically recorded.

70 (9) ~~A No~~ firefighter ~~may not shall~~ be discharged,  
 71 disciplined, demoted, denied promotion or seniority,  
 72 transferred, reassigned, or otherwise disciplined or  
 73 discriminated against in regard to his or her employment, or be  
 74 threatened with any such treatment as retaliation for or by  
 75 reason ~~solely~~ of his or her exercise of any of the rights  
 76 granted or protected by this part.

77 Section 3. Section 112.825, Florida Statutes, is created to  
 78 read:

79 112.825 Notice of disciplinary action.—

80 (1) A dismissal, demotion, transfer, reassignment, or other  
 81 disciplinary action that might result in loss of pay or benefits  
 82 or that might otherwise be considered a punitive measure may not  
 83 be taken against a firefighter unless the firefighter is  
 84 notified of the action and the reason for the action before the  
 85 effective date of the action.

86 (2) A firefighter who is subject to disciplinary action  
 87 that consists of suspension with loss of pay, demotion, or

16-00789-19

2019494

88 dismissal, or his or her representative, must, upon request, be  
 89 given a complete copy of the investigative file, including the  
 90 final investigative report and all evidence, by the employing  
 91 agency. The firefighter must be given the opportunity to address  
 92 the findings in the final investigative report with the  
 93 employing agency before such disciplinary action is taken. The  
 94 contents of the complaint and all information obtained pursuant  
 95 to the subsequent investigation must remain confidential and  
 96 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 97 Constitution as provided under s. 119.071(2)(k), until such time  
 98 as the employing agency makes a final determination as to  
 99 whether to issue a notice of disciplinary action that consists  
 100 of suspension with loss of pay, demotion, or dismissal.

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

**COMMITTEE:** Community Affairs  
**ITEM:** SB 494  
**FINAL ACTION:** Favorable  
**MEETING DATE:** Tuesday, March 5, 2019  
**TIME:** 2:30—4:30 p.m.  
**PLACE:** 301 Senate Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
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VA=Vote After Roll Call  
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WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

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

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 436

INTRODUCER: Senator Hooper

SUBJECT: Use of Vessel Registration Fees

DATE: February 28, 2019

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Peacock | Yeatman        | CA        | <b>Favorable</b> |
| 2. |         |                | EN        |                  |
| 3. |         |                | RC        |                  |

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**I. Summary:**

Currently, any county may impose an annual registration fee on vessels registered, operated, used, or stored on waters within its jurisdiction. This fee is 50 percent of the applicable state registration fee and must be used for patrol, regulation, and maintenance of the lakes, rivers, and waters and for other boating-related activities within the county.

The bill expands the authorized uses of the county vessel registration fees to include channel and other navigational dredging, the construction, expansion, or maintenance of public boat ramps and other public water access facilities, and associated engineering and permitting costs.

**II. Present Situation:**

**Vessel Registration**

The term “vessel” is synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution<sup>1</sup> and includes every description of watercraft, barge, or airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.<sup>2</sup> Vessels operated, used, or stored on the waters of this state must be registered with the Department of Highway Safety and Motor Vehicles (DHSMV) as a commercial or recreational<sup>3</sup> vessel, unless:

- The vessel is operated, used, and stored exclusively on private lakes and ponds;
- The vessel is owned by the U.S. Government;

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<sup>1</sup> FLA. CONST. art. VII, s.1(b) provides that motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes.

<sup>2</sup> Section 327.02(46), F.S.

<sup>3</sup> Section 327.02(40), F.S., defines a “recreational vessel” as a vessel manufactured and used primarily for noncommercial purposes, or a vessel leased, rented, or chartered to a person for his or her noncommercial use.

- The vessel is used exclusively as a ship's lifeboat; or
- The vessel is non-motor-powered and less than 16 feet in length or a non-motor-powered canoe, kayak, racing shell, or rowing scull, regardless of length.<sup>4</sup>

Section 328.72(12), F.S., provides that vessel registration periods are for 12 or 24 months. An individual who owns a vessel is eligible to register the vessel for a 12 or 24 month period that begins the first day of the birth month of the owner and ends the last day of the month preceding the owner's birth month. The registration period for vessels owned by companies, corporations, governmental entities, and registrations issued to dealers and manufacturers is July 1 to June 30.<sup>5</sup>

The base registration fee for vessels is determined by the length of the vessel. The vessel registration fee for a 12-month period is as follows:<sup>6</sup>

- *Class A-1*: Less than 12 feet in length and all canoes to which propulsion motors have been attached, regardless of length: \$5.50;
- *Class A-2*: 12 feet or more and less than 16 feet in length: \$16.25;
- *Class 1*: 16 feet or more and less than 26 feet in length: \$28.75;
- *Class 2*: 26 feet or more and less than 40 feet in length: \$78.25;
- *Class 3*: 40 feet or more and less than 65 feet in length: \$127.75;
- *Class 4*: 65 feet or more and less than 110 feet in length: \$152.75;
- *Class 5*: 110 feet or more in length: \$189.75; and
- *Dealer Registration Certificate*: \$25.50.

A portion of state vessel registration fees goes to the counties, with priority given to counties with more than 35,000 registered vessels.<sup>7</sup> The portion of money going to the counties must be used for specific boating-related purposes.<sup>8</sup>

### **Local Vessel Registration Fees**

In addition to the state vessel registration fees above, any county may impose an annual registration fee on vessels registered, operated, used, or stored on waters within its jurisdiction. This fee is 50 percent of the applicable state registration fee as provided in s. 328.72(1), F.S., and not the reduced vessel registration fee specified in s. 328.72(18), F.S.<sup>9</sup> The first \$1 of every county registration fee must be remitted to the state for deposit into the Save the Manatee Trust Fund created within the Fish and Wildlife Conservation Commission.<sup>10</sup> The remaining proceeds of the optional county fee is retained by the county where the vessel is registered and is to be used for patrol, regulation, and maintenance of the lakes, rivers, and waters and for other boating-related activities within the county.<sup>11</sup> A county which imposes a vessel registration fee

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<sup>4</sup> Section 328.48(2), F.S.

<sup>5</sup> Section 328.72(12)(c)2., F.S.

<sup>6</sup> Section 328.72(1)(a), F.S.

<sup>7</sup> Section 328.72(15), F.S.

<sup>8</sup> *Id.* The dredging of channels is prohibited as a use for the money by the counties.

<sup>9</sup> State vessel registration fees are reduced for recreational vessels equipped with an emergency position-indicating radio beacon registered with the U.S. National Oceanic and Atmospheric Administration (NOAA) or whose owner owns a personal locator beacon registered with the NOAA.

<sup>10</sup> Section 328.66(1), F.S.

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



may share such proceeds with one or more municipalities within the county pursuant to an interlocal agreement to fund authorized boating-related projects.<sup>12</sup>

Currently, 15 counties have elected to impose the local vessel registration fee. The following chart<sup>13</sup> summarizes the associated revenue by county for Fiscal Year (FY) 2018-2019.

| <b>County</b>      | <b>FY 18-19</b>       |
|--------------------|-----------------------|
| Broward            | \$348,657.83          |
| Charlotte          | \$162,291.76          |
| Collier            | \$161,248.00          |
| Hardee             | \$ 4,314.81           |
| Hillsborough       | \$261,766.16          |
| Lee                | \$350,021.31          |
| Manatee            | \$137,603.99          |
| Martin             | \$145,050.98          |
| Miami-Dade         | \$575,512.73          |
| Monroe             | \$224,956.67          |
| Palm Beach         | \$270,853.06          |
| Pinellas           | \$335,436.88          |
| Polk               | \$184,755.27          |
| Sarasota           | \$153,898.38          |
| Volusia            | \$166,786.14          |
| <b>Grand Total</b> | <b>\$3,483,153.97</b> |

### Regulation of Dredging

Dredging means excavation in wetlands or other surface waters or excavation in uplands that creates wetlands or other surface waters. Filling means deposition of any material (such as sand, dock pilings or seawalls) in wetlands or other surface waters.<sup>14</sup>

Any activity on or over wetlands and other surface waters (dredging and filling) is regulated by the Department of Environmental Protection (DEP) and the five water management districts (Northwest Florida, Suwannee River, St. Johns River, Southwest Florida, and South Florida) through the Environmental Resources Permitting (ERP) program. Dredging and filling is also regulated by the federal government under a separate program administered by the U.S. Army Corps of Engineers (Corps). The process is initiated by submitting a joint (interagency) application to DEP or to one of the above water management districts. The appropriate agency is determined by a division of responsibilities specified in Operating Agreements between the agencies. Upon receipt of the application by DEP or water management district, a copy is also forwarded to the Corps to initiate the federal permitting process.<sup>15</sup>

<sup>12</sup> Section 328.66(2), F.S.

<sup>13</sup> Email from Kevin Jacobs, Deputy Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, RE: SB 436, (February 15, 2019) (Copy on file with the Senate Committee on Community Affairs).

<sup>14</sup> Department of Environmental Protection, *ERP Dredging and Filing*, available at <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/erp-dredging-and-filing> (last visited on February 15, 2019).

<sup>15</sup> *Id.*

**III. Effect of Proposed Changes:**

**Section 1** of the bill amends s. 328.66, F.S., to authorize a county to use a portion of vessel registration fees for additional purposes that may include channel and other navigational dredging, the construction, expansion, or maintenance of public boat ramps and other public water access facilities, and associated engineering and permitting costs.

**Section 2** provides that 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. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 328.66 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.

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

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February 4, 2019

SB 436

Senate Bill 436 related to use of vessel registration fees, as written would not impact the Department of Highway Safety and Motor Vehicles. The Department would continue to distribute fees per s. 328.66, F.S.

Thank you,

Kevin Jacobs  
Deputy Legislative Affairs Director  
Department of Highway Safety and Motor Vehicles  
(850) 617-3195

## THE FLORIDA SENATE

## APPEARANCE RECORD

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

3-5-2019

SB 436

Meeting Date

Bill Number (if applicable)

Topic Use of Vessel Registration Fees

Amendment Barcode (if applicable)

Name Woody Simmons

Job Title Consultant to Hopping Green and Sams

Address 119 South Monroe St

Phone 850-294-0700

Street

Tallahassee

FL

32301

Email Woodys@HGSlaw.com

City

State

Zip

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

Representing National Marine Manufacturers Association

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

By Senator Hooper

16-00829A-19

2019436\_\_

A bill to be entitled

An act relating to use of vessel registration fees; amending s. 328.66, F.S.; authorizing a portion of county or municipal vessel registration fees to be used for specified additional purposes; providing an effective date.

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

Section 1. Subsection (1) of section 328.66, Florida Statutes, is amended to read:

328.66 County and municipality optional registration fee.—

(1) A ~~Any~~ county may impose an annual registration fee on vessels registered, operated, used, or stored on the waters of this state within its jurisdiction. This fee shall be 50 percent of the applicable state registration fee as provided in s. 328.72(1) and not the reduced vessel registration fee specified in s. 328.72(18). However, the first \$1 of every registration fee imposed under this subsection shall be remitted to the state for deposit in the Save the Manatee Trust Fund created within the Fish and Wildlife Conservation Commission, and shall be used only for the purposes specified in s. 379.2431(4). All other moneys received from such fee shall be expended for the patrol, regulation, and maintenance of the lakes, rivers, and waters and for other boating-related activities of such municipality or county, which may include channel and other navigational dredging, the construction, expansion, or maintenance of public boat ramps and other public water access facilities, and associated engineering and permitting costs. A municipality that

Page 1 of 2

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

16-00829A-19

2019436\_\_

was imposing a registration fee before April 1, 1984, may continue to levy such fee, notwithstanding the provisions of this section.

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

Page 2 of 2

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

## The Florida Senate COMMITTEE VOTE RECORD

**COMMITTEE:** Community Affairs  
**ITEM:** SB 436  
**FINAL ACTION:** Favorable  
**MEETING DATE:** Tuesday, March 5, 2019  
**TIME:** 2:30—4:30 p.m.  
**PLACE:** 301 Senate Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

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

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 7014

INTRODUCER: Community Affairs Committee and Governmental Oversight and Accountability Committee

SUBJECT: Government Accountability

DATE: March 7, 2019

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

|    | ANALYST                     | STAFF DIRECTOR              | REFERENCE | ACTION                                |
|----|-----------------------------|-----------------------------|-----------|---------------------------------------|
|    | <u>Ponder</u>               | <u>McVaney</u>              |           | <b>GO Submitted as Committee Bill</b> |
| 1. | <u>Peacock</u>              | <u>Yeatman</u>              | <u>CA</u> | <b>Fav/CS</b>                         |
| 2. | <u>                    </u> | <u>                    </u> | <u>RC</u> | <u>                    </u>           |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 7014 amends various statutes to enhance government accountability and auditing processes based on recommendations noted in recent reports by the Auditor General. The bill:

- Authorizes the Governor or Commissioner of Education, or designee, to notify the Joint Legislative Auditing Committee if an entity fails to comply with certain auditing and financial reporting requirements;
- Provides definitions for the terms “abuse,” “fraud,” and “waste;”
- Adds tourist development council and county tourism promotion agency to the definition of “local government entity” to clarify that the Auditor General has authority to audit the entities;
- Removes water management districts from the definition of local government entities for the purposes audit cycles and follow-up reviews;
- Requires the Florida Clerks of Court Operations Corporation to notify the Legislature quarterly if a clerk is not meeting workload performance standards;
- Requires each agency, the judicial branch, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Guardian Ad Litem program, local governmental entities, charter schools, school districts, Florida College System institutions, and state universities to establish and maintain internal controls designed to prevent and detect fraud, waste, and abuse;



- Requires counties, municipalities, special districts, and water management districts to maintain certain budget documents on their websites for specified timeframes;
- Revises the monthly financial statement requirements for water management districts;
- Provides that the Department of Financial Services may request additional information from local government entities when preparing its annual verified report;
- Revises the membership, and restrictions thereof, for an auditor selection committee of a county, municipality, special district, district school board, charter school, or charter technical career center;
- Specifies that the definition of fraud, waste and abuse set forth in s. 2 of the bill apply to s. 1001.42, F.S.;
- Requires completion of an annual financial audit of the Florida Virtual School; and
- Requires the Florida College System and Florida State University System to comply with s. 110.1127, F.S., for employee background screenings.

## **II. Present Situation:**

Various statutes ensure government accountability of state and local governments. For example, the Auditor General conducts audits of accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Joint Legislative Auditing Committee. The Auditor General conducts operational and performance audits on public records and information technology systems. The Auditor General also reviews all audit reports of local governmental entities, charter schools, and charter technical career centers. Other statutes require publishing of government budgets and other information online and require government entities to follow certain practices to promote efficiency and compliance within the entity.

Due to the disparate issues in the bill, the “Present Situation” for each bill section is discussed below in conjunction with the “Effect of Proposed Changes.”

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

### **Legislative Oversight (Sections 1, 2, and 3)**

#### ***Present Situation***

The position of Auditor General is established by Art. III, s. 2 of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Joint Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.<sup>1</sup> The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.<sup>2</sup> At the time of appointment, the Auditor General must have been certified under the Public Accountancy Law in Florida for a period of at least 10 years and may not have less than 10 years’ experience in an accounting- or auditing-related field.<sup>3</sup>

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<sup>1</sup> Section 11.42(2), F.S.

<sup>2</sup> Section 11.42(5), F.S.

<sup>3</sup> Section 11.42(2), F.S.

The Auditor General must conduct audits, examinations, or reviews of government programs<sup>4</sup> as well as audit the accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Joint Legislative Auditing Committee.<sup>5</sup> The Auditor General conducts operational and performance audits on public records and information technology systems and reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.<sup>6</sup>

Various statutory provisions require the Auditor General to compile and submit reports. For example, the Auditor General must annually compile and transmit to the President of the Senate, the Speaker of the House of Representatives, and the Joint Legislative Auditing Committee a summary of significant findings and financial trends identified in audit reports.<sup>7</sup> The Auditor General also must compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Joint Legislative Auditing Committee an annual report by December 1. The report must include a two-year work plan identifying the audit and other accountability activities to be undertaken and a list of statutory and fiscal changes recommended by the Auditor General.<sup>8</sup> In addition, the Auditor General must transmit recommendations at other times during the year when the information would be timely and useful to the Legislature.<sup>9</sup>

The annual report for the Auditor General for November 1, 2017, through October 31, 2018, contained the following recommendation:<sup>10</sup>

The Legislature should consider amending applicable Florida Statutes to establish in law the responsibility of each state and local government for the establishment and maintenance of management systems and internal controls designed to prevent and detect fraud, waste, and abuse; promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices; support economical and efficient operations; ensure reliability of financial records and reports; and safeguard assets.

Section 11.45, F.S., defines the types of audits the Auditor General may conduct, requires certain state and local governmental audits to be conducted, and specifies the frequency with which the audits must occur. The Auditor General also may conduct other audits he or she determines to be appropriate.

Following notification by the Auditor General, the Department of Financial Services (DFS), or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with applicable auditing, financial reporting, bond issuance notification, or bond

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<sup>4</sup> Section 11.45(7), F.S.

<sup>5</sup> Section 11.45(2)(d)-(f), F.S.

<sup>6</sup> Section 11.45(7)(b), F.S.

<sup>7</sup> Section 11.45(7)(f), F.S.

<sup>8</sup> Section 11.45(7)(h), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Annual Report, Florida Auditor General, at page 9. A copy of the report can be found online at: [https://flauditor.gov/pages/pdf\\_files/annual%20report%202018.pdf](https://flauditor.gov/pages/pdf_files/annual%20report%202018.pdf) (last visited January 18, 2019).

verification provisions or the failure to disclose a financial emergency or provide information required during a financial emergency,<sup>11</sup> the Joint Legislative Auditing Committee may schedule a hearing to determine whether the entity should be subject to further state action. For purposes of s. 11.45, F.S., the term “local governmental entity” means a county agency, municipality, or special district as defined in s. 189.012, F.S.,<sup>12</sup> but does not include any housing authority established under ch. 421, F.S.

The Auditor General is also required to annually transmit, by July 15, to the President of the Senate, the Speaker of the House of Representatives, and the DFS a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and water management districts that have failed to comply with certain transparency requirements.

### ***Effect of the Bill***

**Section 1** amends s. 11.40, F.S., to authorize the Governor or his or her designee, and the Commissioner of Education or his or her designee, to notify the Joint Legislative Auditing Committee that a local governmental entity, district school board, charter school, or charter technical career center has failed to comply with applicable auditing, financial reporting, bond issuance notification, or bond verification provisions or failed to disclose a financial emergency or provide information required during a financial emergency. Upon such notification the Joint Legislative Auditing Committee may consider whether the entity should be subject to further state action.

**Section 2** amends s. 11.45, F.S., to revise the definition of the term “financial audit” and to define the terms abuse, fraud, and waste. These newly defined terms are related to the internal controls various government entities must establish and maintain to prevent and detect fraud, waste, and abuse.

This section specifically includes tourist development council and county tourism promotion agency within the definition of “local governmental entity.” With this definition, the Auditor General clearly has the authority to conduct audits or other engagements of tourist development councils and county tourism promotion agencies.

This section exempts water management districts from being subject to audits as a local government entities conducted pursuant to s. 11.45(2)(j), F.S. With this change, the districts will continue to be subject to periodic audits authorized by s. 11.45(2)(f), F.S.,<sup>13</sup> and the Auditor

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<sup>11</sup> Section 11.45, F.S., governs certain audits to be conducted by the Auditor General. Section 218.32(1), F.S., requires annual financial reports from local governmental entities. Section 218.38, F.S., requires notice of bond issuance and contains verification requirements. Section 218.503(3), F.S., requires certain entities to disclose a financial emergency and provide certain information concerning a financial emergency.

<sup>12</sup> Section 189.012(6), F.S., defines a “special district” to mean a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

<sup>13</sup> Section 11.45(2)(f), F.S., states in part that at least every three years, the Auditor General shall conduct operational audits of the accounts and records of water management districts.

General will follow up on prior audit findings at the next scheduled audit rather than 18 months after the completion of the latest audit.

This section expands the list of entities that must be included in the Auditor General report concerning entities that fail to comply with transparency requirements in s. 11.45, F.S., to include all local governmental entities rather than just the water management districts.

**Section 3** amends s. 11.47, F.S., to expand the activities that are punishable as a crime to include willful failure or refusal to provide the Auditor General access to an employee, officer, or agent of an entity as a first-degree misdemeanor punishable as provided in s. 775.082 or s. 775.083, F.S.

#### **Florida Clerks of Court Operations Corporation (Section 4)**

##### ***Present Situation***

Currently, s. 28.35, F.S., requires the Florida Clerks of Court Operations Corporation (corporation) to develop and certify a uniform system of workload measures and applicable workload standards for court-related functions as developed by the corporation and clerk workload performance in meeting the workload performance standards. These workload measures and workload performance standards must be designed to facilitate an objective determination of the performance of each clerk in accordance with minimum standards for fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and court costs. The corporation must develop the workload measures and workload performance standards in consultation with the Legislature. When the corporation finds a clerk has not met the workload performance standards, the corporation must identify the nature of each deficiency and any corrective action recommended and taken by the affected clerk of the court. The corporation must notify the Legislature of any clerk not meeting workload performance standards and provide a copy of any corrective action plans.

##### ***Effect of the Bill***

**Section 4** amends s. 28.35, F.S., to require the corporation to provide a copy of any corrective action plans for any clerk not meeting the workload performance standards within 45 days after the end of each quarter. The section is also amended to clarify that the applicable quarters end on the last day of March, June, September, and December of each year.

#### **Internal Controls to Prevent and Detect Fraud, Waste, and Abuse (Sections 5, 9, 14, 17, 18, and 20)**

##### ***Present Situation***

##### **State Agencies and the Judicial Branch**

Section 215.86, F.S., requires each state agency and the judicial branch as defined in s. 216.011, F.S., to establish and maintain management systems and controls that promote and encourage compliance; economic, efficient, and effective operations; reliability of records and reports; and safeguarding of assets. It requires accounting systems and procedures to be designed to fulfill the requirements of generally accepted accounting principles.

### Local Governmental Entities

Section 218.33, F.S., requires each local governmental entity to begin its fiscal year on October 1 and end it on September 30. Section 218.33(2), F.S., requires each local governmental entity to follow uniform accounting practices and procedures as provided by rule of DFS to assure the use of proper accounting and fiscal management by such units. Such rules must include a uniform classification of accounts.

### Charter Schools

Section 1002.33, F.S., authorizes charter schools as part of Florida's state program of education. In addition to creating charter schools, that section also imposes certain requirements on charter schools. In pertinent part, the law provides that the governing body of a charter school is responsible for:

- Ensuring that the charter school has retained a certified public accountant or auditor to perform its annual audit;
- Reviewing and approving the audit report;
- Establishing a corrective plan, if necessary;
- Monitoring a financial recovery plan to ensure compliance; and
- Participating in governance training approved by the Department of Education, which must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.<sup>14</sup>

### School Districts, Florida College System Institutions, and State Universities

Current law requires the financial records and accounts of each school district, Florida College System institution, and other institution or agency under the supervision of the State Board of Education (SBE) to be prepared and maintained as prescribed by law and rules of the SBE. The financial records and accounts of each state university under the supervision of the Board of Governors (BOG) must be prepared and maintained as prescribed by law and rules of the BOG. Rules of the SBE and rules of the BOG must incorporate the requirements of law and accounting principles generally accepted in the United States and must include a uniform classification of accounts. Each state university must annually file with the BOG financial statements prepared in conformity with these requirements. The BOG's rules must prescribe the filing deadline for the financial statements. The required financial accounts and reports must include provisions that are unique to K-12 school districts, Florida College System institutions, and state universities.<sup>15</sup>

### Justice Administrative Commission

The Justice Administrative Commission (Commission) is created in s. 43.16, F.S. As one of its duties, the Commission is charged with maintaining a central state office for administrative services and assistance on behalf of state attorneys and public defenders, the capital collateral regional counsel, the criminal conflict and civil regional counsel, and the Guardian Ad Litem Program.<sup>16</sup> Additionally, the Commission records and submits certain documents prepared by a state attorney, public defender, or criminal conflict and civil regional counsel or the Guardian Ad

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<sup>14</sup> Section 1002.33(9)(j), F.S.

<sup>15</sup> Section 1010.01, F.S.

<sup>16</sup> Section 43.16(5)(a), F.S.

Litem Program, including necessary budgets, vouchers that represent valid claims for reimbursement by the state for authorized expenses, and other things incidental to the proper administrative operation of the office, such as revenue transmittals to the Chief Financial Officer and automated systems plans.<sup>17</sup>

### ***Effect of the Bill***

**Sections 5, 9, 14, 18, and 20** amend ss. 43.16, 215.86, 218.33, 1002.33, and 1010.01, F.S., respectively, to require state agencies, the judicial branch, local governmental entities, charter schools, school districts, Florida College System institutions, state universities, the Commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program to establish and maintain internal controls designed to:

- Prevent and detect fraud, waste, and abuse, as defined in s. 11.45(1), F.S.;
- Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices;
- Support economical and efficient operations;
- Ensure reliability of financial records and reports; and
- Safeguard assets.

**Section 17** amends s. 1001.42, F.S., to specify that internal controls designed to prevent and detect fraud, waste, and abuse meet the definition provided in s. 11.45(1), F.S.

### **Online Posting of Governmental Budgets (Sections 6, 7, 8, and 16)**

#### ***Present Situation***

##### Counties and Municipalities

Counties<sup>18</sup> and municipalities<sup>19</sup> are required to post their tentative budgets on their websites two days prior to consideration of the budget at a public hearing. The final budget of a county or municipality must be posted on its website within 30 days after adoption. An amendment to a budget must be posted to the website within five days of adoption.<sup>20</sup> Current law does not specify how long these documents must remain available on the website.

##### Water Management Districts

Chapter 373, F.S., governs Florida's water resource management and authorizes the creation of water management districts, which are given taxing authority. A water management district is defined as "any flood control, resource management, or water management district" operating under the authority of ch. 373, F.S.<sup>21</sup> There are five water management districts in Florida: Northwest Florida, Suwanee River, St. Johns River, Southwest Florida, and South Florida.<sup>22</sup> Section 373.536, F.S., governs the budget process for water management districts and requires a

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<sup>17</sup> Section 43.16(5)(b), F.S.

<sup>18</sup> Section 129.03, F.S.

<sup>19</sup> Section 166.241, F.S.

<sup>20</sup> Sections 129.06(2)(f)2., 166.241(5), and 189.016(7), F.S.

<sup>21</sup> Section 373.019(23), F.S.

<sup>22</sup> Section 373.069(1), F.S.

water management district's tentative budget to be posted on the water management district's website at least two days before budget hearings are conducted. The law requires a water management district's final adopted budget to be posted on the water management district's official website within 30 days after adoption.

### ***Effect of the Bill***

**Sections 6, 7, 8, and 16** amend ss. 129.03, 129.06, 166.241, and 373.536, F.S., respectively, to require the various budgets remain accessible on a county, municipality or water management district's website for certain time periods. Specifically, a tentative budget must remain on an entity's website for at least 45 days and final budget or an adopted amendment to a budget must remain on the website for at least two years.

## **Florida Single Audit Act (Section 10)**

### ***Present Situation***

The Florida Single Audit Act, codified in s. 215.97, F.S., is designed to:

- Establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects;
- Promote sound financial management, including effective internal controls, with respect to state financial assistance administered by nonstate entities;
- Promote audit economy and efficiency by relying to the extent possible on already required audits of federal financial assistance provided to nonstate entities;
- Provide for identification of state financial assistance transactions in the state accounting records and recipient organization records;
- Promote improved coordination and cooperation within and between affected state agencies providing state financial assistance and nonstate entities receiving state assistance; and
- Ensure, to the maximum extent possible, that state agencies monitor, use, and follow-up on audits of state financial assistance provided to nonstate entities.

Pursuant to the Florida Single Audit Act, certain entities that meet the “audit threshold” requirements are subject to a state single audit or a project-specific audit. Currently, the “audit threshold” requires each nonstate entity that expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such nonstate entity to have a state single audit, or a project-specific audit, for such fiscal year. Every two years, the Auditor General, after consulting with the Executive Office of the Governor, the DFS, and all state awarding agencies, is required to review the threshold amount for requiring audits and may adjust the threshold amount.<sup>23</sup>

### ***Effect of the Bill***

**Section 10** amends s. 215.97, F.S., to allow the Auditor General to review the threshold amount for requiring audits periodically rather than every two years; however, the term “periodically” is not defined. This section also authorizes the Auditor General to recommend in its annual report to the Legislature a statutory change to revise the threshold amount.

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<sup>23</sup> Section 215.97(2)(a), F.S.

## **Transparency in Government Spending (Section 11)**

### ***Present Situation***

The Transparency Florida Act (Act), codified in s. 215.985, F.S., requires the Governor, in consultation with the appropriations committees of the House and Senate, to maintain a central website providing access to all other websites required to be linked under the Act. It also requires certain budget information, certain contract information, and minimum functionality standards to be readily available online. In pertinent part, s. 215.985(11), F.S., requires each water management district to provide a monthly financial statement to its governing board and make the statement available for public access on its website.

### ***Effect of the Bill***

**Section 11** amends s. 215.985, F.S., to require a water management district's monthly financial statement to be in the form and manner prescribed by the DFS and requires each water management district to make the monthly financial statement available to the public on its website.

## **Local Governmental Entity Annual Financial Reports (Section 13)**

### ***Present Situation***

Section 218.32, F.S., requires local governmental entities that are required to provide for an audit under s. 218.39, F.S., to submit an audit report and annual financial report to the DFS within 45 days after completion of the audit report, but no later than nine months after the end of the fiscal year. The annual financial report must be signed by the chair of the governing body and the chief financial officer of the local governmental entity. The law also specifies the information that must be included in the report.

In addition, the DFS is required to file a verified report with the Governor, the Legislature, the Auditor General, and the Special District Accountability Program of the Department of Economic Opportunity showing the revenues, both locally derived and derived from intergovernmental transfers, and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report.<sup>24</sup>

### ***Effect of the Bill***

**Section 13** amends s. 218.32, F.S., to authorize the DFS, in preparing the verified report, to request additional information from a local governmental entity. Any additional information requested must be provided to the DFS within 45 days after the request. If the local governmental entity does not comply with the request, the DFS must notify the Joint Legislative Auditing Committee, which may take action pursuant to s. 11.40(2), F.S.

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<sup>24</sup> Section 218.32(2), F.S.



## **Local Government Auditor Selection Procedures (Section 15)**

### ***Present Situation***

Section 218.391, F.S., outlines the process that each local governmental entity, district school board, charter school, or charter technical career center must follow in selecting an auditor to conduct the annual financial audit of the entity required by s. 218.39, F.S. Each entity is required to establish an audit committee to assist the governing body in selecting the auditor. The audit committee of a noncharter county must consist of each of its constitutional officers and one member of the board of county commissioners or its designee. The audit committees must publicly announce requests for proposals for the audit services. The law specifies the factors that must be considered in selecting the auditor and the procedures for negotiating for compensation.

### ***Effect of the Bill***

**Section 15** amends s. 218.391, F.S., to require each county's auditor selection committee to consist of each county officer elected pursuant to the State Constitution or the county charter, or their respective designees, and one member of the board of county commissioners or its designee. The section requires the auditor selection committee for a municipality, special district, district school board, charter school, or charter technical career center to consist of at least three members, one of whom must be a member of the governing body of the entity. That member must serve as the auditor selection committee's chair. An employee, chief executive officer, or chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may not serve as a member of an auditor selection committee; however, an employee, chief executive officer, or chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may serve in an advisory capacity.

## **The Florida Virtual School (Section 19)**

### ***Present Situation***

The Florida Virtual School was created to develop and deliver online and distance learning education.<sup>25</sup> The Commissioner of Education is charged with monitoring the Florida Virtual School. In pertinent part, the law requires the board of trustees to submit an annual report to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education (SBE) that must address:

- The operations and accomplishments of the Florida Virtual School within the state and those occurring outside the state as Florida Virtual School Global;
- The marketing and operational plan for the Florida Virtual School and Florida Virtual School Global, including recommendations regarding methods for improving the delivery of education through the Internet and other distance learning technology;
- The assets and liabilities of the Florida Virtual School and Florida Virtual School Global at the end of the fiscal year;
- A copy of an annual financial audit of the accounts and records of the Florida Virtual School and Florida Virtual School Global, conducted by an independent certified public accountant and performed in accordance with rules adopted by the Auditor General;

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<sup>25</sup> Section 1002.37(1)(a), F.S.

- Recommendations regarding the unit cost of providing services to students through the Florida Virtual School and Florida Virtual School Global; and
- Recommendations regarding an accountability mechanism to assess the effectiveness of the services provided by the Florida Virtual School and Florida Virtual School Global.<sup>26</sup>

### ***Effect of the Bill***

**Section 19** amends s. 1002.37, F.S., to require the Florida Virtual School to have an annual financial audit of its accounts and records conducted by an independent auditor who is a licensed certified public accountant. The independent auditor must conduct the audit in accordance with rules adopted by the Auditor General and must prepare an audit report in accordance with such rules. The audit report must include a written statement by the board of trustees describing corrective action to be taken in response to each of the independent auditor's recommendations. The independent auditor must submit the audit report to the board of trustees and the Auditor General no later than nine months after the end of the preceding fiscal year.

### **Employee Background Screening (Sections 21 and 22)**

#### ***Present Situation***

Currently, s. 110.1127, F.S., requires that each agency designate the positions that require background screening using level one standards and those positions that, because of the special trust or responsibility or sensitive location, require security background investigations using level two screening standards. Level one screening standards include employment history checks, statewide criminal correspondence checks and a check of the Dru Sjodin National Sex Offender Public Website by the Department of Law Enforcement.<sup>27</sup> For a level two screening, the Department of Law Enforcement performs a criminal history record check of its records and request the Federal Bureau of Investigations (FBI) to perform a national criminal history record check of its records.<sup>28</sup> According to the Department of Law Enforcement, the FBI does not allow its criminal justice information to be reviewed for a level two background investigation unless the screening is required by law.

Section 1001.60, F.S., established a system of governance for the Florida College System for the institutions identified in s. 1000.21, F.S. Likewise, state universities are governed by the Board of Governors, as provided in s. 1001.70, F.S. Current law does not specify that the Florida College System and State University System are state agencies for the purpose of s. 110.1127, F.S.

### ***Effect of the Bill***

**Sections 21 and 22** create ss. 1012.8551 and 1012.915, F.S., respectively, to apply s. 110.1127, F.S., relating to background screening requirements to the personnel of the Florida College System and the State University System. With this change, state universities and colleges are required to designate personnel for level one and level two background screenings. This statutory

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<sup>26</sup> Section 1002.37(6), F.S.

<sup>27</sup> Section 435.03(1), F.S.

<sup>28</sup> Section 435.04(1), F.S.

requirement is intended to allow background screenings requested by the State College System and the State University System to include federal information.

#### **Other Provisions (Sections 12, 23, 24, and 25)**

**Section 12** amends s. 218.31(17), F.S., to revise the definition of the term “financial audit.”

**Section 23** conforms provisions and cross-references to changes made by the bill.

**Section 24** specifies that a proper and legitimate state purpose is served when internal controls are established to prevent and detect fraud, waste, and abuse and to safeguard and account for government funds and property.

**Section 25** provides an effective date of July 1, 2019.

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

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

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and:

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

Article VII, s. 18(d) of the Florida Constitution provides, in pertinent part, that laws having insignificant fiscal impact are exempt from the mandates requirements.

This bill requires county and municipal governments to establish and maintain specified internal controls and to maintain its budgets online for a specified period. Section 23 of the bill specifies that the bill serves an important state interest. An exception may apply because the bill applies to similarly situated persons (municipalities, counties, water management districts, school districts, state agencies and other governmental entities).

In addition, the bill may be exempt from the mandates requirements if the costs incurred by the municipalities and counties to comply are \$2.1 million or less (the threshold for “insignificant”<sup>29</sup> fiscal impact for Fiscal Year 2018-2019).<sup>30</sup>

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<sup>29</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited January 29, 2019).

<sup>30</sup> Based on the Demographic Estimating Conference’s population adopted on November 5, 2018. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited January 29, 2019).

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

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

The bill does not appear to impact state or local revenues.

**C. Government Sector Impact:**

State agencies, the court system, court-related entities, local governments, district school boards, charter schools, and state colleges and universities may incur minimal costs associated with establishing and maintaining the specified internal controls.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 11.40, 11.45, 11.47, 28.35, 43.16, 112.061, 129.03, 129.06, 166.241, 215.86, 215.97, 215.985, 218.31, 218.32, 218.33, 218.39, 218.391, 218.503, 373.536, 1001.42, 1002.33, 1002.37, and 1010.01.

This bill also creates sections 1012.8551, 1012.915, and one undesignated section of Florida law.

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

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

**CS by Community Affairs on March 5, 2019:**

The committee substitute:

- Revises the definition of the term “financial audit” contained in ss. 11.45 and 218.31, F.S.
- Amends s. 218.391, F.S., regarding auditor selection committee for specified governmental entities.
- Makes technical amendment to s. 1001.42(12), F.S.

**B. Amendments:**

None.

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

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The Committee on Community Affairs (Hooper) recommended the following:

**Senate Amendment**

Delete line 172  
and insert:  
United States and government auditing standards ~~as adopted~~  
~~by~~



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The Committee on Community Affairs (Hooper) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 480 and 481  
insert:

Section 12. Subsection (17) of section 218.31, Florida  
Statutes, is amended to read

218.31 Definitions.—As used in this part, except where the  
context clearly indicates a different meaning:

(17) "Financial audit" means an examination of financial  
statements in order to express an opinion on the fairness with



523950

which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States and government auditing standards ~~as adopted by the Board of Accountancy and as prescribed by rules promulgated by the Auditor General~~. When applicable, the scope of financial audits must ~~shall~~ encompass the additional activities necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other applicable federal law.

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

And the title is amended as follows:

Delete line 39

and insert:

Management district; amending s. 218.31, F.S.;

revising the definition of financial audit;





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The Committee on Community Affairs (Hooper) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 523 - 567

and insert:

Section 14. Subsections (2), (3), and (4) of section 218.391, Florida Statutes, are amended, and subsection (9) is added to that section, to read:

218.391 Auditor selection procedures.—

(2) The governing body of a ~~charter~~ county, municipality, special district, district school board, charter school, or



553006

11 charter technical career center shall establish an auditor  
12 selection ~~audit~~ committee.

13 (a) The auditor selection committee for a ~~Each noncharter~~  
14 county must ~~shall establish an audit committee that,~~ at a  
15 minimum, ~~shall~~ consist of each of the county officers elected  
16 pursuant to the county charter or s. 1(d), Art. VIII of the  
17 State Constitution, or their respective designees ~~a designee,~~  
18 and one member of the board of county commissioners or its  
19 designee.

20 (b) The auditor selection committee for a municipality,  
21 special district, district school board, charter school, or  
22 charter technical career center must consist of at least three  
23 members. One member of the auditor selection committee must be a  
24 member of the governing body of an entity specified in this  
25 paragraph, who shall serve as the chair of the committee.

26 (c) An employee, a chief executive officer, or a chief  
27 financial officer of the county, municipality, special district,  
28 district school board, charter school, or charter technical  
29 career center may not serve as a member of an auditor selection  
30 committee established under this subsection; however, an  
31 employee, a chief executive officer, or a chief financial  
32 officer of the county, municipality, special district, district  
33 school board, charter school, or charter technical career center  
34 may serve in an advisory capacity.

35 (d) The primary purpose of the auditor selection ~~audit~~  
36 committee is to assist the governing body in selecting an  
37 auditor to conduct the annual financial audit required in s.  
38 218.39; however, the ~~audit~~ committee may serve other audit  
39 oversight purposes as determined by the entity's governing body.



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40 The public may ~~shall~~ not be excluded from the proceedings under  
41 this section.

42 (3) The auditor selection ~~audit~~ committee shall:

43 (a) Establish factors to use for the evaluation of audit  
44 services to be provided by a certified public accounting firm  
45 duly licensed under chapter 473 and qualified to conduct audits  
46 in accordance with government auditing standards as adopted by  
47 the Florida Board of Accountancy. Such factors shall include,  
48 but are not limited to, ability of personnel, experience,  
49 ability to furnish the required services, and such other factors  
50 as may be determined by the committee to be applicable to its  
51 particular requirements.

52 (b) Publicly announce requests for proposals. Public  
53 announcements must include, at a minimum, a brief description of  
54 the audit and indicate how interested firms can apply for  
55 consideration.

56 (c) Provide interested firms with a request for proposal.  
57 The request for proposal shall include information on how  
58 proposals are to be evaluated and such other information the  
59 committee determines is necessary for the firm to prepare a  
60 proposal.

61 (d) Evaluate proposals provided by qualified firms. If  
62 compensation is one of the factors established pursuant to  
63 paragraph (a), it shall not be the sole or predominant factor  
64 used to evaluate proposals.

65 (e) Rank and recommend in order of preference no fewer than  
66 three firms deemed to be the most highly qualified to perform  
67 the required services after considering the factors established  
68 pursuant to paragraph (a). If fewer than three firms respond to



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the request for proposal, the committee shall recommend such firms as it deems to be the most highly qualified.

(4) The governing body shall inquire of qualified firms as to the basis of compensation, select one of the firms recommended by the auditor selection ~~audit~~ committee, and negotiate a contract, using one of the following methods:

(a) If compensation is not one of the factors established pursuant to paragraph (3) (a) and not used to evaluate firms pursuant to paragraph (3) (e), the governing body shall negotiate a contract with the firm ranked first. If the governing body is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the governing body shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. Negotiations with the other ranked firms shall be undertaken in the same manner. The governing body, in negotiating with firms, may reopen formal negotiations with any one of the three top-ranked firms, but it may not negotiate with more than one firm at a time.

(b) If compensation is one of the factors established pursuant to paragraph (3) (a) and used in the evaluation of proposals pursuant to paragraph (3) (d), the governing body shall select the highest-ranked qualified firm or must document in its public records the reason for not selecting the highest-ranked qualified firm.

(c) The governing body may select a firm recommended by the audit committee and negotiate a contract with one of the recommended firms using an appropriate alternative negotiation



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method for which compensation is not the sole or predominant factor used to select the firm.

(d) In negotiations with firms under this section, the governing body may allow a designee to conduct negotiations on its behalf.

(9) If the entity fails to select the auditor in accordance with the requirements of subsections (3)-(6), the entity must again perform the auditor selection process in accordance with this section to select an auditor to conduct audits for subsequent fiscal years.

===== T I T L E   A M E N D M E N T =====  
And the title is amended as follows:

Delete lines 49 - 54  
and insert:  
specified purposes; amending s. 218.391, F.S.;  
revising membership, and restrictions thereof, for an  
auditor selection committee; prescribing requirements  
and procedures for selecting an auditor if certain  
conditions exist; amending s.



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The Committee on Community Affairs (Hooper) recommended the following:

**Senate Amendment**

Delete lines 639 - 641.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

3-5-19

Bill Number (if applicable)

7014

Amendment Barcode (if applicable)

553006

Topic

Government Accountability

Name

Justin Turner

Job Title

Director of Governmental

Address

Street

Phone

850-528-2209

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Florida Institute of CPAs

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 Governmental Oversight and Accountability

585-02171-19

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1 A bill to be entitled  
 2 An act relating to government accountability; amending  
 3 s. 11.40, F.S.; specifying that the Governor, the  
 4 Commissioner of Education, or the designee of the  
 5 Governor or of the commissioner, may notify the  
 6 Legislative Auditing Committee of an entity's failure  
 7 to comply with certain auditing and financial  
 8 reporting requirements; amending s. 11.45, F.S.;  
 9 revising definitions and defining the terms "abuse,"  
 10 "fraud," and "waste"; excluding water management  
 11 districts from certain audit requirements; removing a  
 12 cross-reference; authorizing the Auditor General to  
 13 conduct audits of tourist development councils and  
 14 county tourism promotion agencies; revising reporting  
 15 requirements applicable to the Auditor General;  
 16 amending s. 11.47, F.S.; specifying that any person  
 17 who willfully fails or refuses to provide access to an  
 18 employee, officer, or agent of an entity under audit  
 19 is subject to a penalty; amending s. 28.35, F.S.;  
 20 revising reporting requirements applicable to the  
 21 Florida Clerks of Court Operations Corporation;  
 22 amending s. 43.16, F.S.; revising the responsibilities  
 23 of the Justice Administrative Commission, each state  
 24 attorney, each public defender, the criminal conflict  
 25 and civil regional counsel, the capital collateral  
 26 regional counsel, and the Guardian Ad Litem Program,  
 27 to include the establishment and maintenance of  
 28 certain internal controls; amending ss. 129.03,  
 29 129.06, and 166.241, F.S.; requiring counties and

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

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30 municipalities to maintain certain budget documents on  
 31 the entities' websites for a specified period;  
 32 amending s. 215.86, F.S.; revising the purposes for  
 33 which management systems and internal controls must be  
 34 established and maintained by each state agency and  
 35 the judicial branch; amending s. 215.97, F.S.;  
 36 revising certain audit threshold requirements;  
 37 amending s. 215.985, F.S.; revising the requirements  
 38 for a monthly financial statement provided by a water  
 39 management district; amending s. 218.32, F.S.;  
 40 authorizing the Department of Financial Services to  
 41 request additional information from a local  
 42 governmental entity in preparation of an annual  
 43 report; requiring a local governmental entity to  
 44 respond to such requests within a specified timeframe;  
 45 requiring the department to notify the Legislative  
 46 Auditing Committee of noncompliance; amending s.  
 47 218.33, F.S.; requiring local governmental entities to  
 48 establish and maintain internal controls to achieve  
 49 specified purposes; amending s. 218.391, F.S.;  
 50 revising membership, and restrictions thereof, for an  
 51 audit committee; requiring an auditor to include  
 52 certain information in a management letter;  
 53 prescribing requirements and procedures for selecting  
 54 an auditor if certain conditions exist; amending s.  
 55 373.536, F.S.; deleting obsolete language; requiring  
 56 water management districts to maintain certain budget  
 57 documents on the districts' websites for specified  
 58 periods; amending s. 1001.42, F.S.; authorizing

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



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additional internal audits as directed by the district school board; amending s. 1002.33, F.S.; revising the responsibilities of the governing board of a charter school to include the establishment and maintenance of internal controls; amending s. 1002.37, F.S.; requiring completion of an annual financial audit of the Florida Virtual School; specifying audit requirements; requiring an audit report to be submitted to the board of trustees of the Florida Virtual School and the Auditor General; deleting obsolete provisions; amending s. 1010.01, F.S.; requiring each school district, Florida College System institution, and state university to establish and maintain certain internal controls; creating ss. 1012.8551 and 1012.915, F.S.; specifying applicable standards as to employee background screening and investigations of Florida College System and State University System personnel, respectively; amending s. 218.503, F.S.; conforming provisions and cross-references to changes made by the act; providing a declaration of important state interest; providing an effective date.

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

Section 1. Subsection (2) of section 11.40, Florida Statutes, is amended to read:

11.40 Legislative Auditing Committee.—

(2) Following notification by the Auditor General, the

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Department of Financial Services, ~~or~~ the Division of Bond Finance of the State Board of Administration, the Governor or his or her designee, or the Commissioner of Education or his or her designee of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within s. 11.45(5)-(7), s. 218.32(1), s. 218.38, or s. 218.503(3), the Legislative Auditing Committee may schedule a hearing to determine if the entity should be subject to further state action. If the committee determines that the entity should be subject to further state action, the committee shall:

(a) In the case of a local governmental entity or district school board, direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law. The committee shall specify the date that such action must ~~shall~~ begin, and the directive must be received by the Department of Revenue and the Department of Financial Services 30 days before the date of the distribution mandated by law. The Department of Revenue and the Department of Financial Services may implement ~~the provisions of~~ this paragraph.

(b) In the case of a special district created by:

1. A special act, notify the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight as determined by the presiding officers of each respective chamber, the legislators who represent a portion of the geographical jurisdiction of the

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special district, and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the Department of Economic Opportunity shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0651, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

2. A local ordinance, notify the chair or equivalent of the local general-purpose government pursuant to s. 189.0652 and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0652, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

3. Any manner other than a special act or local ordinance, notify the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067(3).

(c) In the case of a charter school or charter technical career center, notify the appropriate sponsoring entity, which may terminate the charter pursuant to ss. 1002.33 and 1002.34.

Section 2. Subsection (1), paragraph (j) of subsection (2), paragraph (u) of subsection (3), and paragraph (i) of subsection (7) of section 11.45, Florida Statutes, are amended, and paragraph (x) is added to subsection (3) of that section, to

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read:

11.45 Definitions; duties; authorities; reports; rules.—

(1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:

(a) "Abuse" means behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary operational practice given the facts and circumstances. The term includes the misuse of authority or position for personal gain.

(b) ~~(a)~~ "Audit" means a financial audit, operational audit, or performance audit.

(c) ~~(b)~~ "County agency" means a board of county commissioners or other legislative and governing body of a county, however styled, including that of a consolidated or metropolitan government, a clerk of the circuit court, a separate or ex officio clerk of the county court, a sheriff, a property appraiser, a tax collector, a supervisor of elections, or any other officer in whom any portion of the fiscal duties of a body or officer expressly stated in this paragraph are ~~the above are under law~~ separately placed by law.

(d) ~~(e)~~ "Financial audit" means an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with auditing standards generally accepted in the United States ~~and government auditing standards as adopted by the Board of Accountancy~~. When applicable, the scope of financial audits must ~~shall~~ encompass the additional activities

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necessary to establish compliance with the Single Audit Act Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other applicable federal law.

(e) "Fraud" means obtaining something of value through willful misrepresentation, including, but not limited to, intentional misstatements or intentional omissions of amounts or disclosures in financial statements to deceive users of financial statements, theft of an entity's assets, bribery, or the use of one's position for personal enrichment through the deliberate misuse or misapplication of an organization's resources.

(f) ~~(d)~~ "Governmental entity" means a state agency, a county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function.

(g) ~~(e)~~ "Local governmental entity" means a county agency, municipality, tourist development council, county tourism promotion agency, or special district as defined in s. 189.012. The term, ~~but~~ does not include any housing authority established under chapter 421.

(h) ~~(f)~~ "Management letter" means a statement of the auditor's comments and recommendations.

(i) ~~(g)~~ "Operational audit" means an audit whose purpose is to evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines. Operational audits must be conducted in accordance with government auditing standards. Such audits examine internal

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controls that are designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets, and identify weaknesses in those internal controls.

(j) ~~(h)~~ "Performance audit" means an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. The term includes an examination of issues related to:

1. Economy, efficiency, or effectiveness of the program.

2. Structure or design of the program to accomplish its goals and objectives.

3. Adequacy of the program to meet the needs identified by the Legislature or governing body.

4. Alternative methods of providing program services or products.

5. Goals, objectives, and performance measures used by the agency to monitor and report program accomplishments.

6. The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies.

7. Compliance of the program with appropriate policies, rules, or laws.

8. Any other issues related to governmental entities as directed by the Legislative Auditing Committee.

(k) ~~(i)~~ "Political subdivision" means a separate agency or unit of local government created or established by law and

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includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

~~(1)-(j)~~ "State agency" means a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

(m) "Waste" means the act of using or expending resources unreasonably, carelessly, extravagantly, or for no useful purpose.

(2) DUTIES.—The Auditor General shall:

(j) Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law. No later than 18 months after the release of the audit report, the Auditor General shall perform such appropriate followup procedures as he or she deems necessary to determine the audited entity's progress in addressing the findings and recommendations contained within the Auditor General's previous report. The Auditor General shall notify each member of the audited entity's governing body and the Legislative Auditing Committee of the results of his or her determination. For purposes of this paragraph, local

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governmental entities do not include water management districts.

The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit the Auditor General's discretionary authority to conduct other audits or engagements of governmental entities as authorized in subsection (3).

(3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:

(u) The Florida Virtual School ~~pursuant to s. 1002.37.~~

(x) Tourist development councils and county tourism promotion agencies.

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(i) The Auditor General shall annually transmit by July 15, to the President of the Senate, the Speaker of the House of Representatives, and the Department of Financial Services, a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and local governmental entities ~~water management districts~~ that have failed to comply with the transparency requirements as identified in the audit reports reviewed pursuant to paragraph (b) and those conducted pursuant to subsection (2).

Section 3. Subsection (3) of section 11.47, Florida Statutes, is amended to read:

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291 11.47 Penalties; failure to make a proper audit or  
 292 examination; making a false report; failure to produce documents  
 293 or information.-

294 (3) Any person who willfully fails or refuses to provide  
 295 access to an employee, officer, or agent of an entity subject to  
 296 an audit or to furnish or produce any book, record, paper,  
 297 document, data, or sufficient information necessary to a proper  
 298 audit or examination which the Auditor General or the Office of  
 299 Program Policy Analysis and Government Accountability is by law  
 300 authorized to perform commits ~~shall be guilty of~~ a misdemeanor  
 301 of the first degree, punishable as provided in s. 775.082 or s.  
 302 775.083.

303 Section 4. Paragraph (d) of subsection (2) of section  
 304 28.35, Florida Statutes, is amended to read:

305 28.35 Florida Clerks of Court Operations Corporation.-

306 (2) The duties of the corporation shall include the  
 307 following:

308 (d) Developing and certifying a uniform system of workload  
 309 measures and applicable workload standards for court-related  
 310 functions as developed by the corporation and clerk workload  
 311 performance in meeting the workload performance standards. These  
 312 workload measures and workload performance standards shall be  
 313 designed to facilitate an objective determination of the  
 314 performance of each clerk in accordance with minimum standards  
 315 for fiscal management, operational efficiency, and effective  
 316 collection of fines, fees, service charges, and court costs. The  
 317 corporation shall develop the workload measures and workload  
 318 performance standards in consultation with the Legislature. When  
 319 the corporation finds a clerk has not met the workload

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320 performance standards, the corporation shall identify the nature  
 321 of each deficiency and any corrective action recommended and  
 322 taken by the affected clerk of the court. For quarterly periods  
 323 ending on the last day of March, June, September, and December  
 324 of each year, the corporation shall notify the Legislature of  
 325 any clerk not meeting workload performance standards and provide  
 326 a copy of any corrective action plans. Such notifications must  
 327 be submitted no later than 45 days after the end of the  
 328 preceding quarterly period. As used in this subsection, the  
 329 term:

330 1. "Workload measures" means the measurement of the  
 331 activities and frequency of the work required for the clerk to  
 332 adequately perform the court-related duties of the office as  
 333 defined by the membership of the Florida Clerks of Court  
 334 Operations Corporation.

335 2. "Workload performance standards" means the standards  
 336 developed to measure the timeliness and effectiveness of the  
 337 activities that are accomplished by the clerk in the performance  
 338 of the court-related duties of the office as defined by the  
 339 membership of the Florida Clerks of Court Operations  
 340 Corporation.

341 Section 5. Present subsections (6) and (7) of section  
 342 43.16, Florida Statutes, are renumbered as subsections (7) and  
 343 (8), respectively, and a new subsection (6) is added to that  
 344 section, to read:

345 43.16 Justice Administrative Commission; membership, powers  
 346 and duties.-

347 (6) The commission, each state attorney, each public  
 348 defender, the criminal conflict and civil regional counsel, the

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349 capital collateral regional counsel, and the Guardian Ad Litem  
 350 Program shall establish and maintain internal controls designed  
 351 to:

352 (a) Prevent and detect fraud, waste, and abuse as defined  
 353 in s. 11.45(1).

354 (b) Promote and encourage compliance with applicable laws,  
 355 rules, contracts, grant agreements, and best practices.

356 (c) Support economical and efficient operations.

357 (d) Ensure reliability of financial records and reports.

358 (e) Safeguard assets.

359 Section 6. Paragraph (c) of subsection (3) of section  
 360 129.03, Florida Statutes, is amended to read:

361 129.03 Preparation and adoption of budget.—

362 (3) The county budget officer, after tentatively  
 363 ascertaining the proposed fiscal policies of the board for the  
 364 next fiscal year, shall prepare and present to the board a  
 365 tentative budget for the next fiscal year for each of the funds  
 366 provided in this chapter, including all estimated receipts,  
 367 taxes to be levied, and balances expected to be brought forward  
 368 and all estimated expenditures, reserves, and balances to be  
 369 carried over at the end of the year.

370 (c) The board shall hold public hearings to adopt tentative  
 371 and final budgets pursuant to s. 200.065. The hearings shall be  
 372 primarily for the purpose of hearing requests and complaints  
 373 from the public regarding the budgets and the proposed tax  
 374 levies and for explaining the budget and any proposed or adopted  
 375 amendments. The tentative budget must be posted on the county's  
 376 official website at least 2 days before the public hearing to  
 377 consider such budget and must remain on the website for at least

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378 45 days. The final budget must be posted on the website within  
 379 30 days after adoption and must remain on the website for at  
 380 least 2 years. The tentative budgets, adopted tentative budgets,  
 381 and final budgets shall be filed in the office of the county  
 382 auditor as a public record. Sufficient reference in words and  
 383 figures to identify the particular transactions must ~~shall~~ be  
 384 made in the minutes of the board to record its actions with  
 385 reference to the budgets.

386 Section 7. Paragraph (f) of subsection (2) of section  
 387 129.06, Florida Statutes, is amended to read:

388 129.06 Execution and amendment of budget.—

389 (2) The board at any time within a fiscal year may amend a  
 390 budget for that year, and may within the first 60 days of a  
 391 fiscal year amend the budget for the prior fiscal year, as  
 392 follows:

393 (f) Unless otherwise prohibited by law, if an amendment to  
 394 a budget is required for a purpose not specifically authorized  
 395 in paragraphs (a)-(e), the amendment may be authorized by  
 396 resolution or ordinance of the board of county commissioners  
 397 adopted following a public hearing.

398 1. The public hearing must be advertised at least 2 days,  
 399 but not more than 5 days, before the date of the hearing. The  
 400 advertisement must appear in a newspaper of paid general  
 401 circulation and must identify the name of the taxing authority,  
 402 the date, place, and time of the hearing, and the purpose of the  
 403 hearing. The advertisement must also identify each budgetary  
 404 fund to be amended, the source of the funds, the use of the  
 405 funds, and the total amount of each fund's appropriations.

406 2. If the board amends the budget pursuant to this

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paragraph, the adopted amendment must be posted on the county's official website within 5 days after adoption and must remain on the website for at least 2 years.

Section 8. Subsections (3) and (5) of section 166.241, Florida Statutes, are amended to read:

166.241 Fiscal years, budgets, and budget amendments.—

(3) The tentative budget must be posted on the municipality's official website at least 2 days before the budget hearing, held pursuant to s. 200.065 or other law, to consider such budget and must remain on the website for at least 45 days. The final adopted budget must be posted on the municipality's official website within 30 days after adoption and must remain on the website for at least 2 years. If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality is located, transmit the tentative budget and final budget to the manager or administrator of such county or counties who shall post the budgets on the county's website.

(5) If the governing body of a municipality amends the budget pursuant to paragraph (4)(c), the adopted amendment must be posted on the official website of the municipality within 5 days after adoption and must remain on the website for at least 2 years. If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality is located, transmit the adopted amendment to the manager or administrator of such county or counties who shall post the adopted amendment on the county's website.

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Section 9. Section 215.86, Florida Statutes, is amended to read:

215.86 Management systems and controls.—Each state agency and the judicial branch as defined in s. 216.011 shall establish and maintain management systems and internal controls designed to:

(1) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1). ~~that~~

(2) Promote and encourage compliance with applicable laws, rules, contracts, and grant agreements.†

(3) Support economical and ~~economic,~~ efficient, ~~and effective~~ operations.†

(4) Ensure reliability of financial records and reports.†

(5) Safeguard ~~and safeguarding of~~ assets. ~~Accounting systems and procedures shall be designed to fulfill the requirements of generally accepted accounting principles.~~

Section 10. Paragraph (a) of subsection (2) of section 215.97, Florida Statutes, is amended to read:

215.97 Florida Single Audit Act.—

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

(a) "Audit threshold" means the threshold amount used to determine when a state single audit or project-specific audit of a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such nonstate entity shall be required to have a state single audit,† or a project-specific audit,† for such fiscal year in accordance with the requirements of this section. ~~Every 2 years the Auditor General,~~ After consulting with the

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Executive Office of the Governor, the Department of Financial Services, and all state awarding agencies, the Auditor General shall periodically review the threshold amount for requiring audits under this section and may recommend any appropriate statutory change to revise the threshold amount in the annual report submitted to the Legislature pursuant to s. 11.45(7)(h) ~~adjust such threshold amount consistent with the purposes of this section.~~

Section 11. Subsection (11) of section 215.985, Florida Statutes, is amended to read:

215.985 Transparency in government spending.—

(11) Each water management district shall provide a monthly financial statement in the form and manner prescribed by the Department of Financial Services to the district's ~~its~~ governing board and make such monthly financial statement available for public access on its website.

Section 12. Subsection (2) of section 218.32, Florida Statutes, is amended to read:

218.32 Annual financial reports; local governmental entities.—

(2) The department shall annually by December 1 file a verified report with the Governor, the Legislature, the Auditor General, and the Special District Accountability Program of the Department of Economic Opportunity showing the revenues, both locally derived and derived from intergovernmental transfers, and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report. In preparing the verified report, the

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department may request additional information from the local governmental entity. The information requested must be provided to the department within 45 days after the request. If the local governmental entity does not comply with the request, the department shall notify the Legislative Auditing Committee, which may take action pursuant to s. 11.40(2). The report must include, but is not limited to:

(a) The total revenues and expenditures of each local governmental entity that is a component unit included in the annual financial report of the reporting entity.

(b) The amount of outstanding long-term debt by each local governmental entity. For purposes of this paragraph, the term "long-term debt" means any agreement or series of agreements to pay money, which, at inception, contemplate terms of payment exceeding 1 year in duration.

Section 13. Present subsection (3) of section 218.33, Florida Statutes, is renumbered as subsection (4), and a new subsection (3) is added to that section, to read:

218.33 Local governmental entities; establishment of uniform fiscal years and accounting practices and procedures.—

(3) Each local governmental entity shall establish and maintain internal controls designed to:

(a) Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

(b) Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

(c) Support economical and efficient operations.

(d) Ensure reliability of financial records and reports.

(e) Safeguard assets.



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Section 14. Subsection (2) of section 218.391, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

218.391 Auditor selection procedures.—

(2) The governing body of a ~~charter~~ county, municipality, special district, district school board, charter school, or charter technical career center shall establish an audit committee.

(a) The audit committee for a county must ~~Each noncharter county shall establish an audit committee that~~, at a minimum, ~~shall~~ consist of each of the county officers elected pursuant to the county charter or s. 1(d), Art. VIII of the State Constitution, or their respective designees ~~a designee~~, and one member of the board of county commissioners or its designee.

(b) The audit committee for a municipality, special district, district school board, charter school, or charter technical career center must consist of at least three members. One member of the audit committee must be a member of the governing body of an entity specified in this paragraph, who shall also serve as the chair of the committee.

(c) An employee, a chief executive officer, or a chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may not serve as a member of an audit committee established under this subsection.

(d) The primary purpose of the audit committee is to assist the governing body in selecting an auditor to conduct the annual financial audit required in s. 218.39; however, the audit committee may serve other audit oversight purposes as determined

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by the entity's governing body. The public may ~~shall~~ not be excluded from the proceedings under this section.

(9) (a) If the entity fails to select the auditor in accordance with the requirements of subsections (3)-(6), the entity must again perform the auditor selection process in accordance with this section to select an auditor to conduct audits for subsequent fiscal years if the original audit was performed under a multiyear contract.

(b) If performing the auditor selection process again in accordance with this section would preclude the entity from timely completing the annual financial audit required by s. 218.39, the entity must again perform the auditor selection process in accordance with this section for the subsequent annual financial audit. A multiyear contract entered into between an entity and an auditor after July 1, 2019, may not prohibit or restrict an entity from complying with the section.

Section 15. Paragraph (e) of subsection (4), paragraph (d) of subsection (5), and paragraph (d) of subsection (6) of section 373.536, Florida Statutes, are amended to read:

373.536 District budget and hearing thereon.—

(4) BUDGET CONTROLS; FINANCIAL INFORMATION.—

~~(e) By September 1, 2012,~~ Each district shall provide a monthly financial statement in the form and manner prescribed by the Department of Financial Services to the district's governing board and make such monthly financial statement available for public access on its website.

(5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND APPROVAL.—

(d) Each district shall, by August 1 of each year, submit

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581 for review a tentative budget and a description of any  
 582 significant changes from the preliminary budget submitted to the  
 583 Legislature pursuant to s. 373.535 to the Governor, the  
 584 President of the Senate, the Speaker of the House of  
 585 Representatives, the chairs of all legislative committees and  
 586 subcommittees having substantive or fiscal jurisdiction over  
 587 water management districts, as determined by the President of  
 588 the Senate or the Speaker of the House of Representatives, as  
 589 applicable, the secretary of the department, and the governing  
 590 body of each county in which the district has jurisdiction or  
 591 derives any funds for the operations of the district. The  
 592 tentative budget must be posted on the district's official  
 593 website at least 2 days before budget hearings held pursuant to  
 594 s. 200.065 or other law and must remain on the website for at  
 595 least 45 days.

596 (6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN;  
 597 WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

598 (d) The final adopted budget must be posted on the water  
 599 management district's official website within 30 days after  
 600 adoption and must remain on the website for at least 2 years.

601 Section 16. Paragraph (1) of subsection (12) of section  
 602 1001.42, Florida Statutes, as amended by chapter 2018-5, Laws of  
 603 Florida, is amended to read:

604 1001.42 Powers and duties of district school board.—The  
 605 district school board, acting as a board, shall exercise all  
 606 powers and perform all duties listed below:

607 (12) FINANCE.—Take steps to assure students adequate  
 608 educational facilities through the financial procedure  
 609 authorized in chapters 1010 and 1011 and as prescribed below:

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610 (1) *Internal auditor.*—May or, in the case of a school  
 611 district receiving annual federal, state, and local funds in  
 612 excess of \$500 million, shall employ an internal auditor. The  
 613 scope of the internal auditor shall not be restricted and shall  
 614 include every functional and program area of the school system.  
 615 1. The internal auditor shall perform ongoing financial  
 616 verification of the financial records of the school district, a  
 617 comprehensive risk assessment of all areas of the school system  
 618 every 5 years, and other audits and reviews as the district  
 619 school board directs for determining:  
 620 a. The adequacy of internal controls designed to prevent  
 621 and detect fraud, waste, and abuse as defined in s. 11.45(1).  
 622 b. Compliance with applicable laws, rules, contracts, grant  
 623 agreements, district school board-approved policies, and best  
 624 practices.  
 625 c. The efficiency of operations.  
 626 d. The reliability of financial records and reports.  
 627 e. The safeguarding of assets.  
 628 f. Financial solvency.  
 629 g. Projected revenues and expenditures.  
 630 h. The rate of change in the general fund balance.  
 631 2. The internal auditor shall prepare audit reports of his  
 632 or her findings and report directly to the district school board  
 633 or its designee.  
 634 3. Any person responsible for furnishing or producing any  
 635 book, record, paper, document, data, or sufficient information  
 636 necessary to conduct a proper audit or examination which the  
 637 internal auditor is by law authorized to perform is subject to  
 638 the provisions of s. 11.47(3) and (4).

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The internal auditor shall report directly to the district school board or its designee.

Section 17. Paragraph (j) of subsection (9) of section 1002.33, Florida Statutes, is amended to read:

1002.33 Charter schools.—

(9) CHARTER SCHOOL REQUIREMENTS.—

(j) The governing body of the charter school shall be responsible for:

1. Establishing and maintaining internal controls designed to:

a. Prevent and detect fraud, waste, and abuse as defined in s. 11.45(1).

b. Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices.

c. Support economical and efficient operations.

d. Ensure reliability of financial records and reports.

e. Safeguard assets.

2.1- Ensuring that the charter school has retained the services of a certified public accountant or auditor for the annual financial audit, pursuant to s. 1002.345(2), who shall submit the report to the governing body.

3.2- Reviewing and approving the audit report, including audit findings and recommendations for the financial recovery plan.

4.a.3.a- Performing the duties in s. 1002.345, including monitoring a corrective action plan.

b. Monitoring a financial recovery plan in order to ensure compliance.

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5.4- Participating in governance training approved by the department which must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.

Section 18. Present subsections (6) through (10) of section 1002.37, Florida Statutes, are renumbered as subsections (7) through (11), respectively, present subsection (6) is amended, and a new subsection (6) is added to that section, to read:

1002.37 The Florida Virtual School.—

(6) The Florida Virtual School shall have an annual financial audit of its accounts and records conducted by an independent auditor who is a certified public accountant licensed under chapter 473. The independent auditor shall conduct the audit in accordance with rules adopted by the Auditor General pursuant to s. 11.45 and, upon completion of the audit, shall prepare an audit report in accordance with such rules. The audit report must include a written statement by the board of trustees describing corrective action to be taken in response to each of the independent auditor's recommendations included in the audit report. The independent auditor shall submit the audit report to the board of trustees and the Auditor General no later than 9 months after the end of the preceding fiscal year.

(7)-(6) The board of trustees shall annually submit to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education the audit report prepared pursuant to subsection (6) and a complete and detailed report setting forth:

(a) The operations and accomplishments of the Florida Virtual School within the state and those occurring outside the

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697 state as Florida Virtual School Global.

698 (b) The marketing and operational plan for the Florida  
699 Virtual School and Florida Virtual School Global, including  
700 recommendations regarding methods for improving the delivery of  
701 education through the Internet and other distance learning  
702 technology.

703 (c) The assets and liabilities of the Florida Virtual  
704 School and Florida Virtual School Global at the end of the  
705 fiscal year.

706 ~~(d) A copy of an annual financial audit of the accounts and~~  
707 ~~records of the Florida Virtual School and Florida Virtual School~~  
708 ~~Global, conducted by an independent certified public accountant~~  
709 ~~and performed in accordance with rules adopted by the Auditor~~  
710 ~~General.~~

711 (d)(e) Recommendations regarding the unit cost of providing  
712 services to students through the Florida Virtual School and  
713 Florida Virtual School Global. In order to most effectively  
714 develop public policy regarding any future funding of the  
715 Florida Virtual School, it is imperative that the cost of the  
716 program is accurately identified. The identified cost of the  
717 program must be based on reliable data.

718 ~~(e)(f)~~ Recommendations regarding an accountability  
719 mechanism to assess the effectiveness of the services provided  
720 by the Florida Virtual School and Florida Virtual School Global.

721 Section 19. Subsection (5) is added to section 1010.01,  
722 Florida Statutes, to read:

723 1010.01 Uniform records and accounts.—

724 (5) Each school district, Florida College System  
725 institution, and state university shall establish and maintain

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726 internal controls designed to:

727 (a) Prevent and detect fraud, waste, and abuse as defined  
728 in s. 11.45(1).

729 (b) Promote and encourage compliance with applicable laws,  
730 rules, contracts, grant agreements, and best practices.

731 (c) Support economical and efficient operations.

732 (d) Ensure reliability of financial records and reports.

733 (e) Safeguard assets.

734 Section 20. Section 1012.8551, Florida Statutes, is created  
735 to read:

736 1012.8551 Employee background screening and investigations  
737 for Florida College System personnel.—Section 110.1127 applies  
738 to each institution in the Florida College System. Each  
739 institution must designate the positions subject to background  
740 screening and investigation pursuant to that section.

741 Section 21. Section 1012.915, Florida Statutes, is created  
742 to read:

743 1012.915 Employee background screening and investigations  
744 for State University System personnel.—Section 110.1127 applies  
745 to each institution in the State University System. Each  
746 institution must designate the positions subject to background  
747 screening and investigation pursuant to that section.

748 Section 22. Subsection (3) of section 218.503, Florida  
749 Statutes, is amended to read:

750 218.503 Determination of financial emergency.—

751 (3) Upon notification that one or more of the conditions in  
752 subsection (1) have occurred or will occur if action is not  
753 taken to assist the local governmental entity or district school  
754 board, the Governor or his or her designee shall contact the

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local governmental entity or the Commissioner of Education or his or her designee shall contact the district school board, as appropriate, to determine what actions have been taken by the local governmental entity or the district school board to resolve or prevent the condition. The information requested must be provided within 45 days after the date of the request. If the local governmental entity or the district school board does not comply with the request, the Governor or his or her designee or the Commissioner of Education or his or her designee shall notify ~~the members of~~ the Legislative Auditing Committee, which ~~who~~ may take action pursuant to s. 11.40(2) ~~11.40~~. The Governor or the Commissioner of Education, as appropriate, shall determine whether the local governmental entity or the district school board needs state assistance to resolve or prevent the condition. If state assistance is needed, the local governmental entity or district school board is considered to be in a state of financial emergency. The Governor or the Commissioner of Education, as appropriate, has the authority to implement measures as set forth in ss. 218.50-218.504 to assist the local governmental entity or district school board in resolving the financial emergency. Such measures may include, but are not limited to:

(a) Requiring approval of the local governmental entity's budget by the Governor or approval of the district school board's budget by the Commissioner of Education.

(b) Authorizing a state loan to a local governmental entity and providing for repayment of same.

(c) Prohibiting a local governmental entity or district school board from issuing bonds, notes, certificates of

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20197014

indebtedness, or any other form of debt until such time as it is no longer subject to this section.

(d) Making such inspections and reviews of records, information, reports, and assets of the local governmental entity or district school board as are needed. The appropriate local officials shall cooperate in such inspections and reviews.

(e) Consulting with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports into compliance with state requirements.

(f) Providing technical assistance to the local governmental entity or the district school board.

(g)1. Establishing a financial emergency board to oversee the activities of the local governmental entity or the district school board. If a financial emergency board is established for a local governmental entity, the Governor shall appoint board members and select a chair. If a financial emergency board is established for a district school board, the State Board of Education shall appoint board members and select a chair. The financial emergency board shall adopt such rules as are necessary for conducting board business. The board may:

a. Make such reviews of records, reports, and assets of the local governmental entity or the district school board as are needed.

b. Consult with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial

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813 procedures, and reports of the local governmental entity or the  
 814 district school board into compliance with state requirements.

815 c. Review the operations, management, efficiency,  
 816 productivity, and financing of functions and operations of the  
 817 local governmental entity or the district school board.

818 d. Consult with other governmental entities for the  
 819 consolidation of all administrative direction and support  
 820 services, including, but not limited to, services for asset  
 821 sales, economic and community development, building inspections,  
 822 parks and recreation, facilities management, engineering and  
 823 construction, insurance coverage, risk management, planning and  
 824 zoning, information systems, fleet management, and purchasing.

825 2. The recommendations and reports made by the financial  
 826 emergency board must be submitted to the Governor for local  
 827 governmental entities or to the Commissioner of Education and  
 828 the State Board of Education for district school boards for  
 829 appropriate action.

830 (h) Requiring and approving a plan, to be prepared by  
 831 officials of the local governmental entity or the district  
 832 school board in consultation with the appropriate state  
 833 officials, prescribing actions that will cause the local  
 834 governmental entity or district school board to no longer be  
 835 subject to this section. The plan must include, but need not be  
 836 limited to:

837 1. Provision for payment in full of obligations outlined in  
 838 subsection (1), designated as priority items, which are  
 839 currently due or will come due.

840 2. Establishment of priority budgeting or zero-based  
 841 budgeting in order to eliminate items that are not affordable.

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842 3. The prohibition of a level of operations which can be  
 843 sustained only with nonrecurring revenues.

844 4. Provisions implementing the consolidation, sourcing, or  
 845 discontinuance of all administrative direction and support  
 846 services, including, but not limited to, services for asset  
 847 sales, economic and community development, building inspections,  
 848 parks and recreation, facilities management, engineering and  
 849 construction, insurance coverage, risk management, planning and  
 850 zoning, information systems, fleet management, and purchasing.

851 Section 23. The Legislature finds that a proper and  
 852 legitimate state purpose is served when internal controls are  
 853 established to prevent and detect fraud, waste, and abuse and to  
 854 safeguard and account for government funds and property.  
 855 Therefore, the Legislature determines and declares that this act  
 856 fulfills an important state interest.

857 Section 24. This act shall take effect July 1, 2019.

**COMMITTEE:** Community Affairs  
**ITEM:** SB 7014  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, March 5, 2019  
**TIME:** 2:30—4:30 p.m.  
**PLACE:** 301 Senate Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

**COMMITTEE:** Community Affairs  
**ITEM:** SB 7014  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, March 5, 2019  
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[illegible]

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

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/CS/SB 246

INTRODUCER: Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senator Hooper

SUBJECT: Public Construction

DATE: March 6, 2019

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

|    | ANALYST                     | STAFF DIRECTOR              | REFERENCE | ACTION                      |
|----|-----------------------------|-----------------------------|-----------|-----------------------------|
| 1. | <u>Ponder</u>               | <u>McVaney</u>              | <u>GO</u> | <u>Fav/CS</u>               |
| 2. | <u>Toman</u>                | <u>Yeatman</u>              | <u>CA</u> | <u>Fav/CS</u>               |
| 3. | <u>                    </u> | <u>                    </u> | <u>AP</u> | <u>                    </u> |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 246 reduces the amount (referred to as retainage<sup>1</sup>) a state or local governmental entity may withhold from payment to a contractor for construction services. The retainage amount is reduced from 10 percent to 5 percent for construction projects until the project is at least 50-percent complete. The bill also reduces the retainage from 5 percent to 2.5 percent for construction projects after the project has reached 50-percent completion. These changes will have a positive fiscal impact on the private sector contractors who will receive a higher percentage of payment as work is completed for construction services.

The bill revises the requirements for Department of Management Services' rules governing certain contracts to align with the reduced retainage cap.

The bill provides the act does not apply to any contract for construction services entered into or pending approval by a public entity or to any construction services project advertised for bid by the public entity, on or before July 1, 2019. Additionally, the bill specifies that the amendments to sections 255.05 and 255.078, F.S., made by this act do not apply to contracts executed under ch. 337, F.S.

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<sup>1</sup> The term "retainage" means a "percentage of what a landowner pays a contractor, withheld until the construction has been satisfactorily completed and all mechanic's liens are released or have expired." BLACK'S LAW DICTIONARY (10<sup>th</sup> ed. 2014)

The state and local governments may incur additional costs as a result of the reduced retainage cap if a contractor or subcontractor fails to adequately perform construction services as contracted.

The bill takes effect July 1, 2019.

## **II. Present Situation:**

### **Public Construction Project Bonds**

Section 255.05, F.S., requires any person contracting with the state or any local government, or other public authority, for construction or repair of a public building, must provide a payment and performance bond. The bond is conditioned upon the contractor's timely performance and prompt payment to all subcontractors or materialmen.<sup>2</sup> The section was created to afford protection to the laborers and materialmen who cannot perfect a mechanic's lien on public property.<sup>3</sup> The public, who is, in effect, the owner of the public works project, is also protected by the payment and performance bond requirements. The payment portion of the bond provides the surety insurer's undertaking to guarantee prompt payment to all subcontractors and materialmen, and the performance bond ensures full performance.<sup>4</sup>

Contracts for construction services with the state in the amount of \$100,000 or less are specifically exempted from the requirement of a payment and performance bond.<sup>5</sup> Additionally, the Secretary of the Department of Management Services may delegate authority to state agencies to exempt payment and performance bond for projects more than \$100,000 but not more than \$200,000.<sup>6</sup> When the construction services are for a county, city, political subdivision, or public authority, the official or board awarding the contract for \$200,000 or less has the discretion to exempt such project from the execution of the payment and performance bond.<sup>7</sup>

The Department of Management Services is charged with adopting rules with respect to all contracts in the amount of \$200,000 or less, to provide procedures for retainage of each request for payment submitted by a contractor for the first half of the contract and procedures for determining disbursements from the retainage for claims made by subcontractors or materialmen.<sup>8</sup>

Section 337.18, F.S., requires a successful bidder for a Department of Transportation construction or maintenance contract to obtain a surety. This section also provides for department project bonds. Section 337.18(1)(f), F.S., specifies that s. 255.05, F.S., is not applicable to the statutory bonds issued pursuant to this section.

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<sup>2</sup> Section 255.05(1)(c), F.S.

<sup>3</sup> *American Home Assurance Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 363 (Fla. 2005) (citation omitted).

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

<sup>5</sup> Section 255.05(1)(d), F.S.

<sup>6</sup> *Id.*; See Rule 60D-50041, F.A.C.

<sup>7</sup> Section 255.05(1)(d), F.S.

<sup>8</sup> Section 255.05(1)(f), F.S.

## **The Florida Prompt Payment Act and the Local Government Prompt Payment Act**

Sections 255.0705 through 255.078, F.S., known as the Florida Prompt Payment Act, govern the timely payment for construction services by the state.<sup>9</sup> Local governmental entities as defined under s. 218.72, F.S., are specifically excluded from the application of those sections.

Additionally, contracts or work performed for the Department of Transportation are specifically excluded from the definition of “construction services” under the Florida Prompt Payment Act.<sup>10</sup>

Part VII of ch. 218, F.S., is known as The Local Government Prompt Payment Act and governs local governmental entities<sup>11</sup> in contracting for public construction projects. The stated purpose of the Local Government Prompt Payment Act is to provide for the prompt payments by local governmental entities, interest on late payments, and a dispute resolution process.<sup>12</sup> The Local Government Prompt Payment Act states that it is the policy of this state that “payment for all purchases by local governmental entities be made in a timely manner.”<sup>13</sup>

## **Public Construction Retainage**

Retainage is a common construction contracting practice whereby a certain percentage of payment is withheld by the project owner from the general contractor and, in turn, by the general contractor from the subcontractors, to ensure satisfactory completion of the project.<sup>14</sup> Both the Florida Prompt Payment Act and Local Government Prompt Payment Act (collectively, the “Prompt Payment Acts”) provide caps on the amount of retainage that may be withheld by a state and local governmental entity. Under the Prompt Payment Acts, up to 10 percent may be withheld by the state or local governmental entity from each progress payment made to the contractor until 50-percent completion of the services.<sup>15</sup> After 50-percent completion, the amount of retainage withheld by the state or local governmental entity may not exceed 5 percent.<sup>16</sup> The term “50-percent completion” has the meaning provided by contract between the state and the contractor, or, if not defined by contract, the point at which the state has expended 50 percent of the total cost of the construction services purchased.<sup>17</sup>

The Prompt Payment Acts specifically provide that state and local governmental entities are not prohibited from contracting with a contractor to withhold a retainage of less than 10 percent of each progress payment, from incrementally reducing the retainage amount, or from releasing, at

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<sup>9</sup> Section 255.073, F.S., defines public entity to mean “the state, or any office, board, bureau, commission, department, branch, division, or institution thereof.”

<sup>10</sup> Section 255.072(2), F.S.

<sup>11</sup> Section 218.72, F.S., for purposes of the Local Prompt Payment Act, defines “local governmental entity” as a “county or municipal government, school board, school district, authority, special taxing district, other political subdivision, or any office, board, bureau, commission, department, branch, division, or institution thereof.”

<sup>12</sup> Section 218.71, F.S.

<sup>13</sup> *Id.*

<sup>14</sup> See OPPAGA *Special Review: Inflexibility in Contracting and Retainage Practices Could Hurt Construction Industry*, Report No. 00-26, December 2000. Available online at <http://www.oppaga.state.fl.us/reports/pdf/0026rpt.pdf>. (Last visited February 13, 2019.)

<sup>15</sup> Sections 278.078(1) and 218.735(8)(a), F.S.

<sup>16</sup> Sections 255.078(2) and 218.735(8)(b), F.S.

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

any point, any portion of retainage held that is attributable to labor, services or materials supplied for the project.<sup>18</sup>

In accordance with bond requirements found in s. 255.05(1)(f), F.S., Department of Management Services Rule 60D-50041(2), FAC., provides for procedures in instances where a payment and performance bond are not required for a public construction project and requires, in a case where the contractor defaults, the claims made for unpaid bills by laborers, materialmen, and subcontractors of the project be paid from the ten percent (10%) retainage on a pro rata basis.

### III. Effect of Proposed Changes

The bill modifies the retainage cap for public construction projects.

**Section 1** amends s. 218.735, F.S., to reduce the retainage cap a local governmental entity may withhold for construction services from 10 percent to 5 percent for the first portion of the contract, until 50-percent completion. This section also revises the retainage cap from 5 percent to 2.5 percent after 50-percent of the construction services are completed.

**Section 2** amends s. 255.05, F.S., to align with the new lower retainage amounts provided in sections 1 and 3 of the bill. The change in the retainage cap revises requirements for the Department of Management Services' rules for contracts under \$200,000.

**Section 3** revises s. 255.078, F.S., to reduce the retainage cap the state may withhold in a contract for construction services from 10 percent to 5 percent for the first portion of the contract, until 50-percent completion. This section also revises the retainage cap from 5 percent to 2.5 percent after 50 percent of the construction services are completed.

**Section 4** specifies that the act does not apply to any contract which is entered into or pending approval by a public entity as defined in s. 255.072, F.S., or by a local government entity as defined in s. 218.72, F.S., or to any construction services project advertised for bid by the public entity or local government entity, on or before July 1, 2019. This section also provides that the changes made in ss. 255.05 and 255.078, F.S., by this act do not apply to contracts executed under ch. 337, F.S.

**Section 5** provides that the bill takes effect July 1, 2019.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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<sup>18</sup> Sections 255.078(5) and 218.735(8)(e), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

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

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The reduction in the retainage cap will likely provide a positive fiscal impact for contractors and subcontractors because it provides a more timely payment of a larger percentage of work performed and invoiced.

C. Government Sector Impact:

The state or local governmental entity may incur additional costs as a result of the reduced retainage cap if a contractor or subcontractor fails to adequately perform construction services as contracted. The state or local governmental entity is not required to withhold retainage for construction services; rather, retainage, in most instances, functions as a secondary security device, supplementing the payment and performance bond. For construction services contracts where a payment or performance bond is not required, the lowered retainage cap potentially may not provide adequate leverage to protect the investment by the state or local governmental entity.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 218.735, 255.05 and 255.078 of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS by Community Affairs on March 5, 2019:**

Provides that the non-applicability of the act to specified date-certain contracts also applies to a local government entity as defined in s. 218.72, F.S.

**CS by Governmental Oversight and Accountability on February 12, 2019:**

The committee substitute expands the bill to apply the reduced retainage cap to local governmental entities. It also clarifies that the amendments to ss. 255.05 and 255.078, F.S., made by this act do not apply to contracts executed under ch. 337, F.S.

- B. **Amendments:**

None.



772792

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 03/06/2019 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Community Affairs (Hooper) recommended the following:

**Senate Amendment**

Delete lines 183 - 187  
and insert:

Section 4. (1) This act does not apply to any contract for construction services which is entered into or is pending approval by a public entity, as defined in s. 255.072, Florida Statutes, or by a local governmental entity, as defined in s. 218.72, Florida Statutes, or to any construction services project advertised for bid by the public entity or local



772792

11 governmental entity, on or before July 1, 2019.



THE FLORIDA SENATE

# APPEARANCE RECORD

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

3/5/2019  
Meeting Date

246  
Bill Number (if applicable)

Public Construction  
Topic

Amendment Barcode (if applicable)

Jeff Branch  
Name

Legislative Advocate  
Job Title

Address

Phone 761-3701

Tallahassee FL 32302  
Street City State Zip

John@ofc.hca  
Email

Speaking: ☐ For ☐ Against ☐ Information

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

Florida League of Cities  
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.

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

03/05/2019

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

246

Meeting Date

Bill Number (if applicable)

Topic Impact Fees

Amendment Barcode (if applicable)

Name Warren Husband

Job Title \_\_\_\_\_

Address PO Box 10909

Phone (850) 205-9000

*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 Fla. Associated General Contractors Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3/5/14

Bill Number (if applicable) 216

Topic Public Construction

Amendment Barcode (if applicable) \_\_\_\_\_

Name Frank Bernardino

Job Title Partner

Address 201 W. Park Ave. Suite 100

Phone 561/718-2345

City Valhalla, NY State FL Zip 32301

Email frank.bernardino@florida.com

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

Representing Polk 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

3/5/19

Bill Number (if applicable)

58246

Amendment Barcode (if applicable)

Topic

Pub. Construction

Name

Bruce Kershner

Job Title

Address

231 West Bay Ave

Phone

407 830 1882

Street

Longwood

State

FL 32230

Zip

Email

BKershner@att-net

Speaking:

☐ For

☐ Against

☐ Information

Waive Speaking:

☒ In Support

☐ Against

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

Representing

Southwest Glass 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)

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810

Phone 305-979-7110

Street

MIAMI

FL

33128

Email JMM2@MIAMIDADE.GOV

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

3/5/19  
Meeting Date

SB 246  
Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Buddy DeWitt

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)

Meeting Date 3/5/19

Bill Number (if applicable) 246

Topic Public Construction

Amendment Barcode (if applicable) \_\_\_\_\_

Name Scott Jenkins

Job Title Lobbyist

Address 113 E. College Ave Suite 200

Phone 850-661-0829

Street Alhambra City FL State FL Zip 32312

Email scott@colsonmfg.com

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

Representing National Utility Contractors Association 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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date 3/5/19

Bill Number (if applicable) 246

Topic Public Construction

Amendment Barcode (if applicable) \_\_\_\_\_

Name Carol Bowen

Job Title Chief Lobbyist

Address 3330 Coconut Creek Parkway, Suite

Phone 954-4605-6811

City Coconut Creek State FL Zip 33066

Email cbowen@cbowenandfonda.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 Governmental Oversight and Accountability;  
and Senator Hooper

585-02352-19

2019246c1

A bill to be entitled

An act relating to public construction; amending s. 218.735, F.S.; revising the amounts of retainage that local governmental entities and contractors may withhold from progress payments for any construction services contract; amending s. 255.05, F.S.; revising requirements for Department of Management Services rules governing certain contracts; amending s. 255.078, F.S.; revising the amounts of retainage that certain public entities and contractors may withhold from progress payments for any construction services contract; specifying nonapplicability of the act; providing an effective date.

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

Section 1. Subsection (8) of section 218.735, Florida Statutes, is amended to read:

218.735 Timely payment for purchases of construction services.—

(8) (a) With regard to any contract for construction services, a local governmental entity may withhold from each progress payment made to the contractor an amount not exceeding 5 ~~40~~ percent of the payment as retainage until 50-percent completion of such services.

(b) After 50-percent completion of the construction services purchased pursuant to the contract, the local governmental entity must reduce to 2.5 ~~5~~ percent the amount of retainage withheld from each subsequent progress payment made to

Page 1 of 7

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

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2019246c1

the contractor. For purposes of this subsection, the term "50-percent completion" has the meaning set forth in the contract between the local governmental entity and the contractor or, if not defined in the contract, the point at which the local governmental entity has expended 50 percent of the total cost of the construction services purchased as identified in the contract together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in the contract. However, notwithstanding this subsection, a municipality having a population of 25,000 or fewer, or a county having a population of 100,000 or fewer, may withhold retainage in an amount not exceeding 5 ~~40~~ percent of each progress payment made to the contractor until final completion and acceptance of the project by the local governmental entity.

(c) After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may elect to withhold retainage from payments to its subcontractors at a rate higher than 2.5 ~~5~~ percent. The specific amount to be withheld must be determined on a case-by-case basis and must be based on the contractor's assessment of the subcontractor's past performance, the likelihood that such performance will continue, and the contractor's ability to rely on other safeguards. The contractor shall notify the subcontractor, in writing, of its determination to withhold more than 2.5 ~~5~~ percent of the progress payment and the reasons for making that determination, and the contractor may not request the release of such retained funds from the local governmental entity.

(d) After 50-percent completion of the construction

Page 2 of 7

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

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services purchased pursuant to the contract, the contractor may present to the local governmental entity a payment request for up to one-half of the retainage held by the local governmental entity. The local governmental entity shall promptly make payment to the contractor, unless the local governmental entity has grounds, pursuant to paragraph (f), for withholding the payment of retainage. If the local governmental entity makes payment of retainage to the contractor under this paragraph which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor shall timely remit payment of such retainage to those subcontractors and suppliers.

(e) This section does not prohibit a local governmental entity from withholding retainage at a rate less than 5 ~~10~~ percent of each progress payment, from incrementally reducing the rate of retainage pursuant to a schedule provided for in the contract, or from releasing at any point all or a portion of any retainage withheld by the local governmental entity which is attributable to the labor, services, or materials supplied by the contractor or by one or more subcontractors or suppliers. If a local governmental entity makes any payment of retainage to the contractor which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor shall timely remit payment of such retainage to those subcontractors and suppliers.

(f) This section does not require the local governmental entity to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, or otherwise the subject of a claim or demand by the

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local governmental entity or contractor.

(g) The time limitations set forth in this section for payment of payment requests apply to any payment request for retainage made pursuant to this section.

(h) Paragraphs (a)-(d) do not apply to construction services purchased by a local governmental entity which are paid for, in whole or in part, with federal funds and are subject to federal grantor laws and regulations or requirements that are contrary to any provision of the Local Government Prompt Payment Act.

(i) This subsection does not apply to any construction services purchased by a local governmental entity if the total cost of the construction services purchased as identified in the contract is \$200,000 or less.

Section 2. Paragraph (f) of subsection (1) of section 255.05, Florida Statutes, is amended to read:

255.05 Bond of contractor constructing public buildings; form; action by claimants.—

(1) A person entering into a formal contract with the state or any county, city, or political subdivision thereof, or other public authority or private entity, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work or before recommencing the work after a default or abandonment, to execute and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. A public entity may not require a contractor to secure a surety bond

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under this section from a specific agent or bonding company.

(f) The Department of Management Services shall adopt rules with respect to all contracts for \$200,000 or less, to provide:

1. Procedures for retaining up to 5 ~~10~~ percent of each request for payment submitted by a contractor and procedures for determining disbursements from the amount retained on a pro rata basis to laborers, materialmen, and subcontractors, as defined in s. 713.01.

2. Procedures for requiring certification from laborers, materialmen, and subcontractors, as defined in s. 713.01, before final payment to the contractor that such laborers, materialmen, and subcontractors have no claims against the contractor resulting from the completion of the work provided for in the contract.

The state is not liable to any laborer, materialman, or subcontractor for any amounts greater than the pro rata share as determined under this section.

Section 3. Subsections (1), (2), (3), and (5) of section 255.078, Florida Statutes, are amended to read:

255.078 Public construction retainage.—

(1) With regard to any contract for construction services, a public entity may withhold from each progress payment made to the contractor an amount not exceeding 5 ~~10~~ percent of the payment as retainage until 50-percent completion of such services.

(2) After 50-percent completion of the construction services purchased pursuant to the contract, the public entity must reduce to 2.5 ~~5~~ percent the amount of retainage withheld

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from each subsequent progress payment made to the contractor.

For purposes of this section, the term "50-percent completion" means the definition that is provided ~~has the meaning set forth~~ in the contract between the public entity and the contractor or, if not defined in the contract, the point at which the public entity has expended 50 percent of the total cost of the construction services purchased as identified in the contract together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in the contract.

(3) After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may elect to withhold retainage from payments to its subcontractors at a rate higher than 2.5 ~~5~~ percent. The specific amount to be withheld must be determined on a case-by-case basis and must be based on the contractor's assessment of the subcontractor's past performance, the likelihood that such performance will continue, and the contractor's ability to rely on other safeguards. The contractor shall notify the subcontractor, in writing, of its determination to withhold more than 2.5 ~~5~~ percent of the progress payment and the reasons for making that determination, and the contractor may not request the release of such retained funds from the public entity.

(5) ~~Neither~~ This section and ~~nor~~ s. 255.077 do not prohibit ~~prohibits~~ a public entity from withholding retainage at a rate less than 5 ~~10~~ percent of each progress payment, from incrementally reducing the rate of retainage pursuant to a schedule provided for in the contract, or from releasing at any point all or a portion of any retainage withheld by the public

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entity which is attributable to the labor, services, or materials supplied by the contractor or by one or more subcontractors or suppliers. If a public entity makes any payment of retainage to the contractor which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor ~~must~~ ~~shall~~ timely remit payment of such retainage to those subcontractors and suppliers.

Section 4. (1) This act does not apply to any contract for construction services which is entered into or is pending approval by a public entity, as defined in s. 255.072, Florida Statutes, or to any construction services project advertised for bid by the public entity, on or before July 1, 2019.

(2) The amendments made to ss. 255.05 and 255.078, Florida Statutes, by this act do not apply to contracts executed under chapter 337, Florida Statutes.

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

**COMMITTEE:** Community Affairs  
**ITEM:** CS/SB 246  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, March 5, 2019  
**TIME:** 2:30—4:30 p.m.  
**PLACE:** 301 Senate Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

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

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 144

INTRODUCER: Senator Gruters

SUBJECT: Impact Fees

DATE: March 4, 2019

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Toman   | Yeatman        | CA        | <b>Favorable</b> |
| 2. | _____   | _____          | FT        | _____            |
| 3. | _____   | _____          | AP        | _____            |

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## I. Summary:

SB 144 requires that the collection of an impact fee occur no earlier than the issuance of a property's building permit. The bill also codifies the 'dual rational nexus test' for impact fees as articulated in case law. This test requires an impact fee to have a reasonable connection, or rational nexus, between 1) the proposed new development and the need and the impact of additional capital facilities and, 2) the expenditure of funds and the benefits accrued to the proposed new development.

Additional conditions of the bill include earmarking impact fee funds for capital facilities that benefit new residents and prohibiting the use of impact fee revenues to pay existing debt unless specific conditions are met. The bill deems that certain statutory provisions related to impact fees do not apply to water and sewer connection fees.

## II. Present Situation:

### Local Government Authority

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

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<sup>1</sup> FLA. CONST. art. VIII, s. 1(f).

<sup>2</sup> FLA. CONST. art. VIII, s. 1(g).

<sup>3</sup> FLA. CONST. art. VIII, s. 2(b). See also s. 166.021(1), F.S.

Unlike counties or municipalities, independent special districts do not possess home rule power. Therefore, the powers possessed by independent special districts are those expressly provided by, or which can be reasonably implied from, the special district's charter or by general law.<sup>4</sup>

### **Local Government Revenue Sources Based on Home Rule Authority<sup>5</sup>**

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,<sup>6</sup> regulatory fees, and special assessments<sup>7</sup> to pay the cost of providing a facility or service or regulating an activity. Each fee imposed under a local government's home rule powers should be analyzed in the context of requirements established in Florida case law that are applicable to its validity.

Regulatory fees are home rule revenue sources that may be imposed pursuant to a local government's police powers in the exercise of a sovereign function. Examples of regulatory fees include building permit fees, impact fees, inspection fees, and storm water fees. Two principles guide the application and use of regulatory fees. The fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.

Special districts do not possess home rule powers; therefore, special districts may impose only those taxes, assessments, or fees authorized by special or general law.<sup>8</sup>

### **Impact Fees**

As one type of regulatory fee, impact fees are charges imposed by local governments against new development to provide for capital facilities' costs made necessary by such growth.<sup>9</sup> Examples of capital facilities include the provision of additional water and sewer systems, schools,<sup>10</sup> libraries, parks and recreational facilities. Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

In 2017, the most recent year for which the Office of Economic and Demographic Research (EDR) has impact fee data, 35 counties reported impact fee revenues totaling \$629.1 million, 194

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<sup>4</sup> Section 189.031, F.S. See also *State ex rel. City of Gainesville v. St. Johns River Water Mgmt. Dist.*, 408 So. 2d 1067 (Fla. 1st DCA 1982).

<sup>5</sup> Office of Economic and Demographic Research, The Florida Legislature, *2018 Local Government Financial Handbook*, 9-13, available at <http://edr.state.fl.us/Content/local-government/reports/lgh18.pdf> (last visited Jan. 10, 2019).

<sup>6</sup> Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees.

<sup>7</sup> Special assessments are typically used to construct and maintain capital facilities or to fund certain services.

<sup>8</sup> See ch. 189, F.S. See also State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *The Local Government Formation Handbook 2018-2020*, 70, available at <http://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=3025> (last visited Jan. 10, 2019).

<sup>9</sup> See *supra* note 5.

<sup>10</sup> *Id.* With respect to a school impact fee, the fee is imposed by the respective board of county commissioners at the request of the school board. The fee amount is usually determined after a study of the actual impact/costs of new residential construction on the school district has been made.

cities reported impact fee revenues of \$279.7 million, and 28 school districts reported impact fee revenues of 329.7 million.<sup>11</sup>

### **Florida Impact Fee Act**

In response to local governments' reliance on impact fees and the growth of impact fee collections, the Legislature adopted the Florida Impact Fee Act in 2006, which requires local governing authorities to satisfy certain requirements when imposing impact fees.<sup>12</sup> The Act was amended in 2009 to impose new restrictive rules on impact fees by requiring local governments to shoulder the burden of proof when an impact fee is challenged in court and prohibiting the judiciary from giving deference to local government impact fee determinations.<sup>13</sup>

Section 163.31801(3), F.S., provides requirements and procedures for the adoption of an impact fee. An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

- Require that the calculation of the impact fee be based on the most recent and localized data;
- Provide for accounting and reporting of impact fee collections and expenditures. If a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund;
- Limit administrative charges for the collection of impact fees to actual costs; and
- Require that notice be provided at least 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.

### **Dual Rational Nexus Test**

While s. 163.31801, F.S., outlines many characteristics and limitations of impact fees, case law serves an integral role in the impact fee process in Florida. As developed under case law, an impact fee imposed by a local government should meet the 'dual rational nexus test' in order to withstand legal challenge.<sup>14</sup> A number of court decisions have addressed the dual rational nexus test and challenges to the legality of impact fees.<sup>15</sup>

In *Hollywood, Inc. v. Broward County*,<sup>16</sup> the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if (1) it offsets reasonable needs that are sufficiently attributable to the new development and (2) the fees collected are adequately earmarked for the

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<sup>11</sup> Office of Economic and Demographic Research, The Florida Legislature, *Impact Fees*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm> (last visited Jan.10, 2019).

<sup>12</sup> Section 163.31801, F.S.

<sup>13</sup> Chapter 2009-49, L.O.F., creates a "preponderance of the evidence" standard of review placing the burden of proof on the local government to show that the imposition or amount of an impact fee meets the requirement of case law and s. 163.31801, F.S.

<sup>14</sup> See *supra* note 4.

<sup>15</sup> See, e.g., *Contractors & Builders Ass'n v. City of Dunedin*, 329 So.2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So.2d 140 (Fla. 4th DCA 1983).

<sup>16</sup> *Hollywood, Inc. v. Broward County*, 431 So.2d 606 (Fla. 4th DCA 1983).



acquisition of capital assets that will benefit the residents of the new development.<sup>17</sup> In order to show the impact fee meets those requirements, the local government must demonstrate a rational relationship between the need for additional capital facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.<sup>18</sup>

In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when a residential development has no potential to increase school enrollment, public school impact fees may not be imposed.<sup>19</sup> The county in that case had imposed a school impact fee on a deed-restricted community for adults 55 years old and older. In *City of Zephyrhills v. Wood*, the Second District Court of Appeal upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.<sup>20</sup>

As developed under case law, an impact fee must have the following characteristics to be legal:

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for public facilities;
- The fee represents a proportionate share of the cost of public facilities needed to serve new development;
- The fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- The fee is a one-time charge, although collection may be spread over a period of time;
- The fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions toward the cost of the increased capacity for public facilities.<sup>21</sup>

### **Timing of Collection for Impact Fees**

Florida Statutes do not specify when a local government must collect impact fees. As a result, the applicable local government makes this decision, and the time of collection varies.<sup>22</sup> For example, in Orange County, residential impact fees are due when the building permit is issued, although the county allows the fees to be deferred in certain circumstances.<sup>23</sup> In contrast, in

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<sup>17</sup> *Id.* at 611.

<sup>18</sup> *Id.* at 611-12.

<sup>19</sup> *Volusia County v. Aberdeen at Ormond Beach*, 760 So.2d 126, 134 (Fla. 2000).

<sup>20</sup> *City of Zephyrhills v. Wood*, 831 So.2d 223, 225 (Fla. 2d DCA 2002).

<sup>21</sup> Committee on Community Affairs, The Florida Senate, *Impact Fees*, 4 (Issue Brief 2010-310) (Sept. 2009), available at [http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-310ca.pdf](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-310ca.pdf) (last visited Jan. 7, 2019).

<sup>22</sup> Common benchmark development actions include plat approval, building permitting, and certificate of occupancy. A 2015 national impact fee study by Duncan Associates entitled *State Impact Fee Enabling Acts* identified 29 states with impact fee enabling acts. The study found that “about one-third of enabling acts allow impact fees to be collected at any time during the development process. Most of the others provide that impact fees cannot be collected prior to the building permit or certificate of occupancy.” See [http://impactfees.com/publications%20pdf/state\\_enabling\\_acts.pdf](http://impactfees.com/publications%20pdf/state_enabling_acts.pdf) (last visited Jan 7, 2019).

<sup>23</sup> Orange County Government, Florida, *Residential Impact Fees*, available at <http://www.orangecountyfl.net/PermitsLicenses/Permits/ResidentialImpactFees.aspx#.WgnLs0kUmUl>. (last visited January 25, 2019).

Volusia County, impact fees are due before the issuance of a certificate of occupancy or business tax receipt.<sup>24</sup>

### **Water and Sewer Connection Fees**

Counties<sup>25</sup> and municipalities<sup>26</sup> may construct or acquire and operate water supply and wastewater disposal systems and may charge reasonable fees for the connection to and use of such systems.<sup>27</sup> Connection fees are charges imposed by the operator of a water supply or wastewater disposal system to defray the costs incurred for allowing additional users to tie into the system and may be considered a type of impact fee.<sup>28</sup>

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

The bill amends s. 163.31801, F.S., to require that the collection of an impact fee occur no earlier than the date of issuance of the building permit for the property that is subject to the fee.

The bill also codifies the dual rational nexus test. Specifically, the bill requires that an impact fee be reasonably connected to, or have a rational nexus with:

- The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
- The expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.

The local government also must specifically earmark funds collected pursuant to the impact fees for use in acquiring, constructing, or improving capital facilities to benefit the new users. In addition, the bill prohibits the use of impact fee revenues to pay existing debt or for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction. Lastly, the bill provides that water and sewer connection fees are excluded from the statutory provisions related to impact fees contained in s. 163.31801, F.S.

The bill takes effect July 1, 2019.

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

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

Article VII, Section 18(b) of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect

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<sup>24</sup> Volusia County, Florida, *Frequently Asked Questions on Impact Fees*, available at <https://www.volusia.org/services/growth-and-resource-management/impact-fees/faqs-impact-fees.stml> (last visited Jan. 25, 2019).

<sup>25</sup> Section 153.03, F.S.

<sup>26</sup> Section 180.06, F.S.

<sup>27</sup> Section 153.03(3), F.S. authorizes counties to “fix and collect” fees for service, including connection fees. Section 180.13, F.S., authorizes municipalities to establish “just and equitable” service rates or charges for utilities.

<sup>28</sup> See *City of Zephyrhills v. Wood*, 831 So. 2d 223 (Fla. 2d DCA 2002); *Hernando County Water and Sewer District v. Hernando Board of Public Instruction*, 610 So. 2d 6 (Fla. 5th DCA 1992).

of doing so would be to reduce the *authority* that counties or municipalities have to raise revenues in the aggregate. However, the mandate requirements do not apply to laws having an insignificant fiscal impact, which for Fiscal Year 2018-2019 is forecast at slightly over \$2 million.<sup>29,30,31</sup>

In 1991, Senate President Margolis and House Speaker Wetherell created a memo to guide the House and Senate in the review of local government mandates.<sup>32</sup> In the memo, the guidelines define the term “authority” to mean the power to levy a tax; the vote required to levy the tax, e.g., increasing the required vote from majority to majority plus one; the tax rate which can be levied; and the base against which the tax is levied, e.g., a bill providing a sales tax exemption should be considered a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.

While SB 144 does not restrict the amount of an impact fee, the county/municipality mandates provision of Article VII, Section 18 of the Florida Constitution may apply because the bill restricts the time at which a county or municipality may collect its impact fees. An impact fee collected at the platting stage is theoretically worth more than an amount collected no earlier than the issuance of the building permit due to the time value of money.<sup>33</sup> It is unclear if this bill lessens the type of *authority* contemplated by President Margolis and Speaker Wetherell.

If the bill is determined to reduce the *authority* that counties and municipalities have to raise revenues in the aggregate and exceeds the threshold for insignificant fiscal impact, the bill may qualify as a mandate and require final passage by a two-thirds vote of the membership of each house of the Legislature.

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

None.

**C. Trust Funds Restrictions:**

None.

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<sup>29</sup> FLA. CONST. art. VII, s. 18(d).

<sup>30</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 9, 2019).

<sup>31</sup> Based on the Florida Demographic Estimating Conference’s November 5, 2018 population forecast for 2019 of 21,170,399. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Jan. 18, 2019).

<sup>32</sup> Memorandum to Members of The Florida House and The Florida Senate from Gwen Margolis, President of the Senate and T.K. Wetherall, Speaker of the House, *County and Municipal Mandates Analysis*, (March 7, 1991) (on file with the Senate Committee on Community Affairs).

<sup>33</sup> Provided money can earn interest, any amount of money is worth more the sooner it is received.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the bill will reduce local impact fee revenues by an indeterminate amount in Fiscal Year 2019-2020 and beyond.<sup>34</sup>

B. Private Sector Impact:

Developers will not have to pay impact fees prior to the issuance of the building permit for a property.

C. Government Sector Impact:

Counties, municipalities, and special districts will not be able to collect impact fees prior to the issuance of the building permit for a property.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 163.31801 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.

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<sup>34</sup> Office of Economic and Demographic Research, The Florida Legislature, *Local Taxes and Fees, SB 144/HB 107*, 29-34 (Jan. 24, 2019), available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/\\_pdf/Impact0124.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/_pdf/Impact0124.pdf) (last visited Jan. 28, 2019).

B. Amendments:

None.

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

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# THE FLORIDA LEGISLATURE

OFFICE OF THE  
PRESIDENT



OFFICE OF THE  
SPEAKER



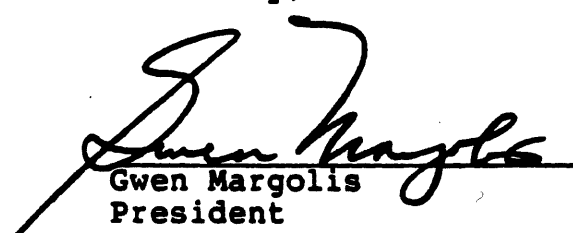
March 21, 1991

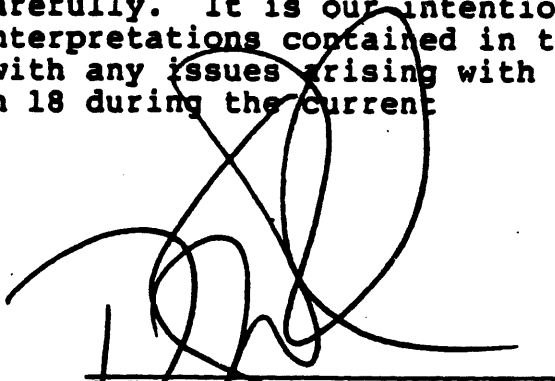
Members of The Florida House  
and The Florida Senate  
The Capitol  
Tallahassee, Florida

Dear Members:

Last fall the voters approved a constitutional amendment concerning the imposition of mandates on municipalities and counties. These provisions are now contained in Article VII, Section 18 of the Florida Constitution. Staff of the House and Senate have been working together over the past few weeks to recommend a set of guidelines for interpreting the new constitutional provisions. These guidelines are attached. Please read them carefully. It is our intention that both houses follow the interpretations contained in the attached document in dealing with any issues arising with regard to Article VII, Section 18 during the current session.

Sincerely,

  
Gwen Margolis  
President

  
T.K. Wetherell  
Speaker

March 7, 1991

## **COUNTY AND MUNICIPALITY MANDATES ANALYSIS**

The purpose of this document is to assist legislative staff in analyzing bills that potentially fall under Article VII, Section 18 of the Florida Constitution, the provision relating to county and municipality mandates. This constitutional provision contains three criteria which describe types of bills considered to be mandates on municipalities and counties. There are eight exemptions contained in subsection (d) which, if applicable, exempt the bill from the constitutional restrictions. In addition, under each criterion there are exceptions which, if met, also exclude the bill from the restrictions. For the second and third criteria, one of the exceptions is passage of the bill by a two-thirds vote of the membership of each house. For an exception to the first criterion, that vote must be coupled with a legislative determination of an important state interest.

In preparing a staff analysis, any bill which meets one or more of the criteria should be identified as a mandate, even if an exemption or an exception applies. The analysis should describe the issue causing the mandate and state the constitutional criterion which is met. If appropriate, a fiscal analysis of the required expenditures and/or revenue impacts should be provided. If one of the "substantive" exemptions or exceptions (other than the two-thirds vote) apply, this should be stated and explained. If the exemptions or exceptions do not apply, leaving the two-thirds vote as the only possibility for exception, this should also be stated.

### **OVERVIEW:**

The accompanying chart provides a procedure for doing a mandates analysis. The bill should first be analyzed to determine if it or one of its provisions meet the constitutional criteria. If not, the bill is not a mandate. If one of the criteria is met, the analyst should then examine the exemptions. If one or more are applicable, the bill is exempt from the mandates requirements. If not, the exceptions under each applicable criterion should be examined. If any exception other than the two-thirds vote applies, this should be stated. If the only exception available is for the Legislature to pass the bill by a two-thirds vote, this should also be stated.

### **GENERAL CONSIDERATIONS:**

- \* In analyzing a bill or amendment to a bill for an Article VII, Section 18 impact, each issue of the bill or amendment must be analyzed individually.
- \* The mandates analysis applies only to general laws and not to special laws (local bills).
- \* The requirements of Article VII, Section 18 apply only to cities and counties.

## **CRITERIA:**

The bill should first be analyzed to determine if it or any of its provisions meet one or more of the mandates criteria. These are:

- A. A law requiring cities or counties to spend funds or to take action requiring expenditure.
- B. A law that reduces the authority of cities or counties to raise revenues in the aggregate as such authority existed on 2/1/89.
  - 1. In analyzing this criterion, the term "in the aggregate" means that effects on cities and counties are to be considered together. It also means that decreases in the authority to raise revenues should be offset against increases in such authority.
  - 2. The term "authority" applies to:
    - a) the power to levy a tax;
    - b) the vote required to levy the tax, e.g., increasing the required vote from majority to majority plus one;
    - c) the tax rate which can be levied; and
    - d) the base against which the tax is levied, e.g., a bill providing a sales tax exemption should be considered a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.
- C. A law that reduces the percentage of a state tax shared with cities and counties as an aggregate on 2/1/89.

This criterion indicates that the percentage of each shared state tax that the counties and cities receive cannot be reduced. Provisions that reduce the base of a shared tax while leaving the percentage shared with cities and counties unchanged, however, do not meet this criterion.

If it is determined, after an initial reading, that a bill falls within one of the above, the analysis outlined in the remainder of this paper should be performed. If it does not fall within one of these criteria, no further mandates analysis need be done.



## **EXEMPTIONS:**

Determine whether the bill's provisions fall under one of the following exemptions set out in subsection (d) of Article VII, Section 18:

1. **Requires Funding of Pension Benefits Existing on January 8, 1991 --**  
This applies only to additional funding that is necessary to assure the actuarial soundness of pension funds in providing only those benefits that existed on January 8, 1991. In order to qualify for exemption, the funding cannot apply to an expansion of either specific benefits or classes of people receiving the benefits.
2. **Criminal law -- This applies to any bill relating to the following:**
  - \* Defining the types of behaviors for which individuals are subject to arrest and criminal sanction and the penalties associated with these behaviors.
  - \* Relating to the processes of arrest and pretrial detention.
  - \* Relating to defense and prosecution.
  - \* Relating to adjudication, sentencing, and implementation of criminal sanctions.
3. **Election Laws -- Generally, this applies to any bill relating to the required processes and procedures of holding public elections.**
4. **The General Appropriations Act**
5. **Special Appropriations Acts**
6. **Laws Re-authorizing but not Expanding Then-existing Statutory Authority --** Look to authority existing at the time the bill would become effective. Where a bill would expand, in addition to re-authorize, only the re-authorizing provisions would be exempt. This exemption includes sunset bills, sundown bills, reviser's bills, re-adoptions of statutes, and laws extending repeal dates.

7. **Laws Having Insignificant Fiscal Impact** -- This exemption is to be determined on an aggregate basis for all cities and counties in the state. If, in aggregate, the bill would have an insignificant fiscal impact, it is exempt.

For purposes of legislative application of Article VII, Section 18, the term "insignificant" means an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Thus, for fiscal year 1991-92, a bill that would have a statewide annual fiscal impact on counties and municipalities, in aggregate, of \$1.4 million or less is exempt.

Bills should also be analyzed over the long term. The appropriate length of the long-term analysis will vary with the issue being considered, but in general should be adequate to insure that no unusual long-term consequences occur. In determining fiscal significance or insignificance, the average fiscal impact, including any offsetting effects over the long term, should be considered. For instance, if a program would require recycling costs of \$5 million statewide, but would generate \$4 million statewide in revenues from the sale of scrap metal and paper, the fiscal impact would be insignificant.

8. **Laws Creating, Modifying, or Repealing Noncriminal Infractions** -- Apply the definition of "noncriminal violation" in s. 775.08, F.S.

If a bill or one of its provisions meets the definition or description of one of the exemptions above, the bill or provision is not subject to further Article VII, Section 18 analysis. However, the mandates provision and the exemption should still be discussed in the bill analysis.

#### **EXCEPTIONS:**

After determining that a bill or its provisions do not fall under one of the exemptions, the exceptions applicable to each relevant criterion should be analyzed. If one of the exceptions is applicable, this should be stated in the analysis. If no exception other than the two-thirds vote is applicable, this should also be stated.

- A. **General bills requiring cities and counties to spend funds or to take action requiring expenditure.**

It is not feasible for the Legislature to analyze the effects of possible mandates legislation on each city and county individually. Thus, for purposes of legislative analysis and determination of the offsetting

appropriations or other funding sources as described below, analysis should be made on an aggregate basis for all counties and municipalities as a whole.

Cities and counties will have to comply with a provision requiring expenditures if:

**1. The Legislature Determines That It Fulfills an Important State Interest:**

This determination should be made by the Legislature itself and not by staff. The most effective means of doing this would be the insertion of a provision into the bill.

**2. Condition #1 must be met and any one of the following exceptions:**

- a. Funds are appropriated that are estimated to be sufficient to fund such expenditure.

As stated above, the question of whether this exception is met should be analyzed on an aggregate basis including all counties and municipalities.

- b. The Legislature authorizes or has authorized a county or city to enact, by a simple majority vote of the governing board, a funding source not available on 2/1/89. The source must be estimated to fund the expenditure.

In addition to the granting of new authority to enact funding sources, this exception also includes the broadening of tax bases against which cities and counties already have the authority to levy taxes by a majority vote.

As stated above, the question of whether this exception is met should be analyzed on an aggregate basis, including all counties and municipalities.

- c. The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

In analyzing this exception, the makeup of the group which should be considered "similarly situated" should first be determined. Once this determination has been made, the exception can be considered applicable if all members of the group are treated similarly, even though the group may only contain governmental entities or even only local governmental entities.

The determination of similarly situated should be independent of a local government's status as a local government. However, if only cities and counties are affected by the issue, this exception does not apply. If, on the other hand, by the nature of the issue in the bill being analyzed, only local governments (all local governments, not just cities and counties) could be affected and these are treated similarly, the exception is met. If there are entities in the private sector or in state government which also could be affected by the bill, but are not treated similarly because they are not local governments, or for other reasons not inherently connected to the issue being analyzed, the exception is not met.

An example of a bill in which the exception is met would be one affecting the Florida Retirement System (FRS). This system includes employees of the state government, school districts and local governments. As long as classes of employees were not deliberately manipulated to apply only to cities and counties, all in the system would be similarly situated and changes in retirement benefits would be excepted.

- d. The expenditure is required to comply with a federal requirement or federal entitlement which contemplates action by cities or counties.

If any one of the exceptions (a) through (d) is met, no further analysis is necessary with respect to Article VII, Section 18. The bill is excepted from the provisions of that section as long as the Legislature also determines that an important state interest exists.

If none of the exceptions (a) through (d) are met, the Legislature must find an important state interest and the bill must pass by a 2/3 vote to effectively bind cities and counties.

- B. A law that reduces the authority of cities or counties to raise revenues in the aggregate as such authority existed on 2/1/89.

There is only one exception applicable to this criterion. A bill determined to meet this criterion may only take effect if passed by 2/3 vote of each house.

- C. A law that reduces the percentage of a state tax shared with cities and counties as an aggregate on 2/1/89.

The exceptions by which this criterion does not apply are:

1. Enhancements to state taxes shared with counties and municipalities enacted after 2/1/89. For example, assume that the base of a shared tax source has been expanded since 2/1/89 (and the percentage shared not reduced) so that cities and counties receive more money. It would be permissible under this exception for the Legislature to reduce the percentage shared with cities and counties up to the point where such governments would be receiving the same amount of money they would have received if the tax base had not been expanded.
2. During a fiscal emergency; or
3. If replacement state shared revenues sufficient to replace the aggregate loss are provided.

If exceptions (1), (2) or (3) are not satisfied, the bill must pass by a 2/3 vote of each house in order to take effect.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3/5/19

Bill Number (if applicable) 144

Topic Impact Fees

Amendment Barcode (if applicable) \_\_\_\_\_

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St.

Phone 222-7500

City Tallahassee State FL

Email garyh@hyslaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Chamber / Association of Florida Community Developers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

03/05/2019

144

Meeting Date

Bill Number (if applicable)

Topic Impact Fees

Amendment Barcode (if applicable)

Name Warren Husband

Job Title

Address PO Box 10909

Phone (850) 205-9000

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 Fla. Associated General Contractors Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/5/19

Meeting Date

SB144

Bill Number (if applicable)

Topic Impact Fees

Amendment Barcode (if applicable)

Name Nicolette Springer

Job Title Legislative Analyst

Address

Street

Phone 4074843656

Email nicolette@LWVFL.org

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

☐

Waive Speaking:

☐

In Support

☒

Against

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

Representing

League of Women Voters 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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THE FLORIDA SENATE

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03/05/19  
Meeting Date

SB 144  
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Impact Fees (Gruters)

Name Joanna Bonfanti (Bon-faun-tee)

Job Title Gov't Affairs

Address 215 S. Monroe St. Suite 101

Street

Tallahassee

FL

32301

City

State

Zip

Phone 850-521-1980

Email jbonfanti@quster.

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL ~~Section~~ American Water Works 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)

Meeting Date 3/5/19

Bill Number (if applicable) 144

Amendment Barcode (if applicable) \_\_\_\_\_

Topic Impact Fees

Name Carol Bauer

Job Title Chief Lobbyist

Address 3736 Lacount Creek Parkway, Sr Phone (954) 405-6811

City Lacount Creek State FL Zip 33010

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.

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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)

Meeting Date 3-5-19

Bill Number (if applicable) SB 144

Amendment Barcode (if applicable)

Topic IMPAI FTS

Name KEI HEBBARD

Job Title \_\_\_\_\_

Address 113 EAST DUSTY AVE. #200

City MIAMI BEACH State FL Zip 331301

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FORIST HOME BUILDERS ASSN. MIWA 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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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3/5/19

Bill Number (if applicable) SB 144

Amendment Barcode (if applicable) \_\_\_\_\_

Topic Impact Fees

Name Buddy DEWAR

Job Title \_\_\_\_\_

Phone \_\_\_\_\_

Address \_\_\_\_\_

Street \_\_\_\_\_

Email \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Fire Spineless ASSN

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

## THE FLORIDA SENATE

## APPEARANCE RECORD

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

March 5, 2019

Meeting Date

SB 144

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Impact Fees

Name Bob Ward

Job Title President &amp; CEO

Address 400 N. Tampa St., Suite 1010

Phone (813) 229-1775

Street Tampa

Florida

33602

Email bward@fc100.org

City

State

Zip

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

Representing Florida Council of 100

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 Gruters

4-00371A-19

2019144\_\_

A bill to be entitled

An act relating to impact fees; amending s. 163.31801, F.S.; revising the minimum requirements for impact fees adopted by a local government; exempting water and sewer connection fees from the Florida Impact Fee Act; providing an effective date.

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

Section 1. Section 163.31801, Florida Statutes, is amended to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges definitions; ordinances levying impact fees.—

(1) This section may be cited as the "Florida Impact Fee Act."

(2) The Legislature finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction. Due to the growth of impact fee collections and local governments' reliance on impact fees, it is the intent of the Legislature to ensure that, when a county or municipality adopts an impact fee by ordinance or a special district adopts an impact fee by resolution, the governing authority complies with this section.

(3) At a minimum, an impact fee adopted by ordinance of a county or municipality or by resolution of a special district

Page 1 of 3

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

4-00371A-19

2019144\_\_

must satisfy all of the following conditions, ~~at minimum~~:

(a) ~~Require that~~ The calculation of the impact fee must be based on the most recent and localized data.

(b) The local government must provide for accounting and reporting of impact fee collections and expenditures. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity must ~~shall~~ account for the revenues and expenditures of such impact fee in a separate accounting fund.

(c) ~~Limit~~ Administrative charges for the collection of impact fees must be limited to actual costs.

(d) The local government must provide ~~Require that~~ notice ~~be provided~~ no less than 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee. A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.

(e) Collection of the impact fee may not be required to occur earlier than the date of issuance of the building permit for the property that is subject to the fee.

(f) The impact fee must be reasonably connected to, or have a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.

(g) The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.

(h) The local government must specifically earmark funds collected under the impact fee for use in acquiring,

Page 2 of 3

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

4-00371A-19

2019144\_\_

59 constructing, or improving capital facilities to benefit new  
60 users.

61 (i) Revenues generated by the impact fee may not be used,  
62 in whole or in part, to pay existing debt or for previously  
63 approved projects unless the expenditure is reasonably connected  
64 to, or has a rational nexus with, the increased impact generated  
65 by the new residential or commercial construction.

66 (4) Audits of financial statements of local governmental  
67 entities and district school boards which are performed by a  
68 certified public accountant pursuant to s. 218.39 and submitted  
69 to the Auditor General must include an affidavit signed by the  
70 chief financial officer of the local governmental entity or  
71 district school board stating that the local governmental entity  
72 or district school board has complied with this section.

73 (5) In any action challenging an impact fee, the government  
74 has the burden of proving by a preponderance of the evidence  
75 that the imposition or amount of the fee meets the requirements  
76 of state legal precedent or this section. The court may not use  
77 a deferential standard.

78 (6) This section does not apply to water and sewer  
79 connection fees.

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

**COMMITTEE:** Community Affairs  
**ITEM:** SB 144  
**FINAL ACTION:** Favorable  
**MEETING DATE:** Tuesday, March 5, 2019  
**TIME:** 2:30—4:30 p.m.  
**PLACE:** 301 Senate Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting



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

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 202

INTRODUCER: Senator Wright

SUBJECT: Property Tax Exemptions

DATE: February 19, 2019

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

| ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION           |
|----------|----------------|-----------|------------------|
| 1. Toman | Yeatman        | CA        | <b>Favorable</b> |
| 2. _____ | _____          | FT        | _____            |
| 3. _____ | _____          | AP        | _____            |

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**I. Summary:**

SB 202 increases the existing property tax exemption for Florida residents who are widows, widowers, blind, or totally and permanently disabled from \$500 to \$5,000.

**II. Present Situation:**

**General Overview of Property Taxation**

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.<sup>1</sup> The property appraiser annually determines the “just value”<sup>2</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>3</sup> Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

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<sup>1</sup> Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>2</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art. VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>3</sup> See s. 192.001(2) and (16), F.S.

The Florida Constitution prohibits the state from levying ad valorem taxes<sup>4</sup> and limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.<sup>5</sup>

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;<sup>6</sup> however, the Florida Constitution authorizes certain types of property to be valued based on their character or current use, known as classified use assessments,<sup>7</sup> which often result in lower assessments. Properties that receive classified use treatment in Florida include agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes;<sup>8</sup> land used for conservation purposes;<sup>9</sup> historic properties when authorized by the county or municipality;<sup>10</sup> and certain working waterfront property.<sup>11</sup>

### **Property Tax Exemptions for Widows, Widowers, Blind Persons, and Totally and Permanently Disabled Persons**

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.<sup>12</sup> Since its 1968 revision, the Florida Constitution has provided a specific exemption to "every widow or widower or person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars."<sup>13</sup> Section 196.202, F.S., as established by ch. 71-134, s. 12, Laws of Florida, effectuates the constitutional provision and exempts from taxation property to the value of \$500<sup>14</sup> for every widow or widower or person who is blind or totally and permanently disabled. The exemption applies to any property owned by these persons if they are bona fide residents of this state.<sup>15</sup>

For the purposes of administering the exemption, the term "widow" or "widower" does not apply to a divorced woman or man, a widow or widower who remarries, or a widow or widower who remarries and is subsequently divorced;<sup>16</sup> a "blind person" is defined as someone who is currently certified as blind by the Division of Blind Services of the Department of Education, the Social Security Administration, or the U.S. Department of Veterans Affairs;<sup>17</sup> and a "totally

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<sup>4</sup> FLA. CONST. art. VII, s. 1(a).

<sup>5</sup> See FLA. CONST. art. VII, s. 4.

<sup>6</sup> Section 193.011(2), F.S.

<sup>7</sup> Section 193.441, F.S.

<sup>8</sup> FLA. CONST. art. VII, s. 4(a).

<sup>9</sup> FLA. CONST. art. VII, s. 4(b).

<sup>10</sup> FLA. CONST. art. VII, s. 4(e).

<sup>11</sup> FLA. CONST. art. VII, s. 4(j).

<sup>12</sup> *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784 (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); See also *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

<sup>13</sup> FLA. CONST. art. VII, s. 3(b).

<sup>14</sup> Using the Bureau of Labor Statistics' Consumer Price Index Calculator, the value of \$500 in June of 1971 represented \$3,100 in January of 2019. See Bureau of Labor Statistics, United States Department of Labor, *CPI Inflation Calculator*, available at [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last visited Feb. 15, 2019).

<sup>15</sup> See Rule 12D-7.003, F.A.C.

<sup>16</sup> Rule 12D-7.003(1)(a), F.A.C.

<sup>17</sup> Rule 12D-7.003(1)(c), F.A.C.

and permanently disabled person” means a person who is currently certified by a physician licensed in this state, by the U.S. Department of Veterans Affairs, or by the Social Security Administration to be totally and permanently disabled.<sup>18</sup>

The exemptions in s. 196.202, F.S., are cumulative, thus, an individual who qualifies under more than one classification may be granted more than one \$500 exemption.<sup>19</sup> However, the exemption may not exceed \$1,500 for an individual.<sup>20</sup>

### ***Other Exemptions for Totally and Permanently Disabled Persons and Blind Persons***

Section 196.101(1), F.S., provides a full property tax exemption for any real estate owned and used as a homestead by quadriplegics. Section 196.101(2), F.S., provides the same full homestead exemption to paraplegics, hemiplegics, totally and permanently disabled persons who must use a wheelchair for mobility, and legally blind persons. Applicants for the exemption in s. 196.101(2), F.S., must show that they meet certain income limitations.<sup>21</sup>

Sections 196.081(1) and 196.091, F.S., respectively, provide a full property tax exemption for any real estate owned and used as a homestead by totally and permanently disabled veterans and veterans confined to a wheelchair due to a service-connected disability.

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

**Section 1** amends s. 196.202, F.S., to increase the ad valorem tax exemption for Florida residents who are widows, widowers, blind, or totally and permanently disabled from \$500 to \$5,000.

**Section 2** specifies that the increased exemption applies to tax years beginning on or after January 1, 2020.

**Section 3** provides that the act shall take effect upon becoming law.

## **IV. Constitutional Issues:**

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

Article VII, Subsection (b) of section 18 of the State Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1,

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<sup>18</sup> Section 196.202(1), F.S.

<sup>19</sup> Rule 12D-7.003(1)(d), F.A.C.

<sup>20</sup> *Id.*

<sup>21</sup> Section 196.101(4) F.S., sets a gross household income limit of \$14,500 as of January 1, 1990, which is adjusted annually utilizing cost-of-living and consumer price index data.

1989. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2018-2019 is forecast at slightly over \$2 million.<sup>22,23,24</sup>

In 1991, Senate President Margolis and House Speaker Wetherell created a memo to guide the House and Senate in the review of local government mandates.<sup>25</sup> Using this guide, the county/municipality mandates provision of Art. VII, S. 18 of the Florida Constitution may apply to SB 202 because the bill reduces local government authority to raise revenue by reducing ad valorem tax bases compared to the tax bases that would exist under current law. SB 202 does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference has determined that the bill will reduce local property tax revenues by \$38.2 million beginning in Fiscal Year 2020-2021, with a \$38.2 million recurring, negative impact. The \$38.2 million reduction includes a school tax reduction of \$15.4 million and a non-school tax reduction of \$22.8 million.<sup>26</sup>

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<sup>22</sup> FLA. CONST. art. VII, s. 18(d).

<sup>23</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 9, 2019).

<sup>24</sup> Based on the Florida Demographic Estimating Conference's November 5, 2018 population forecast for 2019 of 21,170,399. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Jan. 18, 2019).

<sup>25</sup> Memorandum to Members of The Florida House and The Florida Senate from Gwen Margolis, President of the Senate and T.K. Wetherall, Speaker of the House, *County and Municipal Mandates Analysis*, (March 7, 1991) (on file with the Senate Committee on Community Affairs).

<sup>26</sup> Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference: Revenue Impact Results HB 51/SB 202*, 4-10 (Jan. 18, 2019) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/pdf/Impact0118.pdf> (last visited Jan 22, 2019).

**B. Private Sector Impact:**

Florida property owners who are widows, widowers, blind, or totally and permanently disabled will qualify to pay less property tax.

**C. Government Sector Impact:**

The bill will reduce the tax base upon which counties and municipalities raise ad valorem revenue.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 196.202 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

# THE FLORIDA LEGISLATURE

OFFICE OF THE  
PRESIDENT



OFFICE OF THE  
SPEAKER



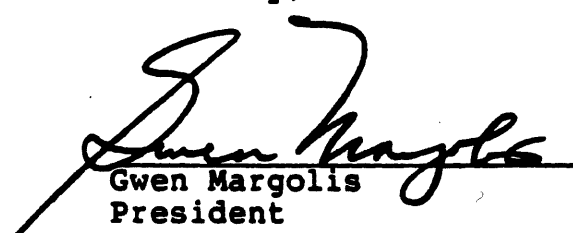
March 21, 1991

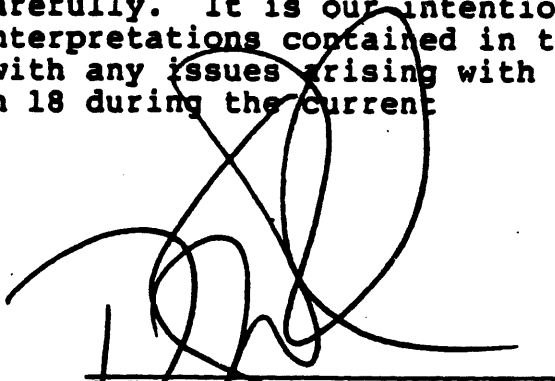
Members of The Florida House  
and The Florida Senate  
The Capitol  
Tallahassee, Florida

Dear Members:

Last fall the voters approved a constitutional amendment concerning the imposition of mandates on municipalities and counties. These provisions are now contained in Article VII, Section 18 of the Florida Constitution. Staff of the House and Senate have been working together over the past few weeks to recommend a set of guidelines for interpreting the new constitutional provisions. These guidelines are attached. Please read them carefully. It is our intention that both houses follow the interpretations contained in the attached document in dealing with any issues arising with regard to Article VII, Section 18 during the current session.

Sincerely,

  
Gwen Margolis  
President

  
T.K. Wetherell  
Speaker

March 7, 1991

## **COUNTY AND MUNICIPALITY MANDATES ANALYSIS**

The purpose of this document is to assist legislative staff in analyzing bills that potentially fall under Article VII, Section 18 of the Florida Constitution, the provision relating to county and municipality mandates. This constitutional provision contains three criteria which describe types of bills considered to be mandates on municipalities and counties. There are eight exemptions contained in subsection (d) which, if applicable, exempt the bill from the constitutional restrictions. In addition, under each criterion there are exceptions which, if met, also exclude the bill from the restrictions. For the second and third criteria, one of the exceptions is passage of the bill by a two-thirds vote of the membership of each house. For an exception to the first criterion, that vote must be coupled with a legislative determination of an important state interest.

In preparing a staff analysis, any bill which meets one or more of the criteria should be identified as a mandate, even if an exemption or an exception applies. The analysis should describe the issue causing the mandate and state the constitutional criterion which is met. If appropriate, a fiscal analysis of the required expenditures and/or revenue impacts should be provided. If one of the "substantive" exemptions or exceptions (other than the two-thirds vote) apply, this should be stated and explained. If the exemptions or exceptions do not apply, leaving the two-thirds vote as the only possibility for exception, this should also be stated.

### **OVERVIEW:**

The accompanying chart provides a procedure for doing a mandates analysis. The bill should first be analyzed to determine if it or one of its provisions meet the constitutional criteria. If not, the bill is not a mandate. If one of the criteria is met, the analyst should then examine the exemptions. If one or more are applicable, the bill is exempt from the mandates requirements. If not, the exceptions under each applicable criterion should be examined. If any exception other than the two-thirds vote applies, this should be stated. If the only exception available is for the Legislature to pass the bill by a two-thirds vote, this should also be stated.

### **GENERAL CONSIDERATIONS:**

- \* In analyzing a bill or amendment to a bill for an Article VII, Section 18 impact, each issue of the bill or amendment must be analyzed individually.
- \* The mandates analysis applies only to general laws and not to special laws (local bills).
- \* The requirements of Article VII, Section 18 apply only to cities and counties.

## **CRITERIA:**

The bill should first be analyzed to determine if it or any of its provisions meet one or more of the mandates criteria. These are:

- A. A law requiring cities or counties to spend funds or to take action requiring expenditure.
- B. A law that reduces the authority of cities or counties to raise revenues in the aggregate as such authority existed on 2/1/89.
  - 1. In analyzing this criterion, the term "in the aggregate" means that effects on cities and counties are to be considered together. It also means that decreases in the authority to raise revenues should be offset against increases in such authority.
  - 2. The term "authority" applies to:
    - a) the power to levy a tax;
    - b) the vote required to levy the tax, e.g., increasing the required vote from majority to majority plus one;
    - c) the tax rate which can be levied; and
    - d) the base against which the tax is levied, e.g., a bill providing a sales tax exemption should be considered a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.
- C. A law that reduces the percentage of a state tax shared with cities and counties as an aggregate on 2/1/89.

This criterion indicates that the percentage of each shared state tax that the counties and cities receive cannot be reduced. Provisions that reduce the base of a shared tax while leaving the percentage shared with cities and counties unchanged, however, do not meet this criterion.

If it is determined, after an initial reading, that a bill falls within one of the above, the analysis outlined in the remainder of this paper should be performed. If it does not fall within one of these criteria, no further mandates analysis need be done.



## **EXEMPTIONS:**

Determine whether the bill's provisions fall under one of the following exemptions set out in subsection (d) of Article VII, Section 18:

1. **Requires Funding of Pension Benefits Existing on January 8, 1991 --**  
This applies only to additional funding that is necessary to assure the actuarial soundness of pension funds in providing only those benefits that existed on January 8, 1991. In order to qualify for exemption, the funding cannot apply to an expansion of either specific benefits or classes of people receiving the benefits.
2. **Criminal law --** This applies to any bill relating to the following:
  - \* Defining the types of behaviors for which individuals are subject to arrest and criminal sanction and the penalties associated with these behaviors.
  - \* Relating to the processes of arrest and pretrial detention.
  - \* Relating to defense and prosecution.
  - \* Relating to adjudication, sentencing, and implementation of criminal sanctions.
3. **Election Laws --** Generally, this applies to any bill relating to the required processes and procedures of holding public elections.
4. **The General Appropriations Act**
5. **Special Appropriations Acts**
6. **Laws Re-authorizing but not Expanding Then-existing Statutory Authority --** Look to authority existing at the time the bill would become effective. Where a bill would expand, in addition to re-authorize, only the re-authorizing provisions would be exempt. This exemption includes sunset bills, sundown bills, reviser's bills, re-adoptions of statutes, and laws extending repeal dates.

7. **Laws Having Insignificant Fiscal Impact** -- This exemption is to be determined on an aggregate basis for all cities and counties in the state. If, in aggregate, the bill would have an insignificant fiscal impact, it is exempt.

For purposes of legislative application of Article VII, Section 18, the term "insignificant" means an amount not greater than the average statewide population for the applicable fiscal year times ten cents. Thus, for fiscal year 1991-92, a bill that would have a statewide annual fiscal impact on counties and municipalities, in aggregate, of \$1.4 million or less is exempt.

Bills should also be analyzed over the long term. The appropriate length of the long-term analysis will vary with the issue being considered, but in general should be adequate to insure that no unusual long-term consequences occur. In determining fiscal significance or insignificance, the average fiscal impact, including any offsetting effects over the long term, should be considered. For instance, if a program would require recycling costs of \$5 million statewide, but would generate \$4 million statewide in revenues from the sale of scrap metal and paper, the fiscal impact would be insignificant.

8. **Laws Creating, Modifying, or Repealing Noncriminal Infractions** -- Apply the definition of "noncriminal violation" in s. 775.08, F.S.

If a bill or one of its provisions meets the definition or description of one of the exemptions above, the bill or provision is not subject to further Article VII, Section 18 analysis. However, the mandates provision and the exemption should still be discussed in the bill analysis.

#### **EXCEPTIONS:**

After determining that a bill or its provisions do not fall under one of the exemptions, the exceptions applicable to each relevant criterion should be analyzed. If one of the exceptions is applicable, this should be stated in the analysis. If no exception other than the two-thirds vote is applicable, this should also be stated.

- A. **General bills requiring cities and counties to spend funds or to take action requiring expenditure.**

It is not feasible for the Legislature to analyze the effects of possible mandates legislation on each city and county individually. Thus, for purposes of legislative analysis and determination of the offsetting

appropriations or other funding sources as described below, analysis should be made on an aggregate basis for all counties and municipalities as a whole.

Cities and counties will have to comply with a provision requiring expenditures if:

**1. The Legislature Determines That It Fulfills an Important State Interest:**

This determination should be made by the Legislature itself and not by staff. The most effective means of doing this would be the insertion of a provision into the bill.

**2. Condition #1 must be met and any one of the following exceptions:**

- a. Funds are appropriated that are estimated to be sufficient to fund such expenditure.

As stated above, the question of whether this exception is met should be analyzed on an aggregate basis including all counties and municipalities.

- b. The Legislature authorizes or has authorized a county or city to enact, by a simple majority vote of the governing board, a funding source not available on 2/1/89. The source must be estimated to fund the expenditure.

In addition to the granting of new authority to enact funding sources, this exception also includes the broadening of tax bases against which cities and counties already have the authority to levy taxes by a majority vote.

As stated above, the question of whether this exception is met should be analyzed on an aggregate basis, including all counties and municipalities.

- c. The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

In analyzing this exception, the makeup of the group which should be considered "similarly situated" should first be determined. Once this determination has been made, the exception can be considered applicable if all members of the group are treated similarly, even though the group may only contain governmental entities or even only local governmental entities.

The determination of similarly situated should be independent of a local government's status as a local government. However, if only cities and counties are affected by the issue, this exception does not apply. If, on the other hand, by the nature of the issue in the bill being analyzed, only local governments (all local governments, not just cities and counties) could be affected and these are treated similarly, the exception is met. If there are entities in the private sector or in state government which also could be affected by the bill, but are not treated similarly because they are not local governments, or for other reasons not inherently connected to the issue being analyzed, the exception is not met.

An example of a bill in which the exception is met would be one affecting the Florida Retirement System (FRS). This system includes employees of the state government, school districts and local governments. As long as classes of employees were not deliberately manipulated to apply only to cities and counties, all in the system would be similarly situated and changes in retirement benefits would be excepted.

- d. The expenditure is required to comply with a federal requirement or federal entitlement which contemplates action by cities or counties.

If any one of the exceptions (a) through (d) is met, no further analysis is necessary with respect to Article VII, Section 18. The bill is excepted from the provisions of that section as long as the Legislature also determines that an important state interest exists.

If none of the exceptions (a) through (d) are met, the Legislature must find an important state interest and the bill must pass by a 2/3 vote to effectively bind cities and counties.

- B. A law that reduces the authority of cities or counties to raise revenues in the aggregate as such authority existed on 2/1/89.

There is only one exception applicable to this criterion. A bill determined to meet this criterion may only take effect if passed by 2/3 vote of each house.

- C. A law that reduces the percentage of a state tax shared with cities and counties as an aggregate on 2/1/89.

The exceptions by which this criterion does not apply are:

1. Enhancements to state taxes shared with counties and municipalities enacted after 2/1/89. For example, assume that the base of a shared tax source has been expanded since 2/1/89 (and the percentage shared not reduced) so that cities and counties receive more money. It would be permissible under this exception for the Legislature to reduce the percentage shared with cities and counties up to the point where such governments would be receiving the same amount of money they would have received if the tax base had not been expanded.
2. During a fiscal emergency; or
3. If replacement state shared revenues sufficient to replace the aggregate loss are provided.

If exceptions (1), (2) or (3) are not satisfied, the bill must pass by a 2/3 vote of each house in order to take effect.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/5/19

Meeting Date

SB 202

Bill Number (if applicable)

Topic PROPERTY TAX EXEMPTION

Amendment Barcode (if applicable)

Name CAREY L BAKER

Job Title LAKE CO. PROPERTY APPRAISER

Address

Street

Phone

City

State

Zip

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing FLORIDA ASSN OF PROPERTY APPRAISERS

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

Meeting Date 3/5/19

Bill Number (if applicable) 5B 202

Topic Property Tax Exemption

Amendment Barcode (if applicable) \_\_\_\_\_

Name Mike Twitty

Job Title Pinellas County Property Appraiser

Address 315 Court St. - 2nd FL

Phone (727) 504-5188

Street Clematis State FL Zip 33756

Email mtwitty@cpao.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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)

3/5/19  
Meeting Date

SB 202  
Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Loren Levy

Job Title General Counsel, Property Appraisers Ass'n of Fla.

Address 1828 Disgras Rd

Phone 850-219-0220

City Tallahassee State FL Zip 32308

Email Paul@comcast.net

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

Representing Property Appraisers' Ass'n 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.



By Senator Wright

14-00564-19

2019202\_\_

A bill to be entitled

An act relating to property tax exemptions; amending  
s. 196.202, F.S.; increasing the property tax  
exemption for residents who are widows, widowers,  
blind, or totally and permanently disabled; providing  
applicability; providing an effective date.

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

Section 1. Subsection (1) of section 196.202, Florida  
Statutes, is amended to read:

196.202 Property of widows, widowers, blind persons, and  
persons totally and permanently disabled.—

(1) Property to the value of \$5,000 ~~\$500~~ of every widow,  
widower, blind person, or totally and permanently disabled  
person who is a bona fide resident of this state is exempt from  
taxation. As used in this section, the term "totally and  
permanently disabled person" means a person who is currently  
certified by a physician licensed in this state, by the United  
States Department of Veterans Affairs or its predecessor, or by  
the Social Security Administration to be totally and permanently  
disabled.

Section 2. The amendment made by this act to s. 196.202(1),  
Florida Statutes, applies to tax years beginning on or after  
January 1, 2020.

Section 3. This act shall take effect upon becoming a law.

**COMMITTEE:** Community Affairs  
**ITEM:** SB 202  
**FINAL ACTION:** Favorable  
**MEETING DATE:** Tuesday, March 5, 2019  
**TIME:** 2:30—4:30 p.m.  
**PLACE:** 301 Senate Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

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

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

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 426

INTRODUCER: Community Affairs Committee; and Senator Flores and others

SUBJECT: Firefighters

DATE: March 6, 2019

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

| ANALYST           | STAFF DIRECTOR | REFERENCE | ACTION           |
|-------------------|----------------|-----------|------------------|
| 1. <u>McVaney</u> | <u>McVaney</u> | <u>GO</u> | <b>Favorable</b> |
| 2. <u>Peacock</u> | <u>Yeatman</u> | <u>CA</u> | <b>Fav/CS</b>    |
| 3. _____          | _____          | <u>AP</u> | _____            |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 426 makes firefighters who are diagnosed with certain cancers eligible to receive certain disability or death benefits. Specifically, in lieu of pursuing workers' compensation coverage, a firefighter is entitled to cancer treatment and a one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer. In order to be entitled to such benefits, the firefighter must:

- Be employed full-time as a firefighter;
- Be employed by the state, university, city, county, port authority, special district, or fire control district;
- Have been employed by his or her employer for at least 5 continuous years;
- Not have used tobacco products for at least the preceding 5 years; and
- Have not been employed in any other position in the preceding 5 years which is proven to create a higher risk for cancer.

The bill provides that the term "cancer" includes bladder cancer, brain cancer, breast cancer, cervical cancer, colon cancer, esophageal cancer, invasive skin cancer, kidney cancer, large intestinal cancer, lung cancer, malignant melanoma, mesothelioma, multiple myeloma, non-Hodgkin's lymphoma, oral cavity and pharynx cancer, ovarian cancer, prostate cancer, rectal cancer, stomach cancer, testicular cancer, and thyroid cancer.

In addition, the employer must provide coverage within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse the firefighter

for any out-of-pocket deductible, co-payment, or coinsurance costs incurred due to the treatment of cancer.

For disability and death benefits, the employer must consider a firefighter permanently and totally disabled if diagnosed with one of the 21 enumerated cancers and meets the retirement's plan definition of totally and permanently disabled due to the diagnosis of cancer or circumstances that arise out of the treatment of cancer. Moreover, the cancer or the treatment of cancer is deemed to have occurred in the line of duty, resulting in higher disability and death benefits.

The fiscal impact on state and local governments employing firefighters is unknown at this time.

The bill takes effect July 1, 2019.

## **II. Present Situation:**

Under Florida law, a firefighter<sup>1</sup> may be eligible for benefits upon a showing by a preponderance of the evidence that exposure to a specific toxic substance, at the levels to which the first responder was exposed, can cause the injury or disease sustained by the employee and that the exposure arose out of employment.<sup>2</sup>

### **Cancer Studies regarding Firefighters**

The incidence of cancer among firefighters appears to be higher on average than other occupations. Firefighters work in inherently dangerous situations on a daily basis. They are exposed to many different carcinogens, either inhaled or absorbed through the skin both on the scene and in the firehouse. Studies have been conducted at the state, national, and international level resulting in the identification of cancers found to be common among firefighters.<sup>3</sup> This information has been used to train and educate firefighters to reduce exposure to carcinogens resulting from firefighting activities.

In 2010, the National Institute for Occupational Safety and Health (NIOSH) initiated a study to evaluate the cancer risk of firefighters.<sup>4</sup> The study served to identify whether firefighters are at a higher risk of developing cancer related to exposure on the job. Researchers studied death related to cancer as well as specific types of cancers involved. Researchers took into consideration the types and number of fire runs, use of protective equipment, and diesel exhaust controls. The

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<sup>1</sup> Section 633.102(9), F.S., defines “firefighter” as an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal with the Department of Financial Services under s. 633.408, F.S.

<sup>2</sup> Section 112.1815(2)(a), F.S.

<sup>3</sup> Occupation and Cancer, American Cancer Society, available at <https://www.cancer.org/content/dam/cancer-org/cancer-control/en/booklets-flyers/occupation-and-cancer-fact-sheet.pdf>; 15 Jobs That Put You at a Higher Risk of Cancer, available at <https://www.cheatsheet.com/money-career/jobs-put-higher-cancer-risk.html?a=viewall>; Cancer Facts and Figures, American Cancer Society, available at <https://www.cancer.org/research/cancer-facts-statistics/all-cancer-facts-figures.html>.

<sup>4</sup> See Exposure–response relationships for select cancer and non-cancer health outcomes in a cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950–2009), available at [https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-\(2015\)-508.pdf](https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-(2015)-508.pdf).

study spanned 4 years and the sample size included over 30,000 career firefighters serving in Chicago, Philadelphia, and San Francisco between 1950 and 2010.

According to the 2010 study, firefighters have a 9 percent higher risk of being diagnosed with cancer and a 14 percent higher risk of dying from cancer than the general population in the United States. The cancers mostly responsible for this higher risk were respiratory (lung, mesothelioma), gastrointestinal (oral cavity, esophageal, large intestine) and kidney.<sup>5</sup>

### **Workers' Compensation Insurance**

Under ch. 440, F.S., relating to Workers' Compensation, the employer must pay compensation or furnish benefits if the employee suffers an accidental compensable injury or death arising out of work performed in the course and scope of employment.<sup>6</sup> The injury, its occupational cause, and any resulting disability must be established to a reasonable degree of medical certainty, and the accidental compensable injury must be the major contributing cause of any resulting injuries.<sup>7</sup>

Compensation for permanent total disability is equal to 66 2/3 percent of the employee's average weekly wages payable to the employee during the continuance of the total disability.<sup>8</sup> In addition, an employee will generally receive an annual supplemental income benefit equal to three percent per year of the compensation payment, multiplied by the number of calendar years since the date of the injury, until age 62.<sup>9</sup>

Compensation for temporary total disability is equal to 66 2/3 percent of the employee's average weekly wages payable to the employee during the continuance of the total disability but not to exceed 104 weeks. At the earlier of the 104<sup>th</sup> week or the employee reaching maximum medical improvement, the temporary disability payment will cease and the injured employee's permanent impairment will be determined.<sup>10</sup>

Where the disability or death of an employee results from an "occupational disease," it will be treated as an injury by accident.<sup>11</sup> The employee or his survivors will be entitled to compensation. "Occupational disease" is defined to be "only a disease for which there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee."<sup>12</sup>

An accidental compensable injury must be the major contributing cause of any resulting injury, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only. An injury or disease involving an occupational disease or repetitive exposure, both causation and sufficient exposure to support causation must be proven by clear and convincing evidence.<sup>13</sup>

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

<sup>6</sup> Section 440.09(1), F.S.

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

<sup>8</sup> Section 440.15(1)(a), F.S.

<sup>9</sup> Section 440.15(1)(f), F.S.

<sup>10</sup> Section 440.15(2)(a), F.S.

<sup>11</sup> Section 440.151(1)(a), F.S.

<sup>12</sup> Section 440.151(2), F.S.

<sup>13</sup> Section 440.09(1), F.S.

## **The Florida Retirement System (FRS)**

### ***General Background***

The Florida Retirement System (FRS) was established in 1970.<sup>14</sup> The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S.<sup>15</sup> As of June 30, 2018, the FRS had 643,333 active members, 415,800 annuitants, 16,032 disabled retirees, and 33,432 active participants of the Deferred Retirement Option Program (DROP).<sup>16</sup> As of June 30, 2018, the FRS consisted of 1,002 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 173 cities and 267 special districts that have elected to join the system.<sup>17</sup>

The membership of the FRS is divided into five membership classes:

- The Regular Class<sup>18</sup> consists of 551,997 active members and 7,349 in renewed membership;
- The Special Risk Class<sup>19</sup> includes 72,642 active members and 976 in renewed membership;
- The Special Risk Administrative Support Class<sup>20</sup> has 87 active members;
- The Elected Officers' Class<sup>21</sup> has 2,050 active members and 120 in renewed membership; and
- The Senior Management Service Class<sup>22</sup> has 7,881 active members and 207 in renewed membership.<sup>23</sup>

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The defined contribution plan, also known as the Investment Plan; and
- The defined benefit plan, also known as the Pension Plan.

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<sup>14</sup> Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 35. Available online at: [https://www.rol.frs.state.fl.us/forms/2017-18\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2017-18_CAFR.pdf). (Last visited January 28, 2019.)

<sup>15</sup> Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

<sup>16</sup> Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 160.

<sup>17</sup> *Id.* at 196.

<sup>18</sup> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>19</sup> The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

<sup>20</sup> The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

<sup>21</sup> The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

<sup>22</sup> The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

<sup>23</sup> All figures from Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 163.

***The Special Risk Class of the FRS***

The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S.

In originally establishing the Special Risk Class of membership in the FRS, the Legislature recognized that persons employed in certain categories of positions:

are required . . . to perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, and that such persons, because of diminishing physical and mental faculties, may find that they are not able, without risk to the health and safety of themselves, the public, or their coworkers, to continue performing such duties and thus enjoy the full career and retirement benefits enjoyed by persons employed in other membership classes and that, if they find it necessary, due to the physical and mental limitations of their age, to retire at an earlier age and usually with less service, they will suffer an economic deprivation therefrom.<sup>24</sup>

A person who is a member in the Special Risk Class may retire at an earlier age and is eligible to receive higher disability and death benefits than Regular Class members.

***Disability Retirement Benefits for Special Risk Members of the FRS***

There are two types of disability retirement available under the Florida Retirement System: regular disability and in-the-line-of-duty disability retirement. To qualify for either type of disability retirement, members must be totally and permanently disabled to the extent that they are unable to work.<sup>25</sup> An employee who is physically or mentally unable to continue performing in his or her present occupation, but is able to perform another type of work, will not qualify for disability benefits.<sup>26</sup>

To be eligible for regular disability retirement under the FRS, members must complete 8 years of creditable service.<sup>27</sup> Under the FRS pension plan, the minimum benefit under regular disability retirement, regardless of class, is 25 percent of the employee's average final compensation.<sup>28</sup> In contrast, in-the-line-of-duty disability benefits are available to members on their first day of employment. There is no vesting period. Special Risk Class members receive a minimum in-the-line-of-duty disability benefit of 65 percent of their average final compensation.<sup>29</sup> Members in all other classes are eligible to receive a minimum in-the-line-of-duty disability benefit of 42 percent of their average final compensation.<sup>30</sup>

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<sup>24</sup> Section 121.0515(1), F.S.

<sup>25</sup> Section 121.091(4)(b), F.S.

<sup>26</sup> Florida Retirement System Employer Handbook, Disability Retirement, ch. 10-2, available at [https://www.rol.frs.state.fl.us/forms/EH\\_ch10.pdf](https://www.rol.frs.state.fl.us/forms/EH_ch10.pdf) (last visited Feb. 15, 2019).

<sup>27</sup> Sections 121.091(4)(a) and 121.591(2)(b)2., F.S.

<sup>28</sup> Section 121.091(4)(f), F.S.

<sup>29</sup> *Id.*

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

Under the investment plan, the disability benefits are in lieu of the normal benefits (the accumulations of contributions and investment earnings in the member's account).<sup>31</sup> Instead, the member must transfer all of the member's accumulations to the investment plan disability account and will receive a monthly benefit calculated the same as a similarly situated pension plan member.<sup>32</sup>

### ***Death Benefits for Special Risk Members of the FRS***

Section 121.091(7), F.S., provides death benefits for active members of the FRS pension plan who die before retirement. If an employee dies before vesting, the employee's spouse receives only the accumulated FRS contributions that were made on the employee's behalf. For vested employees, the employee will be assumed to have retired on the date of death, and the spouse may elect one of the annuity options that provide payment to survivors.

The FRS currently provides death benefits for surviving spouses and/or eligible dependents of active members of the pension plan. Death benefits may be paid for an active member of the FRS pension plan who dies before retirement due to an injury or illness.<sup>33</sup> Certain health conditions for firefighters, law enforcement, correctional and correctional probation officers are deemed accidental and suffered in-the-line-of-duty.<sup>34</sup> If the injury or illness arises out of and in the actual performance of duty required by his or her job, the member's surviving spouse and/or eligible dependent(s) are entitled to in-the-line-of-duty death benefits.

If an active FRS member (regardless of vested status) dies in the line of duty, the surviving spouse receives a monthly benefit for his or her lifetime equal to 100 percent of the member's monthly salary at death.<sup>35</sup> If the spouse dies, the benefit continues until the member's youngest child reaches 18 or is married, whichever occurs first.<sup>36</sup> If the child is unmarried and enrolled as a full time student, the benefit continues until he or she turns 25.<sup>37</sup> If the deceased member is entitled to a higher normal retirement benefit based on service credit, the normal retirement benefit is payable to the joint annuitant.<sup>38</sup>

For instances relating to in-the-line-of-duty deaths, the surviving spouse or eligible dependent(s) may purchase credit for any service which could have been claimed by the member at the time of the member's death.<sup>39</sup> If a member dies within one year of vesting, the surviving spouse or other eligible dependent may use the member's annual, sick, or compensatory leave, or service eligible for purchase, to purchase enough service credit to vest the member posthumously.<sup>40</sup>

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<sup>31</sup> Section 121.591(2), F.S.

<sup>32</sup> Section 121.591(2)(g), F.S.

<sup>33</sup> Section 121.091(7), F.S.

<sup>34</sup> Section 112.18(1)(a), F.S., provides any condition of health caused by tuberculosis, heart disease or hypertension resulting in the total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty.

<sup>35</sup> Section 121.091(7)(d) and (i), F.S. If vested posthumously, the surviving spouse or dependent would be entitled to a death benefit.

<sup>36</sup> *Id.*

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

<sup>38</sup> Section 121.091(7)(b) and (d), F.S.

<sup>39</sup> Section 121.091(7)(e), F.S.

<sup>40</sup> Section 121.091(7)(f), F.S.



Under the investment plan, the beneficiary may transfer the accumulations in the member's account to the pension fund and receive the death benefits allowed under the pension plan.<sup>41</sup>

### ***Retirement Plans for Municipalities and Special Districts***

Chapters 175, F.S., provide funding mechanisms for municipal firefighters' pension plans. The statute provides a uniform retirement system for firefighters and sets standards for operating and funding of pension systems through a trust fund supported by a tax on insurance premiums. Most Florida firefighters participate in these plans. Two types of plans are governed by ch. 175, F.S.—chapter plans<sup>42</sup> and local law plans.<sup>43</sup> To be considered totally and permanently disabled, chapter plan and local law plan employees must be found wholly prevented from rendering useful and efficient service as a firefighter.<sup>44</sup> Under local law plans, the standards may vary for determining eligibility for disability retirement, death benefits, and the benefits paid, although all plans must abide by minimum standards established under s. 175.351, F.S.

### **Presumptions and Burdens of Proof Relating to “in the line of duty” Disability and Death**

#### ***Existing In the Line of Duty Presumptions for Firefighters***

Section 112.18, F.S., provides a presumption applicable to any state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer that any such employee qualifies for in the line of duty disability or death benefits if such disability or death is the result of tuberculosis, heart disease, or hypertension.

Section 175.231, F.S., provides a similar presumption for the firefighters in any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under ch. 175, F.S., whose death or disability is the result of tuberculosis, heart disease, or hypertension.

Section 112.181, F.S., provides a presumption applicable to any emergency rescue or public safety worker, including a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer, that such employee qualifies for in the line of duty disability or death if such disability or death is due to hepatitis, meningococcal meningitis, or tuberculosis.

Successful passage of a pre-employment physical examination is required for these presumptions.

#### ***Burden of Proof for In-the-Line-of-Duty Benefits***

Absent one of the existing presumptions, the FRS member has the burden of proof when claiming in-the-line-of-duty disability or death benefits. The member must show by competent medical evidence that the death or disability occurred in-the-line-of-duty in order to receive the

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<sup>41</sup> Section 121.591(4), F.S.

<sup>42</sup> A chapter plan is a plan that adopts the provisions of ch. 175, F.S., by reference. See s. 175.032(4), F.S.

<sup>43</sup> A local law plan is a plan that is created by special act of the Legislature, or by a local ordinance or resolution that meets the minimum statutory requirements. See s. 175.032(14), F.S.

<sup>44</sup> Section 175.191, F.S.

higher benefits.<sup>45</sup> If the employee or the employee's survivors cannot meet the burden of proof, the employee or the employee's survivors are entitled only to the lesser benefits available under regular death or disability benefits.

Under existing law, a firefighter that is disabled or dies as a result of cancer must show that the cancer was contracted due to some factor directly related to the employment as a firefighter. Due to latency periods,<sup>46</sup> it may be difficult for an employee to meet this burden.

***Firefighter Death Benefits under s. 112.191, F.S.***

Section 112.191(2)(a), F.S., grants a death benefit of \$50,000 to each firefighter, while engaged in the performance of his or her firefighter duties, accidentally killed or receives accidental bodily injury which subsequently results in the loss of the firefighter's life. Section 112.191(2)(i), F.S., directs the Division of the State Fire Marshal to adjust the death benefit annually based on the increase in the Consumer Price Index for All Urban Consumers. As of July 1, 2018, the amount of the benefit is \$69,801.94.<sup>47</sup>

**III. Effect of Proposed Changes:**

The bill applies to a firefighter who is employed full-time by the state or local governments and whose primary responsibilities are the prevention and extinguishing of fires; the protection of life and property; and the enforcement of municipal, county and state fire prevention codes and laws pertaining to the prevention and control of fires. Based on this definition, the employers include the Department of Agriculture and Consumer Service (Forest Service), the Department of Financial Services (State Fire Marshal's Office), the Department of Children and Families, the Department of Military Affairs, state universities, cities, counties, port authorities, and fire control districts.

To be eligible for benefits under this bill, a firefighter must be diagnosed with one of 21 specific cancers enumerated in the bill. Upon a diagnosis of one of these cancers, a firefighter is eligible for two new benefits established in the bill - cancer treatment, at the employer's expense, and a \$25,000 cash payment. Under the bill, the firefighter also becomes eligible for disability and death benefits. Based on the conclusive presumption contained in the bill that the cancer or the resulting treatment of cancer occurred in the line of duty, and if the firefighter meets the retirement plan's definition of totally and permanently disabled due to the diagnosis of cancer or circumstances that arise out of the treatment of cancer, the firefighter becomes eligible for enhanced disability benefits either under an employer-sponsored retirement plan or employer-sponsored disability retirement plan. Likewise, if the firefighter dies from the cancer or circumstances that arise from the cancer treatment, the firefighter's death is conclusively presumed to be in the line of duty, resulting in a higher death benefit for the firefighter's beneficiaries.

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<sup>45</sup> Sections 121.091(4)(c) and (7)(d), F.S.

<sup>46</sup> "The time between first exposure to a cancer-causing agent and clinical recognition of the disease is called the latency period. Latency periods vary by cancer type, but usually are 15 to 20 years, or longer. Because of this, past exposures are more relevant than current exposures as potential causes of cancers occurring in workers today. Often, these exposures are hard to document." The National Institute for Occupational Safety and Health (NIOSH), *available at* <http://www.cdc.gov/niosh/topics/cancer/clusters.html> (last visited February 16, 2019).

<sup>47</sup> Rule 69A-64.005, F.A.C.

**Benefits in lieu of Workers Compensation Benefits**

The bill provides that, upon a diagnosis of cancer, a firefighter is entitled to certain benefits, as an alternative to pursuing workers' compensation benefits under ch. 440, F.S., if the firefighter has been employed by his or her employer for at least 5 continuous years, has not used tobacco products for at least the preceding 5 years, and has not been employed in any other position in the preceding 5 years which is proven to create a higher risk for cancer. The benefits are:

- Cancer treatment covered within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse the firefighter for out-of-pocket deductible, copayment, or coinsurance costs incurred by the firefighter.
- A one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer.

If the firefighter elects to continue coverage in the employer-sponsored health plan or group health insurance trust fund after he or she terminates employment, the benefits must be made available by a former employer of a firefighter for 10 years following the date that the firefighter terminates employment, so long as the firefighter has otherwise met the employment criteria when he or she terminated employment and was not subsequently employed as a firefighter following that date. A firefighter's cancer diagnosis must be considered an injury or illness incurred in the line of duty by the employer for purposes of determining leave time and employee retention policies.

**Disability Benefits**

If the firefighter participates in an employer-sponsored retirement plan, the retirement plan must consider the firefighter totally and permanently disabled if he or she meets the retirement plan's definition of totally and permanently disabled due to the diagnosis of cancer or circumstances arising out of the treatment of cancer.

If the firefighter does not participate in an employer-sponsored retirement plan, the employer must provide a disability retirement plan that provides the firefighter with at least 42 percent of his or her annual salary, at no cost to the firefighter, until the firefighter's death. This will serve as coverage for total and permanent disabilities attributable to the diagnosis of cancer arising out of the treatment of cancer.

**Death Benefits**

If the firefighter participates in an employer-sponsored retirement plan, the retirement plan must consider the firefighter to have died in the line of duty if he or she dies as a result of cancer or circumstances arising out of the treatment of cancer.

If the firefighter does not participate in an employer-sponsored retirement plan, the employer must provide a death benefit to the firefighter's beneficiary, at no cost to the firefighter or his or her beneficiary, totaling at least 42 percent of the firefighter's most recent annual salary for at least 10 years following the firefighter's death as a result of cancer or circumstances arising out of the treatment of cancer.

A firefighter who dies as a result of cancer or circumstances arising out of the treatment of cancer is considered to have died while engaged in the performance of his or her firefighter duties under s. 112.191(2)(a), F.S., and all of the benefits arising out of such death are available to the deceased firefighter's beneficiary.<sup>48</sup>

### **Funding Firefighter Health Benefits**

The bill requires the costs of providing the reimbursement, lump sum, and retirement benefits made available under the bill must be borne solely by the employer that employs firefighters.

### **Firefighter Protections**

The bill directs the Division of State Fire Marshal within the Department of Financial services to adopt rules to establish employer cancer prevention best practices as it relates to personal protective equipment, decontamination, fire suppression apparatus, and fire stations.

### **Other Issues**

The bill contains a legislative finding that determines and declares that this act fulfills an important state interest.

The bill takes effect July 1, 2019.

### **Other Implications**

#### ***Conclusive Presumption of Disability***

In terms of the presumption of disability, the bill appears to create a conclusive presumption of disability. Under current law, the burden of proof is on the member to show that the medical condition occurred or became symptomatic during the time the member was employed by the FRS-participating employer, that the member was totally and permanently disabled at the time of termination from such employment, and for an in-line-of-duty disability, that the disability was caused by a job-related illness or accident which occurred while the member was in an employee/employer relationship with the FRS-participating employer.

Under the bill, the member must only show that the firefighter was diagnosed with one of the 21 cancers and was employed by an FRS-participating employer. Moreover, the employer has no opportunity to rebut the presumption that the illness was job-related or in-line-of-duty.

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<sup>48</sup> Section 112.191(2)(a), F.S., provides that a firefighter who is accidentally killed or receives accidental bodily injury which subsequently results in the loss of the firefighter's life while engaged in the performance of his or her firefighter duties is entitled to a sum of \$50,000. However, such killing must not be the result of suicide and such bodily injury may not be intentionally self-inflicted.

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

Article VII, section 18(a) of the Florida Constitution provides in pertinent part that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless:

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated.”

The bill contains a finding that the bill fulfills an important state interest (section 2). The bill appears to apply to all persons similarly situated (those employers employing firefighters), including state agencies, school boards, community colleges, counties, municipalities and special districts. If this exception does not apply, the bill must be approved by two-thirds vote of each chamber.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**E. Other Constitutional Issues:**

Article X, section 14 of the Florida Constitution provides:

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Lines 81-98 of the bill increase benefits to firefighters participating in public sector retirement plans, including the Florida Retirement System and the various ch. 175 plans sponsored by Florida cities. A special study to determine the actuarial impact on the Florida Retirement System is necessary to determine the appropriate level of concurrent funding necessary to meet the constitutional requirements. Likewise, actuarial impact statements for the local government pension plans are required as well.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The fiscal impact on the state, universities, cities, counties, and special fire control districts is unknown at this time. However, these employers should anticipate incurring additional costs (a) to provide \$25,000 payment to each firefighter diagnosed with one of the 21 specific cancers enumerated in the bill; (b) for any cancer treatment undertaken by an eligible firefighter; (c) associated with potentially higher disability retirement benefits; (d) associated with potentially higher in-line-of-duty death benefits; and (e) associated with the adjusted \$50,000 death benefit granted by s. 112.191(2)(a), F.S.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 112.1816 of the Florida Statutes.

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

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

**CS by Community Affairs on March 5, 2019:**

The committee substitute:

- Revises employer reimbursement requirements to firefighters for certain costs incurred in cancer treatment.
- Revises requirements for continuing cancer treatment coverage of firefighters after termination of employment.
- Deletes certain funding prohibitions on cancer coverage for firefighters.

**B. Amendments:**

None.

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

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902036

LEGISLATIVE ACTION

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

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The Committee on Community Affairs (Flores) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 112.1816, Florida Statutes, is created  
to read:

112.1816 Firefighters; cancer diagnosis.—

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

(a) "Cancer" includes:

1. Bladder cancer.





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2. Brain cancer.

3. Breast cancer.

4. Cervical cancer.

5. Colon cancer.

6. Esophageal cancer.

7. Invasive skin cancer.

8. Kidney cancer.

9. Large intestinal cancer.

10. Lung cancer.

11. Malignant melanoma.

12. Mesothelioma.

13. Multiple myeloma.

14. Non-Hodgkin's lymphoma.

15. Oral cavity and pharynx cancer.

16. Ovarian cancer.

17. Prostate cancer.

18. Rectal cancer.

19. Stomach cancer.

20. Testicular cancer.

21. Thyroid cancer.

(b) "Employer" has the same meaning as in s. 112.191.

(c) "Firefighter" means an individual employed as a full-time firefighter within the fire department or public safety department of an employer whose primary responsibilities are the prevention and extinguishing of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.

(2) Upon a diagnosis of cancer, a firefighter is entitled



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to the following benefits, as an alternative to pursuing workers' compensation benefits under chapter 440, if the firefighter has been employed by his or her employer for at least 5 continuous years, has not used tobacco products for at least the preceding 5 years, and has not been employed in any other position in the preceding 5 years which is proven to create a higher risk for any cancer:

(a) Cancer treatment covered within an employer-sponsored health plan or through a group health insurance trust fund. The employer must timely reimburse the firefighter for any out-of-pocket deductible, copayment, or coinsurance costs incurred due to the treatment of cancer.

(b) A one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer.

If the firefighter elects to continue coverage in the employer-sponsored health plan or group health insurance trust fund after he or she terminates employment, the benefits specified in paragraphs (a) and (b) must be made available by the former employer of a firefighter for 10 years following the date on which the firefighter terminates employment so long as the firefighter otherwise met the criteria specified in this subsection when he or she terminated employment and was not subsequently employed as a firefighter following that date. For purposes of determining leave time and employee retention policies, the employer must consider a firefighter's cancer diagnosis as an injury or illness incurred in the line of duty.

(3)(a) If the firefighter participates in an employer-sponsored retirement plan, the retirement plan must consider the



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firefighter totally and permanently disabled in the line of duty  
if he or she meets the retirement plan's definition of totally  
and permanently disabled due to the diagnosis of cancer or  
circumstances that arise out of the treatment of cancer.

(b) If the firefighter does not participate in an employer-  
sponsored retirement plan, the employer must provide a  
disability retirement plan that provides the firefighter with at  
least 42 percent of his or her annual salary, at no cost to the  
firefighter, until the firefighter's death, as coverage for  
total and permanent disabilities attributable to the diagnosis  
of cancer which arise out of the treatment of cancer.

(4) (a) If the firefighter participated in an employer-  
sponsored retirement plan, the retirement plan must consider the  
firefighter to have died in the line of duty if he or she dies  
as a result of cancer or circumstances that arise out of the  
treatment of cancer.

(b) If the firefighter did not participate in an employer-  
sponsored retirement plan, the employer must provide a death  
benefit to the firefighter's beneficiary, at no cost to the  
firefighter or his or her beneficiary, totaling at least 42  
percent of the firefighter's most recent annual salary for at  
least 10 years following the firefighter's death as a result of  
cancer or circumstances that arise out of the treatment of  
cancer.

(c) Firefighters who die as a result of cancer or  
circumstances that arise out of the treatment of cancer are  
considered to have died in the manner as described in s.  
112.191(2) (a), and all of the benefits arising out of such death  
are available to the deceased firefighter's beneficiary.



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(5) The costs of providing the reimbursement, lump sum, and retirement benefits made available under this section must be borne solely by the employer that employs firefighters.

(6) The Division of State Fire Marshal within the Department of Financial Services shall adopt rules to establish employer cancer prevention best practices as it relates to personal protective equipment, decontamination, fire suppression apparatus, and fire stations.

Section 2. The Legislature determines and declares that this act fulfills an important state interest.

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

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to firefighters; creating s. 112.1816,  
F.S.; providing definitions; granting certain benefits  
to a firefighter upon receiving a diagnosis of cancer  
if certain conditions are met; requiring an employer  
to make certain disability payments to a firefighter  
in the event of a total and permanent disability;  
providing for death benefits to a firefighter's  
beneficiary if a firefighter dies as a result of  
cancer or cancer treatments; specifying that any costs  
associated with benefits granted by the act must be  
borne by the employer; requiring the Division of State  
Fire Marshal to adopt certain rules; providing a



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127        declaration of important state interest; providing an  
128        effective date.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 3/5/14

Bill Number (if applicable) 426

Amendment Barcode (if applicable) 902036

Topic Firefighter Cancer

Name Rocco Salvatori

Job Title Firefighter

Address 343 W Madison St

Phone 850-224-7333

City Tallahassee State FL Zip 32301

Email RoccoSalvatori@icloud.com

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

Representing Florida Professional Firefighters

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

8-5-19  
Meeting Date

426  
Bill Number (if applicable)

Topic Cancer in Fire Service

Amendment Barcode (if applicable)

Name Dwayne McKeever

Job Title Fire Fighter

Address 7607 1st Ave West

Phone 941-818-9343

City Brad FL State FL Zip 34209

Email dmcKeever

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fire Service

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

3/5/14  
Meeting Date

SB 426  
Bill Number (if applicable)

Topic SB 426 - Firefighters

Amendment Barcode (if applicable)

Name Jimmy Patronis

Job Title Chief Financial Officer

Address 200 E Gaines St. PL 11, Capitol

Phone (850) 413-2890

Tallahassee FL 32309  
City State Zip

Email CFO.Patronis@myFloridaCFO.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Department of Financial Services

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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



## APPEARANCE RECORD

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

3/5/19  
Meeting Date426  
Bill Number (if applicable)Topic Firefighter CareerName Jim TolleyJob Title ResidentAddress 343 west Madison St.  
StreetPhone 850 224 7333City Tallahassee State FL Zip 32301Email jimt@ppfp.orgSpeaking: ☒ For☐ Against☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida Professional FirefightersAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

Meeting Date \_\_\_\_\_

Bill Number (if applicable) 426

Amendment Barcode (if applicable) \_\_\_\_\_

Topic FF CANAL COVERAGE

Name OMAR BLANCO

Job Title PRESIDENT

Address 8000 NW 21 ST

Phone 305-593-6100

Street MAMI City FL State 33122 Zip

Email \_\_\_\_\_

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

Representing MATT DANE FINESTERS

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-5-19

Meeting Date

Bill Number (if applicable)

486

Topic FIREFIGHTER Cancer Bill

Amendment Barcode (if applicable)

Name CLAUDINE BUZZO

Job Title FIREFIGHTER

Address 501 E ACRE DR

Phone 954-601-7235

City PLANTATION

State FL

Zip 33317

Email JHBUTZY4046MA12.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing LOCAL 1403

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

Meeting Date 3/5/19Bill Number (if applicable) SB 426Topic Firefighters

Amendment Barcode (if applicable) \_\_\_\_\_

Name Ashley BenoitJob Title TeacherAddress 79476 Plummers Creek DrPhone 863-370-9830City Yulee State FL Zip 32097Email ambenoit@gmail.comSpeaking: ☒ For ☐ Against ☐ InformationWaive 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.***

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Bill Number (if applicable)

5B426

Topic

Amendment Barcode (if applicable)

Name

Jacklyn Cusell

Job Title

Address

1749 Ross Rd

Phone

8502545400

Street  
1749

City  
Ft

State  
FL

Zip  
32305

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Henry Cusell (d)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

Meeting Date 3/5/19

Bill Number (if applicable) SB 426

Topic Firefighters

Amendment Barcode (if applicable) \_\_\_\_\_

Name Buddy Davis

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)

Meeting Date

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic

Name JESS MCCARTY

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810

Street

MIAMI

City

FL

State

33128

Zip

Email JMM2@MIAMIDADE.GOV

Phone 305-979-7110

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.

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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)

3/5/19  
Meeting Date

426  
Bill Number (if applicable)

Topic Fire fighter Cancer Benefits

Amendment Barcode (if applicable)

Name Amber Hughes

Job Title Sr. Legislative Advocate

Address ~~PO Box~~ PO Box 1757

Phone 850-701-3021

Street Talbasse  
City Talbasse State FL Zip 32302

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Bill Number (if applicable)

SB 426-FF's

Topic Case Preemption

Amendment Barcode (if applicable)

Name Scott Bielecky

Job Title President, IAAF Local 2928

Address 2328 S. Congress Ave. Ste. 2-C

Phone 561-968-0729

Street

West Palm Beach FL 33405

Email President@iaa2928.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Firefighters & Paramedics

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 Flores

39-00816A-19

2019426\_\_

1 A bill to be entitled  
 2 An act relating to firefighters; creating s. 112.1816,  
 3 F.S.; providing definitions; granting certain benefits  
 4 to a firefighter upon receiving a diagnosis of cancer  
 5 if certain conditions are met; requiring an employer  
 6 to make certain disability payments to a firefighter  
 7 in the event of a total and permanent disability;  
 8 providing for death benefits to a firefighter's  
 9 beneficiary if a firefighter dies as a result of  
 10 cancer or cancer treatments; specifying that any costs  
 11 associated with benefits granted by the act must be  
 12 borne by the employer; requiring the Division of State  
 13 Fire Marshal to adopt certain rules; providing a  
 14 declaration of important state interest; providing an  
 15 effective date.  
 16  
 17 Be It Enacted by the Legislature of the State of Florida:  
 18  
 19 Section 1. Section 112.1816, Florida Statutes, is created  
 20 to read:  
 21 112.1816 Firefighters; cancer diagnosis.-  
 22 (1) As used in this section, the term:  
 23 (a) "Cancer" includes:  
 24 1. Bladder cancer.  
 25 2. Brain cancer.  
 26 3. Breast cancer.  
 27 4. Cervical cancer.  
 28 5. Colon cancer.  
 29 6. Esophageal cancer.

Page 1 of 5

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

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30 7. Invasive skin cancer.  
 31 8. Kidney cancer.  
 32 9. Large intestinal cancer.  
 33 10. Lung cancer.  
 34 11. Malignant melanoma.  
 35 12. Mesothelioma.  
 36 13. Multiple myeloma.  
 37 14. Non-Hodgkin's lymphoma.  
 38 15. Oral cavity and pharynx cancer.  
 39 16. Ovarian cancer.  
 40 17. Prostate cancer.  
 41 18. Rectal cancer.  
 42 19. Stomach cancer.  
 43 20. Testicular cancer.  
 44 21. Thyroid cancer.  
 45 (b) "Employer" has the same meaning as in s. 112.191.  
 46 (c) "Firefighter" means an individual employed as a full-  
 47 time firefighter within the fire department or public safety  
 48 department of an employer whose primary responsibilities are the  
 49 prevention and extinguishing of fires; the protection of life  
 50 and property; and the enforcement of municipal, county, and  
 51 state fire prevention codes and laws pertaining to the  
 52 prevention and control of fires.  
 53 (2) Upon a diagnosis of cancer, a firefighter is entitled  
 54 to the following benefits, as an alternative to pursuing  
 55 workers' compensation benefits under chapter 440, if the  
 56 firefighter has been employed by his or her employer for at  
 57 least 5 continuous years, has not used tobacco products for at  
 58 least the preceding 5 years, and has not been employed in any

Page 2 of 5

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

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other position in the preceding 5 years which is proven to create a higher risk for any cancer:

(a) Cancer treatment, at no cost to the firefighter, covered within an employer-sponsored health plan or through a group health insurance trust fund. The health plan, trust fund, or insurance policy, or a rider added to such policy, may not require the firefighter to contribute toward any deductible, copayment, or coinsurance amount for the treatment of cancer. In complying with this paragraph, the employer may timely reimburse the firefighter for any out-of-pocket deductible, copayment, or coinsurance costs incurred.

(b) A one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer.

The benefits specified in paragraphs (a) and (b) must be made available by a former employer of a firefighter for 10 years following the date that the firefighter terminates employment, so long as the firefighter otherwise met the criteria specified in this subsection when he or she terminated employment and was not subsequently employed as a firefighter following that date. For purposes of determining leave time and employee retention policies, the employer must consider a firefighter's cancer diagnosis as an injury or illness incurred in the line of duty.

(3)(a) If the firefighter participates in an employer-sponsored retirement plan, the retirement plan must consider the firefighter totally and permanently disabled if he or she is prevented from rendering useful and effective service as a firefighter and is likely to remain disabled continuously and permanently due to the diagnosis of cancer or circumstances that

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arise out of the treatment of cancer.

(b) If the firefighter does not participate in an employer-sponsored retirement plan, the employer must provide a disability retirement plan that provides the firefighter with at least 42 percent of his or her annual salary, at no cost to the firefighter, until the firefighter's death, as coverage for total and permanent disabilities attributable to the diagnosis of cancer which arise out of the treatment of cancer.

(4)(a) If the firefighter participated in an employer-sponsored retirement plan, the retirement plan must consider the firefighter to have died in the line of duty if he or she dies as a result of cancer or circumstances that arise out of the treatment of cancer.

(b) If the firefighter did not participate in an employer-sponsored retirement plan, the employer must provide a death benefit to the firefighter's beneficiary, at no cost to the firefighter or his or her beneficiary, totaling at least 42 percent of the firefighter's most recent annual salary for at least 10 years following the firefighter's death as a result of cancer or circumstances that arise out of the treatment of cancer.

(c) Firefighters who die as a result of cancer or circumstances that arise out of the treatment of cancer are considered to have died in the manner as described in s. 112.191(2)(a), and all of the benefits arising out of such death are available to the deceased firefighter's beneficiary.

(5) The costs of purchasing an insurance policy that provides the cancer benefits contained in this section, or the costs of providing such benefits through a self-funded system,

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117 must be borne solely by the employer that employs firefighters  
118 and may not be funded by individual firefighters, by any group  
119 health insurance trust fund funded partially or wholly by  
120 firefighters, or by any self-insured trust fund that provides  
121 health insurance coverage that is funded partially or wholly by  
122 firefighters.

123 (6) The Division of State Fire Marshal within the  
124 Department of Financial Services shall adopt rules to establish  
125 employer cancer prevention best practices as it relates to  
126 personal protective equipment, decontamination, fire suppression  
127 apparatus, and fire stations.

128 Section 2. The Legislature determines and declares that  
129 this act fulfills an important state interest.

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

**COMMITTEE:** Community Affairs  
**ITEM:** SB 426  
**FINAL ACTION:** Favorable with Committee Substitute  
**MEETING DATE:** Tuesday, March 5, 2019  
**TIME:** 2:30—4:30 p.m.  
**PLACE:** 301 Senate Building

[illegible]

CODES: FAV=Favorable  
UNF=Unfavorable  
-R=Reconsidered

RCS=Replaced by Committee Substitute  
RE=Replaced by Engrossed Amendment  
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed  
VA=Vote After Roll Call  
VC=Vote Change After Roll Call

WD=Withdrawn  
OO=Out of Order  
AV=Abstain from Voting

# CourtSmart Tag Report

**Room:** SB 301  
**Caption:** Senate Committee on Community Affairs

**Case No.:**

**Type:**  
**Judge:**

**Started:** 3/5/2019 2:36:39 PM  
**Ends:** 3/5/2019 4:27:12 PM **Length:** 01:50:34

2:36:39 PM Meeting Called to Order  
2:36:41 PM Roll Call  
2:36:47 PM Quorum Present  
2:37:01 PM Introduction by Chair Flores  
2:37:03 PM Tab 14 SB 426  
2:37:16 PM Senator Farmer Acting as Chair  
2:38:03 PM Senator Flores explains SB 426  
2:38:17 PM Amendment Barcode 902036 Explained by Senator Flores  
2:41:00 PM No Questions on the Amendment 902036  
2:42:00 PM Rocco Salvatori representing Florida Professional Firefighters Waives in Support of the Amendment  
2:42:15 PM No Debate on Amendment Barcode 902036  
2:42:24 PM Amendment Barcode 902036 Adopted  
2:42:29 PM Back on SB 426 as Amended  
2:42:36 PM No Questions on SB 426  
2:42:44 PM Dwayne McKeever from the Fire Service Speaks in Support of SB 426  
2:45:08 PM Question from Senator Flores  
2:46:08 PM Response from Dwayne McKeever  
2:46:31 PM Comments from Chair Farmer  
2:46:54 PM CFO Jimmy Patronis from the Department of Financial Services Speaks in Support of SB 426  
2:51:20 PM Question from Senator Pizzo  
2:52:20 PM CFO Patronis Responds  
2:52:37 PM No Further Questions  
2:53:36 PM Jim Tolley from Florida Professional Firefighters Speaks in Support of SB 426  
2:54:36 PM Omar Blanco from the Miami-Dade Firefighters Waives in Support of SB 426  
2:55:37 PM Claudine Buzzo from the Local 1403 Fire Department Speaks in Support of SB 426  
2:57:14 PM Ashley Benoit Speaks in Support of of SB 426  
2:59:25 PM Jaclynn Cusell Speaks in Support of SB 426  
3:05:04 PM Buddy Dewar from the Florida Fire Sprinkler Association Speaks in Support of SB 426  
3:06:04 PM Jess McCarty representing Miami-Dade County Waives in Support of SB 426  
3:06:18 PM Amber Hughes representing the Florida League of Cities Speaks Against SB 426  
3:10:21 PM Scott Bielecky representing Firefighters and Paramedics Waives in Support of SB 426  
3:11:49 PM No Debate on SB 426  
3:12:04 PM Senator Flores Closes on SB 426  
3:13:51 PM Roll Call on SB 426  
3:14:32 PM SB 426 is Reported Favorably  
3:14:43 PM Senator Flores Resumes as Chair  
3:14:52 PM Tab 12 SB 144  
3:14:58 PM Senator Gruters Explains SB 144  
3:15:16 PM No Questions on SB 144  
3:15:52 PM Gary Hunter from the Florida Chamber/Assn. of Florida Community Dev. Waives in Support of SB 144  
3:15:59 PM Warren Husband from the Florida Associated General Contractors Council Waives in Support of SB 144  
3:16:04 PM Nicolette Springer from the League of Women Voters of Florida Waives Against SB 144  
3:16:13 PM Joanna Bonfanti from Fl. Section American Water Works Association Waives in Support SB 144  
3:16:24 PM Carol Bowen from Associated Builders and Contractors Waives in Support of SB 144  
3:16:30 PM Kari Hebrank from Florida Home Builders Assoc., NUCA of Florida Waives in Support of SB 144  
3:16:37 PM Buddy Dewar from the Florida Fire Sprinkler Association Waives in Support of SB 144  
3:16:47 PM Bob Ward representing the Florida Council of 100 Waives in Support of SB 144  
3:16:55 PM No Debate on SB 144  
3:17:19 PM Senator Gruters Waives Close on SB 144  
3:17:23 PM Roll Call on SB 144  
3:17:25 PM SB 144 is Reported Favorably  
3:17:36 PM Tab 5 SJR 344

3:17:52 PM Senator Diaz Explains Amendment Barcode 825478 to SJR 344  
3:19:23 PM No Questions on Amendment Barcode 825478  
3:20:23 PM No Debate on Amendment Barcode 825478  
3:20:30 PM Amendment Barcode 825478 Adopted  
3:20:34 PM Back on Bill as Amended  
3:20:39 PM Question from Senator Farmer  
3:20:44 PM Response from Senator Diaz  
3:20:56 PM Follow-up Question from Senator Farmer  
3:21:44 PM Response from Senator Diaz  
3:22:04 PM Question from Senator Simmons  
3:22:34 PM Response from Senator Diaz  
3:23:22 PM Nicolette Springer from Florida League of Women Voters Waives Against SJR 344  
3:23:38 PM Senator Farmer in Debate  
3:24:13 PM Senator Pizzo in Debate  
3:25:13 PM Senator Simmons in Debate  
3:27:12 PM No Further Debate on SJR 344  
3:28:11 PM Senator Diaz Closes on SJR 344  
3:28:14 PM Roll Call on CS/SJR 344  
3:28:59 PM CS/SJR 344 is Reported Favorably  
3:29:11 PM Tab 6 SB 562  
3:29:14 PM SB 562 Explained by Senator Diaz  
3:29:25 PM Late-filed Amendment Barcode 482608 Introduced  
3:29:29 PM Amendment Barcode 482608 Explained by Senator Diaz  
3:29:40 PM No Questions on Amendment Barcode 482608  
3:29:54 PM Amendment Barcode 482608 is Adopted  
3:29:57 PM Back on Bill as Amended  
3:30:02 PM Nicolette Springer from the League of Women Voters of Florida Waives Against SB 562  
3:30:07 PM No Debate on SB 562  
3:30:11 PM Senator Diaz Waives Close on SB 562  
3:30:18 PM Roll Call on CS/SB 562  
3:30:22 PM CS/SB 562 is Reported Favorably  
3:30:28 PM Tab 13 SB 202  
3:30:33 PM Senator Wright Explains SB 202  
3:30:56 PM Question from Senator Pizzo  
3:31:55 PM Response from Senator Wright  
3:32:06 PM No Further Questions  
3:32:18 PM Carey Baker from the Florida Association of Property Appraisers' Speaks in Support of SB 202  
3:32:23 PM Mike Twitty Waives in Support of SB 202  
3:32:28 PM Loren Levy from the Property Appraisers' Association of Florida Waives in Support of SB 202  
3:32:34 PM No Debate on SB 202  
3:32:45 PM Senator Wright Waives Close on SB 202  
3:32:48 PM Roll Call on SB 202  
3:32:55 PM SB 202 is Reported Favorably  
3:33:05 PM Tab 9 SB 436  
3:33:31 PM Senator Hooper Explains SB 436  
3:33:42 PM No Questions on SB 436  
3:34:41 PM Woody Simmons from the National Marine Manufacturers Association Waives in Support of SB 436  
3:34:49 PM No Debate on SB 436  
3:34:58 PM Senator Hooper Waives Close on SB 436  
3:35:03 PM Roll Call on SB 436  
3:35:04 PM SB 436 is Reported Favorably  
3:35:14 PM Tab 8 SB 494  
3:35:18 PM Senator Hooper Explains SB 494  
3:35:36 PM Question from Senator Pizzo  
3:36:29 PM Response from Senator Hooper  
3:36:45 PM Follow-up from Senator Pizzo  
3:37:12 PM Response from Senator Hooper  
3:37:50 PM Question from Senator Simmons  
3:38:20 PM Response from Senator Hooper  
3:38:40 PM Jim Tolley from the Florida Professional Firefighters Speaks in Support of SB 494  
3:40:30 PM Question from Senator Farmer  
3:41:30 PM Response from Jim Tolley

3:41:38 PM Omar Blanco President of the Miami-Dade Firefighters Speaks in Support of SB 494  
3:42:20 PM Senator Farmer in Debate  
3:43:39 PM No Further Debate on SB 494  
3:44:39 PM Senator Hooper Waives Close on SB 494  
3:44:40 PM Roll Call on SB 494  
3:44:42 PM SB 494 is Reported Favorably  
3:44:51 PM Tab 10 SB 7014  
3:44:54 PM Senator Hooper Explains SB 7014  
3:46:46 PM No Questions on the SB 7014  
3:47:45 PM Senator Hooper Explains Amendment Barcode 241712  
3:47:57 PM No Questions on Amendment Barcode 241712  
3:48:16 PM No Debate on Amendment Barcode 241712  
3:48:17 PM Amendment Barcode 241712 is Adopted  
3:48:23 PM Senator Hooper Explains Amendment Barcode 532950  
3:48:43 PM No Questions on Amendment Barcode 532950  
3:48:45 PM No Debate on Amendment Barcode 532950  
3:48:49 PM Amendment Barcode 532950 is Adopted  
3:48:53 PM Senator Hooper Explains Amendment Barcode 553006  
3:48:56 PM No Questions on Amendment Barcode 553006  
3:49:34 PM Justin Thames Waives in Support of Amendment Barcode 553006  
3:49:42 PM Amendment Barcode 553006 is Adopted  
3:49:46 PM Senator Hooper Explains Amendment Barcode 283582  
3:49:56 PM No Questions on Amendment Barcode 283582  
3:50:04 PM No Debate on Amendment 283582  
3:50:06 PM Amendment Barcode 283582 Adopted  
3:50:12 PM Back on Bill as Amended  
3:50:16 PM No Questions on SB 7014  
3:50:20 PM No Debate on SB 7014  
3:50:24 PM Senator Hooper Waives Close on SB 7014  
3:50:30 PM Roll Call on CS/SB 7014  
3:50:32 PM CS/SB 7014 is Reported Favorably  
3:50:46 PM Tab 11 CS/SB 246  
3:50:49 PM Senator Hooper Explains CS/SB 246  
3:51:06 PM No Questions on CS/SB 246  
3:52:06 PM Senator Hooper Explains Amendment Barcode 772792  
3:52:20 PM No Questions on Amendment Barcode 772792  
3:52:45 PM No Debate on Amendment Barcode 772792  
3:52:54 PM Amendment Barcode 772792 is Adopted  
3:52:55 PM Back on Bill as Amended  
3:53:00 PM Question from Senator Pizzo  
3:53:09 PM Senator Hooper Responds  
3:53:36 PM Follow-up Question from Senator Pizzo  
3:54:06 PM Response from Senator Hooper  
3:54:50 PM Follow-up from Senator Pizzo  
3:55:33 PM Response from Senator Hooper  
3:56:18 PM Follow-up from Senator Pizzo  
3:57:18 PM Response from Senator Hooper  
3:57:25 PM No Further Questions on CS/SB 246  
3:58:18 PM Jeff Branch from the Florida League of Cities Waives Against CS/SB 246  
3:58:24 PM Warren Husband from Florida Associated General Contractors Council Waives in Support of CS/SB 246  
3:59:00 PM Frank Bernardino from Polk County Waives Against CS/SB 246  
3:59:05 PM Bruce Kershner from the Southeast Glass Association Waives in Support of CS/SB 246  
3:59:11 PM Jess McCarty from Miami-Dade County Waives Against CS/SB 246  
3:59:16 PM Buddy Dewar from the Florida Fire Sprinkler Association Waives in Support of CS/SB 246  
3:59:18 PM Scott Jenkins from National Utility Contractors Association of Florida Waives in Support of CS/SB 246  
3:59:25 PM Carol Bowen from Associated Builders and Contractors Waives in Support of CS/SB 246  
3:59:35 PM Edward Labrador from Broward County Speaks Against CS/SB 246  
4:03:02 PM Question from Senator Pizzo  
4:04:02 PM Response from Edward Labrador  
4:04:21 PM Senator Pizzo in Debate  
4:05:30 PM No Further Debate on CS/SB 246  
4:06:29 PM Senator Hooper Closes on CS/SB 246



4:08:01 PM Roll Call on CS/SB 246  
 4:09:01 PM CS/SB 246 is Reported Favorably  
 4:09:13 PM Tab 7 CS/SB 462  
 4:09:29 PM Senator Powell Explains CS/SB 462  
 4:09:41 PM No Questions on CS/SB 462  
 4:10:31 PM Senator Powell Explains Amendment Barcode 380012  
 4:10:38 PM Question from Senator Pizzo  
 4:11:06 PM Response from Senator Powell  
 4:11:24 PM Follow-up Senator Pizzo  
 4:11:41 PM Response from Senator Powell  
 4:12:05 PM No Further Questions on Amendment Barcode 380012  
 4:12:13 PM Amendment Barcode 380012 is Adopted  
 4:12:17 PM Back on Bill as Amended  
 4:12:20 PM Brittany Finkbeiner from Real Property Probate & Trust Law Section of the Fl. Bar Waives in Support of CS/SB 462  
 4:12:27 PM Marty Bowen from the Florida Association of Prof. Process Servers Waives in Support of CS/SB 462  
 4:12:30 PM Michael Compton of the Florida Association of Prof. Process Servers Waives in Support of CS/SB 462  
 4:12:35 PM No Debate on CS/SB 462  
 4:12:44 PM Senator Powell Waives Close on CS/SB 462  
 4:12:49 PM Roll Call on CS/SB 462  
 4:12:56 PM CS/SB 462 is Reported Favorably  
 4:13:07 PM Tab 3 CS/SB 268  
 4:13:17 PM Senator Baxley Explains CS/SB 268  
 4:13:30 PM Senator Baxley Explains Amendment Barcode 344688  
 4:14:03 PM No Questions on Amendment Barcode 344688  
 4:15:03 PM French Brown from Verifies Voting Waives in Support of Amendment Barcode 344688  
 4:15:11 PM Nicolette Springer from the League of Women Voters of Florida Waives in Support of Amendment Barcode 344688  
 4:15:17 PM Amendment Barcode 344688 Adopted  
 4:15:27 PM Back on Bill as Amended  
 4:15:31 PM Jess McCarty from Miami-Dade County Waives in Support of CS/SB 268  
 4:15:34 PM Albert Balido from the Southern Poverty Law Center Waives in Support of CS/SB 268  
 4:15:36 PM Alan Hays from the FSASE Waives in Support of CS/SB 268  
 4:15:38 PM Nicolette Springer from the League of Women Voters of Florida Waives in Support of CS/SB 268  
 4:15:48 PM Michael Daniels representing FFAST Waives in Support of CS/SB 268  
 4:15:51 PM No Debate on CS/SB 268  
 4:16:01 PM Senator Baxley Waives Close on CS/SB 268  
 4:16:04 PM Roll Call on CS/SB 268  
 4:16:05 PM CS/SB 268 is Reported Favorably  
 4:16:12 PM Tab 4 SB 350  
 4:16:22 PM Senator Hutson Explains Amendment Barcode 634362  
 4:17:21 PM Question from Senator Broxson  
 4:18:20 PM Response from Senator Hutson  
 4:18:35 PM Question from Senator Simmons  
 4:19:14 PM Response from Senator Hutson  
 4:19:56 PM Question from Chair Flores  
 4:20:02 PM Response from Senator Hutson  
 4:20:26 PM Follow-up from Chair Flores  
 4:20:56 PM Jeff Branch from the Florida League of Cities Waives in Support of SB 350  
 4:21:29 PM Warren Husband from the Florida Associated General Contractors Council Waives in Support of SB 350  
 4:21:34 PM Rusty Payton from the Florida Home Builders Association Waives in Support of SB 350  
 4:21:36 PM Amendment Barcode 634362 Adopted  
 4:21:50 PM Back on Bill as Amended  
 4:21:55 PM No Debate on SB 350  
 4:21:58 PM Senator Hutson Waives Close on SB 350  
 4:22:04 PM Roll Call on CS/SB 350  
 4:22:05 PM CS/SB 350 is Reported Favorably  
 4:22:22 PM Tab 1 SB 532  
 4:22:23 PM Senator Farmer Explains SB 532  
 4:22:35 PM Amendment Barcode 339590 Explained by Senator Farmer  
 4:22:53 PM No Questions on Amendment Barcode 339590  
 4:23:24 PM Frank Bernardino from Palm Beach County Waives in Support of Amendment Barcode 339590

**4:23:27 PM** Lori Killinger from the Florida Assn. of Mitigation Bankers Waives in Support of Amendment Barcode 339590  
**4:23:31 PM** Rusty Payton from the Florida Home Builders Association Waives in Support of Amendment Barcode 339590  
**4:23:36 PM** No Debate on Amendment Barcode 339590  
**4:23:46 PM** Amendment Barcode 339590 is Adopted  
**4:23:49 PM** Back on Bill as Amended  
**4:23:53 PM** No Questions on SB 532  
**4:23:56 PM** Edward Briggs representing Highland Homes Waives in Support of SB 532  
**4:23:59 PM** Nicolette Springer from the League of Women Voters of Florida Waives Against SB 532  
**4:24:01 PM** Rusty Payton from Florida Home Builders Association Waives in Support of SB 532  
**4:24:06 PM** Bob Ward representing the Florida Council 100 Waives in Support of SB 532  
**4:24:14 PM** No Debate on SB 532  
**4:24:19 PM** Senator Farmer Closes on SB 532  
**4:24:22 PM** Roll Call on CS/SB532  
**4:24:32 PM** CS/SB 532 is Reported Favorably  
**4:24:37 PM** Tab 2 SB 310  
**4:24:46 PM** Senator Broxson Explains SB 310  
**4:24:53 PM** No Questions on SB 310  
**4:25:41 PM** Steve Dyal Waives in Support of SB 310  
**4:25:46 PM** No Debate on SB 310  
**4:25:53 PM** Senator Broxson Closes on SB 310  
**4:26:00 PM** Roll Call on SB 310  
**4:26:20 PM** SB 310 is Reported Favorably  
**4:26:32 PM** Closing Remarks from Chair Flores  
**4:26:43 PM** Senator Broxson Moves to Adjourn  
**4:27:00 PM** Meeting Adjourned