Tab 1	**SB 116** by **Stewart**; Motor Vehicle Racing

189694	D	S	RCS	RC, Stewart	Delete everything after	04/23 08:09 PM

Tab 2	**CS/CS/SB 874** by **AP, BI, Rouson**; (Similar to CS/CS/CS/H 00469) Consumer Finance Loans

Tab 3	**SB 604** by **Pizzo**; (Identical to H 00763) Registered Contractor Licensing

Tab 4	**CS/CS/SB 616** by **CA, IT, Perry (CO-INTRODUCERS) Hutson**; (Compare to CS/CS/H 00027) Engineering

495484	A	S	RCS	RC, Perry	Delete L.147 - 338:	04/23 09:42 PM

Tab 5	**SB 1494** by **Perry**; (Identical to H 06017) Small-scale Comprehensive Plan Amendments

Tab 6	**SB 7044** by **CJ**; (Identical to H 07059) OGSR/Concealed Carry License/Department of Agriculture and Consumer Services

Tab 7	**CS/SB 7086** by **JU, CJ**; (Compare to CS/1ST ENG/H 07089) Voting Rights Restoration

116400	D	S	RCS	RC, Brandes	Delete everything after	04/23 10:00 PM
786538	AA	S	UNFAV	RC, Rodriguez	Before L.5:	04/23 10:00 PM
620860	AA	S	UNFAV	RC, Rodriguez	Delete L.266 - 285:	04/23 10:00 PM
~~136384~~	AA	S	WD	RC, Rodriguez	btw L.332 - 333:	04/23 10:00 PM
~~275642~~	AA	S	WD	RC, Rodriguez	btw L.332 - 333:	04/23 10:00 PM
~~477272~~	AA	S	WD	RC, Rodriguez	btw L.425 - 426:	04/23 10:00 PM
714376	A	S		RC, Rodriguez	Before L.63:	04/22 01:49 PM
894776	A	S		RC, Rodriguez	btw L.352 - 353:	04/22 01:44 PM
228614	A	S		RC, Rodriguez	btw L.352 - 353:	04/22 01:52 PM
424162	A	S		RC, Rodriguez	btw L.432 - 433:	04/22 01:48 PM
570922	A	S	L	RC, Rodriguez	Delete L.317 - 331:	04/23 11:33 AM

Tab 8	**CS/SB 620** by **MS, Broxson**; (Compare to CS/CS/H 00891) Military Affairs

~~824062~~	A	S		WD	RC, Broxson	Delete L.30 - 70.	04/24 08:31 AM
252012	A	S	L	RCS	RC, Broxson	btw L.140 - 141:	04/24 08:31 AM

Tab 9	**CS/SB 1690** by **BI, Broxson**; (Identical to CS/H 00925) Warranty Associations

Tab 10	**CS/SB 670** by **GO, Rader (CO-INTRODUCERS) Rouson**; (Similar to CS/H 00253) Assisted and Independent Living Task Force

626102	D	S		RC, Rader	Delete everything after	04/22 09:35 AM
446132	AA	S		RC, Rader	Delete L.9:	04/22 04:56 PM

Tab 11	**CS/SB 722** by **JU, Hooper**; (Similar to CS/H 00487) Carrying of Firearms by Tactical Medical Professionals

696908	A	S	RCS	RC, Hooper	Delete L.45:	04/24 09:21 AM

Tab 12	**CS/CS/SB 908** by **CA, BI, Hooper**; (Compare to H 00647) Firesafety Systems

427046	D	S	RCS	RC, Hooper	Delete everything after	04/23 08:33 PM
515784	AA	S	RCS	RC, Hooper	Delete L.45:	04/23 08:33 PM

Tab 13	**SB 7074** by **GO**; (Compare to CS/CS/H 01121) Support Organizations

145574	D	S	RCS	RC, Montford	Delete everything after	04/24 10:04 AM

Tab 14	**SB 746** by **Wright**; (Identical to H 00635) Public Records/Judicial Assistants

Tab 15	**CS/SM 804** by **JU, Torres (CO-INTRODUCERS) Rodriguez, Taddeo, Powell, Bracy, Gibson, Cruz, Thurston, Book, Farmer, Braynon, Diaz, Pizzo**; (Similar to CS/CS/H 00205) Humanitarian Assistance/Government of Venezuela

Tab 16	**CS/SB 838** by **CF, Powell**; (Similar to CS/H 00363) Public Records/Mental Health Treatment and Services

475810	A		S	L	RCS	RC, Powell	Delete L.27: 04/24 10:38 AM

Tab 17	**CS/SB 1024** by **IT, Gruters**; (Similar to CS/CS/H 00735) Blockchain Technology

343332	A		S		RCS	RC, Gruters	Delete L.83 - 97: 04/24 10:40 AM

Tab 18	**CS/SB 1252** by **BI, Gruters**; (Similar to CS/H 00977) Public Accountancy

Tab 19	**SB 1422** by **Gruters**; (Compare to CS/CS/CS/H 00997) Health Plans

646986	A		S		UNFAV	RC, Rodriguez	Delete L.59 - 139: 04/23 08:43 PM

Tab 20	**CS/SB 1124** by **IT, Harrell**; (Compare to CS/CS/H 01115) Dispensing Medicinal Drugs

Tab 21	**CS/CS/SB 1180** by **HP, BI, Mayfield (CO-INTRODUCERS) Harrell**; (Compare to CS/H 01363) Prescription Drug Formulary Consumer Protection

635224	A		S	L	RCS	RC, Simpson	Delete L.88 - 230: 04/23 08:58 PM
385052	AA		S	L	RCS	RC, Mayfield	Delete L.16 - 166: 04/23 08:58 PM

Tab 22	**CS/CS/SB 1400** by **JU, CA, Albritton**; (Similar to CS/H 01159) Private Property Rights

~~279584~~	A		S		WD	RC, Albritton	Delete L.96 - 108: 04/23 09:21 PM

Tab 23	**CS/SB 1432** by **CF, Baxley**; (Compare to CS/H 01209) Foster Parents

315452	A		S		RCS	RC, Baxley	Delete L.94 - 102. 04/24 11:56 AM

Tab 24	**SB 1616** by **Baxley (CO-INTRODUCERS) Albritton**; (Identical to H 00861) Local Government Financial Reporting

Tab 25	**SB 7066** by **EE**; (Compare to H 00967) Ballot Processes

834194	D		S		RCS	RC, Baxley	Delete everything after 04/23 09:06 PM
640434	AA		S		UNFAV	RC, Rodriguez	Delete L.241 - 947: 04/23 09:06 PM
~~139958~~	AA		S	L	WD	RC, Simmons	Delete L.1068 - 1069: 04/23 09:06 PM

Tab 26	**SB 1462** by **Diaz**; (Compare to CS/1ST ENG/H 07071) Education

466126	A		S	L		RC, Brandes	Before L.11: 04/23 10:20 AM

Tab 27	**SB 7106** by **ED (CO-INTRODUCERS) Simmons**; (Compare to H 00923) Risk Protection Orders

Tab 28	**CS/SB 38** by **JU, Thurston**; (Identical to CS/H 06523) Relief of Jane Doe by the School Board of Miami-Dade County

Tab 29	**CS/SB 236** by **CJ, Book**; Public Records and Public Meetings

Tab 30	**SB 1210** by **Book**; (Identical to H 00983) Ratification of Rules of the Department of Financial Services

Tab 31	**CS/SB 302** by **HP, Brandes**; (Similar to CS/1ST ENG/H 00411) Nonemergency Medical Transportation Services

163830	D	S	RCS	RC, Brandes	Delete everything after	04/24 02:35 PM
590480	AA	S	RCS	RC, Brandes	Delete L.54 - 55:	04/24 02:35 PM

Tab 32	**CS/CS/SB 772** by **JU, BI, Stargel (CO-INTRODUCERS) Baxley**; (Similar to CS/CS/CS/1ST ENG/H 00431) Liens Against Motor Vehicles and Vessels

Tab 33	**CS/CS/SB 1140** by **CA, JU, Hutson**; (Similar to CS/CS/CS/H 00829) Attorney Fees and Costs

124644	A	S	RCS	RC, Hutson	Delete L.30 - 37:	04/24 03:07 PM
344278	AA	S	RCS	RC, Hutson	Delete L.5:	04/24 03:07 PM
552588	A	S	RCS	RC, Hutson	Delete L.40 - 42:	04/24 03:07 PM

Tab 34	**SB 1338** by **Rodriguez**; (Similar to CS/H 01085) Guardianship

Tab 35	**CS/SB 1476** by **BI, Flores**; (Similar to H 01145) Citizens Property Insurance Corporation

Tab 36	**CS/SB 1618** by **IT, Simmons (CO-INTRODUCERS) Cruz, Mayfield, Broxson**; (Compare to H 01013) Tobacco Products

~~923616~~	D	S	L	WD	RC, Simmons	Delete everything after	04/24 03:27 PM

Tab 37	**CS/SB 1622** by **CF, Montford**; (Similar to CS/CS/H 01249) Public Records/Foster Parent and Foster Parent Applicant Names

Tab 38	**CS/SB 1656** by **CJ, Lee (CO-INTRODUCERS) Rouson**; (Similar to H 07069) Criminal Statutes

Tab 39	**CS/SB 728** by **IS, Lee**; (Identical to CS/CS/H 00437) Community Development Districts

~~455636~~	A	S	L	WD	RC, Lee	btw L.45 - 46:	04/24 01:11 PM

Tab 40	**CS/SB 1638** by **IS, Lee**; (Compare to CS/CS/1ST ENG/H 00725) Commercial Motor Vehicles

614976	A	S	L	UNFAV	RC, Lee	btw L.25 - 26:	04/24 03:39 PM
828292	A	S	L	RCS	RC, Lee	btw L.123 - 124:	04/24 03:39 PM

Tab 41	**CS/CS/SB 1730** by **IS, CA, Lee**; (Compare to CS/H 00207) Community Development and Housing

~~944856~~	A	S		WD	RC, Brandes	btw L.346 - 347:	04/24 03:47 PM
~~356486~~	A	S		WD	RC, Stargel	Delete L.433 - 447.	04/24 03:47 PM
817794	A	S	L	RCS	RC, Lee	Delete L.104 - 365:	04/24 03:47 PM
877766	AA	S	L	RCS	RC, Hutson	btw L.57 - 58:	04/24 03:47 PM

Tab 42	**SB 7100** by **IT**; (Similar to H 07121) Public Records/Department of the Lottery

Tab 43	**CS/HB 629** by **GCS, Robinson**; (Identical to S 01264) Lottery Games

834516	A	S	FAV	RC, Hutson	Delete L.20 - 53.	04/24 03:50 PM

Tab 44	**CS/HB 879** by **HMR, Williamson**; (Compare to CS/S 00258) Genetic Information Used for Insurance Purposes

Tab 45	**HB 7067** by **HQS, Yarborough**; Registration Fees

Tab 46	**HB 7073** by **HQS, Plakon, Leek**; (Compare to S 01452) Permit and Inspection Fees

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Gibson, Vice Chair

MEETING DATE: Tuesday, April 23, 2019
TIME: 2:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Building

MEMBERS: Senator Benacquisto, Chair; Senator Gibson, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Farmer, Flores, Hutson, Lee, Montford, Passidomo, Rodriguez, Simmons, Simpson, Stargel, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 116** Stewart	Motor Vehicle Racing; Increasing the criminal penalty for a third or subsequent violation related to motor vehicle racing within a specified period after the date of a prior violation that resulted in a conviction, etc. IS 02/19/2019 Favorable CJ 03/04/2019 Favorable JU 03/18/2019 Favorable RC 04/23/2019 Fav/CS	Fav/CS Yeas 17 Nays 0
2	**CS/CS/SB 874** Appropriations / Banking and Insurance / Rouson (Similar CS/CS/CS/H 469)	Consumer Finance Loans; Creating the Access to Responsible Credit Pilot Program within the Office of Financial Regulation; providing requirements for program licensees, program loans, interest rates, program loan refinancing, receipts, disclosures and statements provided by program licensees to borrowers, origination fees, insufficient funds fees, and delinquency charges; authorizing the office to examine each program licensee, branch office, and access partner, etc. BI 03/18/2019 Not Considered BI 03/25/2019 Fav/CS AP 04/18/2019 Fav/CS RC 04/23/2019 Favorable	Favorable Yeas 13 Nays 2
3	**SB 604** Pizzo (Identical H 763)	Registered Contractor Licensing; Extending the date by which an applicant must make application for a license to be grandfathered, etc. IT 03/19/2019 Favorable CA 04/02/2019 Favorable RC 04/23/2019 Favorable	Favorable Yeas 14 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/CS/SB 616** Community Affairs / Innovation, Industry, and Technology / Perry (Compare CS/CS/H 27, CS/CS/H 827, CS/CS/H 7103, CS/CS/CS/S 1640)	Engineering; Deleting a provision requiring a delinquent status licensee to apply for active or inactive status; revising licensure certification requirements to include active engineering experience and a minimum age; decreasing the amount of time a local building official has to take certain actions after receiving a permit application and affidavit from a private provider, etc. IT 03/26/2019 Fav/CS CA 04/09/2019 Fav/CS RC 04/23/2019 Fav/CS	Fav/CS Yeas 16 Nays 0
5	**SB 1494** Perry (Identical H 6017)	Small-scale Comprehensive Plan Amendments; Removing the acreage limitations that apply to small-scale comprehensive plan amendments, etc. CA 03/26/2019 Favorable IS 04/09/2019 Favorable RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 0
6	**SB 7044** Criminal Justice (Identical H 7059)	OGSR/Concealed Carry License/Department of Agriculture and Consumer Services; Amending provisions relating to an exemption from public records requirements for personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm through a tax collector appointed by the Department of Agriculture and Consumer Services to receive applications and fees; abrogating the scheduled repeal of the exemption, etc. GO 03/12/2019 Favorable RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 1
7	**CS/SB 7086** Judiciary / Criminal Justice (Compare CS/H 7089)	Voting Rights Restoration; Revising terminology regarding voting rights restoration to conform to the State Constitution; requiring the voting disqualification of certain felons to be removed and voting rights restored pursuant to s. 4, Art. VI of the State Constitution; authorizing the Department of State to verify whether a person who has been convicted of a felony offense has completed all the terms of his or her sentence; requiring the Department of Corrections to inform inmates and offenders of voting rights restoration pursuant to s. 4, Art. VI of the State Constitution, in addition to executive clemency and civil rights restoration, etc. JU 04/08/2019 Fav/CS RC 04/23/2019 Fav/CS	Fav/CS Yeas 11 Nays 6

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 620** Military and Veterans Affairs and Space / Broxson (Compare CS/CS/H 891)	Military Affairs; Prohibiting a landlord from requiring a prospective tenant who is a servicemember to deposit or advance more than a certain amount of funds; providing an additional circumstance under which a servicemember may terminate a rental agreement; prohibiting certain construction or activities that are incompatible with the mission of a military installation on certain land under a rural-lands-protection easement, etc. MS 04/03/2019 Fav/CS IT 04/10/2019 Favorable RC 04/23/2019 Fav/CS	Fav/CS Yeas 17 Nays 0
9	**CS/SB 1690** Banking and Insurance / Broxson (Identical CS/H 925)	Warranty Associations; Revising the basis for calculating the required assets in a home warranty association's premium reserve account; requiring that such reserve account be a separate auditable account for contracts in force in this state; prohibiting home warranties from excluding coverage because of the presence of rust or corrosion, except under certain circumstances; revising the basis for calculating the required assets in a service warranty association's premium reserve account, etc. BI 03/18/2019 Not Considered BI 03/25/2019 Fav/CS CM 04/08/2019 Favorable RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 0
10	**CS/SB 670** Governmental Oversight and Accountability / Rader (Similar CS/H 253)	Assisted and Independent Living Task Force; Creating the task force to evaluate proposals that incentivize building contractors and developers to create space for assisted living facilities and independent living communities within mixed-use developments; establishing the task force adjunct to the Agency for Persons with Disabilities; providing for duties, membership, and meetings of the task force, etc. CF 03/04/2019 Favorable GO 03/19/2019 Fav/CS RC 04/23/2019 Not Considered	Not Considered
11	**CS/SB 722** Judiciary / Hooper (Similar CS/H 487)	Carrying of Firearms by Tactical Medical Professionals; Exempting certain licensed medical professionals from specified provisions concerning the carrying of firearms; requiring certain policies and procedures for law enforcement agencies; providing immunities and privileges for such professionals, etc. JU 03/11/2019 Fav/CS IS 04/02/2019 Favorable RC 04/23/2019 Fav/CS	Fav/CS Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	**CS/CS/SB 908** Community Affairs / Banking and Insurance / Hooper (Compare H 647, CS/H 723, CS/CS/CS/H 1393, S 1152, CS/CS/S 1704, S 1732)	Firesafety Systems; Requiring that a uniform fire alarm permit application, along with certain other information, be used and submitted to the local enforcement agency for any project requiring a fire alarm permit; authorizing local authorities having jurisdiction to accept uniform summary inspection reports of certain fire hydrants and fire protection systems by certain means; requiring that condominium association bylaws provide requirements for the association's reasonable compliance with the Florida Fire Prevention Code; extending the date before which a local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system, etc. BI 03/18/2019 Fav/CS CA 04/02/2019 Fav/CS RC 04/23/2019 Fav/CS	Fav/CS Yeas 14 Nays 3
13	**SB 7074** Governmental Oversight and Accountability (Compare CS/CS/H 1121)	Support Organizations; Removing the scheduled repeal of provisions governing the citizen support organization providing support for the Division of Library and Information Services of the Department of State; removing the scheduled repeal of provisions governing citizen support organizations providing support for the Division of Cultural Affairs of the Department of State; repealing a provision relating to the Florida Intergovernmental Relations Foundation, etc. RC 04/23/2019 Fav/CS	Fav/CS Yeas 17 Nays 0
14	**SB 746** Wright (Identical H 635)	Public Records/Judicial Assistants; Providing an exemption from public records requirements for certain identifying and location information of current and former judicial assistants and their spouses and children; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. JU 03/04/2019 Favorable GO 04/02/2019 Favorable RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	**CS/SM 804** Judiciary / Torres (Similar CS/CS/HM 205)	Humanitarian Assistance/Government of Venezuela; Requesting Congress to take appropriate actions to assist in the delivery of humanitarian assistance, to continue and intensify financial sanctions against the regime of Nicolás Maduro and the Government of Venezuela, and to instruct appropriate federal agencies to hold Nicolás Maduro and officials of the Government of Venezuela accountable for violations of law and abuses of internationally recognized human rights, etc. JU 03/04/2019 Fav/CS RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 0
16	**CS/SB 838** Children, Families, and Elder Affairs / Powell (Similar CS/H 363, Compare CS/CS/H 361)	Public Records/Mental Health Treatment and Services; Providing an exemption from public records requirements for petitions for voluntary and involuntary admission for mental health treatment, court orders, related records, and personal identifying information regarding persons seeking mental health treatment and services; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 03/11/2019 Fav/CS GO 04/02/2019 Favorable RC 04/23/2019 Fav/CS	Fav/CS Yeas 17 Nays 0
17	**CS/SB 1024** Innovation, Industry, and Technology / Gruters (Similar CS/CS/H 735)	Blockchain Technology; Establishing the Florida Blockchain Task Force within the Department of Financial Services; requiring the task force to develop a specified master plan; specifying duties and procedures of the task force, etc. BI 03/18/2019 Favorable IT 04/02/2019 Fav/CS RC 04/23/2019 Fav/CS	Fav/CS Yeas 16 Nays 0
18	**CS/SB 1252** Banking and Insurance / Gruters (Similar CS/H 977)	Public Accountancy; Revising the percentage of total hours of accounting-related and auditing-related continuing education required by the Board of Accountancy for license renewal; updating provisions relating to license reactivation; prohibiting a person from performing or offering to perform certain services without a license, etc. IT 03/19/2019 Favorable BI 04/01/2019 Fav/CS RC 04/23/2019 Favorable	Favorable Yeas 17 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
19	**SB 1422** Gruters (Compare CS/CS/CS/H 997)	Health Plans; Revising eligibility requirements for multiple-employer welfare arrangements; revising applicability of requirements relating to preexisting conditions; providing disclosure requirements for short-term individual, group, blanket, and franchise health insurance policies; revising requirements for, and applicability relating to, association and small employer policies, etc. BI 03/18/2019 Favorable CM 03/25/2019 Favorable RC 04/23/2019 Favorable	Favorable Yeas 9 Nays 7
20	**CS/SB 1124** Innovation, Industry, and Technology / Harrell (Compare CS/CS/H 1115)	Dispensing Medicinal Drugs; Authorizing individuals licensed to prescribe medicinal drugs to dispense a 48-hour supply, rather than a 24-hour supply, of such drugs to any patient, including a discharged patient, under certain circumstances; authorizing such individuals to dispense a 72-hour supply if a state of emergency has been declared in the area, etc. HP 03/11/2019 Favorable IT 03/19/2019 Fav/CS RC 04/23/2019 Favorable	Favorable Yeas 17 Nays 0
21	**CS/CS/SB 1180** Health Policy / Banking and Insurance / Mayfield (Compare CS/H 1363)	Prescription Drug Formulary Consumer Protection; Requiring insurers issuing individual or group health insurance policies to provide certain notices to current and prospective insureds within a certain timeframe before the effective date of any change to a prescription drug formulary during a policy year; specifying requirements for a notice of medical necessity that an insured's treating physician may submit to the insurer within a certain timeframe; requiring small employer carriers to comply with certain requirements for any change to a prescription drug formulary under the health benefit plan, etc. BI 03/18/2019 Fav/CS HP 04/08/2019 Fav/CS RC 04/23/2019 Fav/CS	Fav/CS Yeas 15 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	**CS/CS/SB 1400** Judiciary / Community Affairs / Albritton (Similar CS/H 1159)	Private Property Rights; Deleting a provision that authorizes electric utilities to perform certain right-of-way tree maintenance only if a property owner has received local government approval; prohibiting certain local government ordinances or regulations from requiring a permit, application, notice, fee, or fine for certain activities regarding trees on residential property; establishing a property owner bill of rights; requiring each county property appraiser office to provide information regarding the property owner bill of rights on the appraiser's website, etc. CA 04/02/2019 Fav/CS JU 04/08/2019 Fav/CS RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 0
23	**CS/SB 1432** Children, Families, and Elder Affairs / Baxley (Compare CS/H 1209)	Foster Parents; Citing this act as the "Foster Parent Bill of Rights"; creating a bill of rights for foster parents; providing for mediation; requiring the Department of Children and Families to adopt rules, etc. CF 04/08/2019 Fav/CS RC 04/23/2019 Fav/CS	Fav/CS Yeas 15 Nays 0
24	**SB 1616** Baxley (Identical H 861, Compare CS/H 7035, CS/S 7014)	Local Government Financial Reporting; Requiring county and municipal budget officers, respectively, to submit certain information to the Office of Economic and Demographic Research within a specified timeframe; requiring adopted budget amendments and final budgets to remain posted on each entity's official website for a specified period of time, etc. CA 03/26/2019 Favorable GO 04/10/2019 Favorable RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 0
25	**SB 7066** Ethics and Elections (Compare H 967, H 1365, CS/H 7101, S 460, S 1386, S 1802)	Ballot Processes; Modifying requirements for updating voter registration signatures, to conform; revising dates relating to the selection and qualification of a lieutenant governor running mate, to conform; modifying the Provisional Ballot Voter's Certificate and Affirmation; establishing a process to cure a provisional ballot with a signature deficiency; revising requirements related to the canvassing and counting of vote-by-mail ballots, etc. RC 04/23/2019 Fav/CS	Fav/CS Yeas 15 Nays 1

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
26	**SB 1462** Diaz (Compare CS/H 7071, CS/CS/CS/S 770)	Education; Modifying the date on which the Commissioner of Education is required to annually report certain information to the State Board of Education, the Board of Governors, and the Legislature, etc. ED 03/26/2019 Favorable RC 04/23/2019 Not Considered	Not Considered
27	**SB 7106** Education (Compare H 923, S 764)	Risk Protection Orders; Redefining the term "petitioner" to include individuals who have a biological or legal parent-child relationship with, who are a legal guardian of, or who are a sibling of a respondent, etc. RC 04/23/2019 Temporarily Postponed	Temporarily Postponed
28	**CS/SB 38** Judiciary / Thurston (Identical CS/H 6523)	Relief of Jane Doe by the School Board of Miami-Dade County; Providing for the relief of Jane Doe by the School Board of Miami-Dade County; providing for an appropriation to compensate Jane Doe for injuries and damages sustained as a result of the negligence of the School Board of Miami-Dade County, etc. SM JU 04/01/2019 Fav/CS GO 04/10/2019 Favorable RC 04/23/2019 Favorable	Favorable Yeas 15 Nays 0
29	**CS/SB 236** Criminal Justice / Book	Public Records and Public Meetings; Providing an exception to the expiration of certain public records and public meetings exemptions under specified circumstances; prohibiting the disclosure of the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or information that could assist an individual in determining the identity of such alleged victim, in any portion of a proceeding conducted by the Commission on Ethics, a commission on ethics and public trust, or a county or a municipality that has established a local investigatory process which is open to the public; providing for future legislative review and repeal; providing statements of public necessity, etc. CJ 02/11/2019 Fav/CS GO 03/06/2019 Favorable RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
30	**SB 1210** Book (Identical H 983)	Ratification of Rules of the Department of Financial Services; Ratifying a specified rule relating to implementation of expanded workers' compensation benefits for first responders for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds for likely adverse impact or increase in regulatory costs, etc. BI 03/25/2019 Favorable RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 0
31	**CS/SB 302** Health Policy / Brandes (Similar CS/H 411)	Nonemergency Medical Transportation Services; Authorizing Medicaid nonemergency transportation services to be provided to a Medicaid recipient by certain transportation network companies or transportation brokers, subject to compliance with certain requirements; requiring the Agency for Health Care Administration to update certain regulations, policies, or other guidance by a specified date; authorizing a licensed basic life support or licensed advanced life support ambulance service to provide nonemergency Medicaid transportation in permitted ambulances in any county at the request of a certain eligible plan, etc. HP 02/11/2019 Not Considered HP 02/19/2019 Fav/CS BI 03/11/2019 Favorable RC 04/23/2019 Fav/CS	Fav/CS Yeas 16 Nays 0
32	**CS/CS/SB 772** Judiciary / Banking and Insurance / Stargel (Similar CS/CS/CS/H 431)	Liens Against Motor Vehicles and Vessels; Authorizing a person claiming a lien against a motor vehicle to obtain the release of the vehicle from a lien claimed by a motor vehicle repair shop under certain circumstances; prohibiting a motor vehicle repair shop from violating certain provisions; revising notice requirements for enforcing a lien by sale of a motor vehicle; requiring a motor vehicle repair shop, garage, automotive service facility, or storage operator to use a third-party service to provide notices of lien and sale, etc. BI 03/25/2019 Fav/CS JU 04/08/2019 Fav/CS RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
33	**CS/CS/SB 1140** Community Affairs / Judiciary / Hutson (Similar CS/CS/CS/H 829)	Attorney Fees and Costs; Defining the term "attorney fees and costs"; providing for award of attorney fees and costs and damages in civil actions challenging local ordinances as being preempted by the State Constitution or state law; prohibiting an award of attorney fees and costs under certain circumstances, etc. JU 03/18/2019 Fav/CS CA 04/02/2019 Fav/CS RC 04/23/2019 Fav/CS	Fav/CS Yeas 10 Nays 7
34	**SB 1338** Rodriguez (Similar CS/H 1085)	Guardianship; Applying provisions relating to the determination of venue in proceedings for the appointment of a guardian to minors; requiring that a court dismiss a petition for determination of incapacity if all members of the examining committee conclude that the person is not incapacitated, unless a certain motion is filed within a specified period, etc. JU 03/18/2019 Favorable CF 04/01/2019 Favorable RC 04/23/2019 Favorable	Favorable Yeas 17 Nays 0
35	**CS/SB 1476** Banking and Insurance / Flores (Similar H 1145)	Citizens Property Insurance Corporation; Specifying a limit on annual rate increases, except for certain coverage, in policies issued by the corporation to insureds located in certain counties, etc. BI 03/25/2019 Fav/CS CA 04/02/2019 Favorable RC 04/23/2019 Favorable	Favorable Yeas 15 Nays 1
36	**CS/SB 1618** Innovation, Industry, and Technology / Simmons (Compare H 1013, H 1041, CS/H 1125, H 7119, CS/H 7125, CS/CS/S 642, S 734, S 1046, S 1574)	Tobacco Products; Citing this act as the "Tobacco 21 Act"; revising shipping documentation requirements for specified sales of tobacco products; deleting provisions requiring driver license penalties for certain persons who commit tobacco-related offenses; revising the age under which it is unlawful to smoke in, on, or near school property; revising the age limitation that applies to the sale, delivery, bartering, furnishing, or giving of certain tobacco products, etc. HP 03/25/2019 Favorable IT 04/02/2019 Fav/CS RC 04/23/2019 Favorable	Favorable Yeas 14 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
37	**CS/SB 1622** Children, Families, and Elder Affairs / Montford (Similar CS/CS/H 1249)	Public Records/Foster Parent and Foster Parent Applicant Names; Providing an exemption from public records requirements for the names of foster parent applicants and licensed foster parents, and the names of the spouses, minor children, and adult household members of such applicants and foster parents, which are held by the Department of Children and Families; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 04/01/2019 Fav/CS GO 04/10/2019 Favorable RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 0
38	**CS/SB 1656** Criminal Justice / Lee (Similar H 7069)	Criminal Statutes; Specifying that the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate specified circumstances; providing that a reference to any other chapter, part, section, or subdivision of the Florida Statutes in a criminal statute or a reference within a criminal statute constitutes a general reference under the doctrine of incorporation by reference, etc. JU 03/25/2019 Favorable CJ 04/01/2019 Fav/CS RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 0
39	**CS/SB 728** Infrastructure and Security / Lee (Identical CS/CS/H 437)	Community Development Districts; Authorizing sufficiently contiguous lands located within the county or municipality which a petitioner anticipates adding to the boundaries of a new community development district to also be identified in a petition to establish the new district under certain circumstances; providing requirements for the petition; providing notification requirements for the petition, etc. CA 03/12/2019 Favorable IS 03/26/2019 Not Considered IS 04/02/2019 Fav/CS RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
40	**CS/SB 1638** Infrastructure and Security / Lee (Compare CS/CS/H 725, CS/CS/CS/H 1053, S 660, S 7090)	Commercial Motor Vehicles; Revising regulations applicable to owners and drivers of commercial motor vehicles; exempting persons who operate a commercial motor vehicle solely in intrastate commerce which does not transport hazardous materials in amounts that require placarding from certain requirements related to electronic logging devices and hours of service supporting documents until a specified date; deleting a limitation on a civil penalty for falsification of certain time records, etc. IS 03/26/2019 Not Considered IS 04/02/2019 Fav/CS CM 04/08/2019 Favorable RC 04/23/2019 Fav/CS	Fav/CS Yeas 17 Nays 0
41	**CS/CS/SB 1730** Infrastructure and Security / Community Affairs / Lee (Compare CS/H 207, CS/CS/H 7103, S 144, S 1632)	Community Development and Housing; Authorizing an inclusionary housing ordinance to require a developer to provide a specified number or percentage of affordable housing units to be included in a development or allow a developer to contribute to a housing fund or other alternatives; requiring that a county review the application for completeness and issue a certain letter within a specified period after receiving an application for approval of a development permit or development order; revising compliance requirements for a mobility fee-based funding system, etc. CA 03/20/2019 Fav/CS IS 04/09/2019 Fav/CS RC 04/23/2019 Fav/CS	Fav/CS Yeas 10 Nays 6
42	**SB 7100** Innovation, Industry, and Technology (Similar H 7121)	Public Records/Department of the Lottery; Exempting from public records requirements certain security information held by the Department of the Lottery, information about lottery games, personal identifying information of retailers and vendors for purposes of background checks, and certain financial information held by the department; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 0
43	**CS/HB 629** Gaming Control Subcommittee / Robinson (Identical S 1264)	Lottery Games; Prohibits use of personal electronic devices to play, store, redeem, sell, or purchase lottery tickets or games; provides exceptions; provides criminal penalties; requires DOL to include specified warning in advertisements or promotions of lottery games; requires contracts entered into between DOL & vendor to include provision that requires vendor to print specified warning on all lottery tickets. RC 04/23/2019 Fav/1 Amendment	Fav/1 Amendment (Yeas 11 Nays 6

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
44	**CS/HB 879** Health Market Reform Subcommittee / Williamson (Compare CS/S 258)	Genetic Information Used for Insurance Purposes; Prohibits life insurers & long-term care insurers from basing decisions on genetic information; prohibits such insurers from taking certain actions related to genetic information for any insurance purpose. RC 04/23/2019 Favorable	Favorable Yeas 13 Nays 4
45	**HB 7067** Health Quality Subcommittee / Yarborough (Linked CS/CS/H 23)	Registration Fees; Requires an out-of-state health care provider to pay an application fee and biennial renewal fee to be registered to provide telehealth services in this state. RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 1
46	**HB 7073** Health Quality Subcommittee / Plakon / Leek (Compare S 1452, CS/CS/S 1528, Linked CS/H 19)	Permit and Inspection Fees; Requires initial & renewal fees for international export pharmacy permits; requires late renewal fees & annual permit & inspection fees for international prescription drug wholesale distributors. RC 04/23/2019 Favorable	Favorable Yeas 16 Nays 0
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 116
INTRODUCER:	Rules Committee and Senator Stewart
SUBJECT:	Motor Vehicle Racing
DATE:	April 23, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Miller	IS	**Favorable**
2.	Storch	Jones	CJ	**Favorable**
3.	Farach	Cibula	JU	**Favorable**
4.	Proctor	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 116 allows an officer to warrantlessly arrest a person if the officer has probable cause to believe he or she committed a violation of s. 316.191(2), F.S., which prohibits any form of participation in motor vehicle racing. The bill removes the requirement that an officer either witness the offense and arrest immediately or in fresh pursuit, or secure an arrest warrant.

The bill may have a positive insignificant impact on the number jail beds.

The bill is effective July 1, 2019.

II. Present Situation:

Motor vehicle racing is a professional and amateur automobile sport practiced throughout the world, which includes drag racing.[1] A drag race is an acceleration contest from a standing start between two vehicles over a measured distance.[2] Drag racing began in the California deserts,

[1] Encyclopedia Brittanica, *Automobile Racing*, available at https://www.britannica.com/sports/automobile-racing (last visited February 21, 2019).
[2] National Hot Rod Association, *NHRA 101*, available at https://www.nhra.com/nhra-101 (last visited February 21, 2019).

with the first organized event dating back to 1949.[3] Legal drag races take place on monitored drag strips or racetracks.[4]

In contrast, illegal drag racing takes place on highways. Videos of these races depict drivers either taking off from a rolling start or coming to a complete stop on the highway and then taking off. Specifically, in Broward County, dragsters make their way to "The Spot," a stretch of highway US-27, to race their cars up to speeds of 140 mph or better. Racers use cameras with microphones and drones to get footage of the races to post to websites. The dangers of these races is apparent from the videos – there is no concrete median separating the lanes and a flat tire or debris in the road could have fatal consequences.[5]

Drag racing encourages cars to reach unsafe speeds, which has prompted the adoption of laws regulating or prohibiting it. Specifically, s. 316.191(2), F.S., prohibits a person from doing any of the following:

- Driving any motor vehicle, including any motorcycle, in any race,[6] speed competition or contest, drag race[7] or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot;
- Participating in, coordinating, facilitating, or collecting money at any location for any such race, competition, contest, test, or exhibition;
- Knowingly riding as a passenger in any such race, competition, contest, test, or exhibition; or
- Purposefully causing the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.[8]

Any person who violates s. 316.191(2), F.S., commits a first degree misdemeanor.[9] However, additional fines and penalties increase for subsequent violations. For example:

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[3] PBS, *Drag Racing*, available at http://www.pbs.org/opb/historydetectives/feature/drag-racing/ (last visited February 21, 2019).
[4] Driving Line, *Drag Racing 101: Understanding the Basics of 1320 Racing* (July 24, 2015), available at https://www.drivingline.com/articles/drag-racing-101-understanding-the-basics-of-1320-racing/ (last visited February 21, 2019).
[5] Jim DeFede, CBS Miami, *An Inside Look at Broward County's Illegal Drag Racing*, (May 1, 2018), available at https://miami.cbslocal.com/2018/05/01/broward-illegal-drag-racing/ (last visited February 21, 2019).
[6] "Race" means the use of one or more motor vehicles in competition, arising from a challenge to demonstrate superiority of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response, in which the competitor attempts to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes. A race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers which, under the totality of the circumstances, can reasonably be interpreted as a challenge to race. Section 316.191(1)(c), F.S.
[7] "Drag race" means the operation of two or more motor vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more motor vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such motor vehicle or motor vehicles within a certain distance or time limit. Section 316.191(1)(b), F.S.
[8] Section 316.191(2)(a)-(d), F.S. Section 316.191, F.S., does not apply to licensed or duly authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes. Section 316.191(7), F.S.
[9] A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year, a fine of $1,000, or both. Sections 775.082 and 775.083, F.S.

- A first-time violation is punishable with a fine of not less than $500 and not more than $1,000, and a revocation of one's driver's license for 1 year.
- A second violation within 5 years of a prior violation is punishable with a fine of not less than $1,000 and not more than $3,000, and a revocation of one's driver's license for 2 years.
- A third or subsequent violation within 5 years of a prior violation is punishable with a fine of not less than $2,000 and not more than $5,000, and a revocation of one's driver's license for 4 years.[10]

A law enforcement officer may immediately arrest a person who has engaged in a race.[11] Any motor vehicle that was used in unlawful racing may be impounded for 30 days, if the person who is arrested and taken into custody for the unlawful racing is the registered owner or co-owner of the vehicle.[12]

Warrantless Arrest

A judge may issue a warrant authorizing a person's arrest upon finding probable cause that he or she committed a crime in the judge's jurisdiction.[13] The United States Supreme Court has held that the Fourth Amendment to the United States Constitution does not forbid warrantless arrest, however, even for a misdemeanor offense.[14]

In Florida, a law enforcement officer may arrest a person without a warrant under statutorily enumerated circumstances,[15] such as when:

- An officer reasonably believes a person committed a felony.
- A person commits a misdemeanor in an officer's presence.
  - In this circumstance, the officer must arrest the person immediately or in fresh pursuit after observing the offense.
- There is probable cause to believe a person has committed certain enumerated misdemeanor offenses, such as a battery, criminal mischief or graffiti, an act of domestic violence, an injunction violation, or sexual cyberharassment.

An officer may warrantlessly arrest a person who violates the Florida Uniform Traffic Control Law[16] in the presence of the officer.[17] As with other warrantless misdemeanor arrests, the officer must arrest the person immediately or in fresh pursuit after viewing the offense.[18] A fellow officer who did not personally witness the offense may also arrest a person based on the witnessing officer's observations.[19] Thus, to arrest for a racing offense, an officer must:

- Witness the offense and arrest either immediately or in fresh pursuit;

[10] Section 316.191(3)(a)-(c), F.S. In all instances of a violation that results in the subsequent revocation of a person's driver's license, he or she may request a hearing pursuant to s. 322.271, F.S.
[11] Section 316.191(5), F.S.
[12] Section 316.191(5)(c), F.S.
[13] Section 901.02, F.S.
[14] *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).
[15] Section 901.15, F.S.
[16] Chapter 316, F.S.
[17] Section 901.15(5), F.S.
[18] *Id.*
[19] *Id.*

- Arrest pursuant to a fellow officer's observations and arrest either immediately or in fresh pursuit; or
- Secure an arrest warrant.

The exception only for offenses occurring in the presence of an officer prohibits a warrantless arrest based only on a civilian witness's report. For example, if a witness calls police about a spontaneous street race, the race may likely end before police respond; however, obtaining an arrest warrant to timely address the complaint is often impractical.

III. Effect of Proposed Changes:

The bill allows an officer to warrantlessly arrest a person if the officer has probable cause to believe he or she committed a racing offense. The bill lifts the requirement that an officer either:

- Witness the offense and arrest immediately or in fresh pursuit; or
- Secure an arrest warrant.

The bill is effective 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:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a positive insignificant impact on the number of jail beds by enabling officers to warrantlessly arrest racing offenders.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 316.191 and 901.15 of the Florida Statutes.

IX. Additional Information:

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

CS by Rules on April 23, 2019:
The CS removed a felony enhancement for a third or subsequent racing offense in five years and authorized a law enforcement officer to arrest a person, without a warrant, if there is probable cause to believe that the person committed a racing violation.

B. Amendments:

None.

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

189694

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2019	.	
	.	
	.	
	.	

The Committee on Rules (Stewart) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (5) of section 316.191, Florida Statutes, is amended to read:

316.191 Racing on highways.—

(5) Whenever a law enforcement officer has probable cause to believe ~~determines~~ that a person violated subsection (2) ~~was engaged in a drag race or race, as described in subsection (1)~~, the officer may ~~immediately~~ arrest and take such person into

189694

custody, without a warrant. The court may enter an order of impoundment or immobilization as a condition of incarceration or probation. Within 7 business days after the date the court issues the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the motor vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the motor vehicle.

(a) Notwithstanding any provision of law to the contrary, the impounding agency shall release a motor vehicle under the conditions provided in s. 316.193(6)(e), (f), (g), and (h), if the owner or agent presents a valid driver license at the time of pickup of the motor vehicle.

(b) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the motor vehicle or, if the motor vehicle is leased or rented, by the person leasing or renting the motor vehicle, unless the impoundment or immobilization order is dismissed. All provisions of s. 713.78 shall apply.

(c) Any motor vehicle used in violation of subsection (2) may be impounded for a period of 30 business days if a law enforcement officer has arrested and taken a person into custody pursuant to this subsection and the person being arrested is the registered owner or coowner of the motor vehicle. If the arresting officer finds that the criteria of this paragraph are met, the officer may immediately impound the motor vehicle. The law enforcement officer shall notify the Department of Highway Safety and Motor Vehicles of any impoundment for violation of this subsection in accordance with procedures established by the

189694

department. Paragraphs (a) and (b) shall be applicable to such impoundment.

Section 2. Paragraph (d) is added to subsection (9) of section 901.15, Florida Statutes, to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(9) There is probable cause to believe that the person has committed:

(d) A racing violation as described in s. 316.191(2).

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 motor vehicle racing; amending s. 316.191, F.S.; authorizing a law enforcement officer to arrest a person without a warrant upon probable cause that the person committed a criminal racing violation; amending s. 901.15, F.S.; authorizing a law enforcement officer to arrest a person without a warrant upon probable cause that the person committed a criminal racing violation; providing an effective date.

By Senator Stewart

13-00175-19 2019116__

A bill to be entitled

An act relating to motor vehicle racing; amending s. 316.191, F.S.; increasing the criminal penalty for a third or subsequent violation related to motor vehicle racing within a specified period after the date of a prior violation that resulted in a conviction; providing an effective date.

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

Section 1. Subsection (2) and paragraph (c) of subsection (3) of section 316.191, Florida Statutes, are amended to read:

316.191 Racing on highways.—

(2) A person may not do any of the following:

(a) Drive any motor vehicle, including any motorcycle, in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the purpose of making a speed record on any highway, roadway, or parking lot.~~;~~

(b) In any manner participate in, coordinate, facilitate, or collect moneys at any location for any such race, competition, contest, test, or exhibition.~~;~~

(c) Knowingly ride as a passenger in any such race, competition, contest, test, or exhibition.~~; or~~

(d) Purposefully cause the movement of traffic to slow or stop for any such race, competition, contest, test, or exhibition.

(3)

(c) Any person who commits a third or subsequent violation

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

Florida Senate - 2019 **SB 116**

13-00175-19 2019116__

of subsection (2) within 5 years after the date of a prior violation that resulted in a conviction for a violation of subsection (2) commits a felony of the third ~~misdemeanor of the first~~ degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084, and shall pay a fine of not less than $2,000 and not more than $5,000. The department shall also revoke the driver license of that person for 4 years. A hearing may be requested pursuant to s. 322.271.

Section 2. This act shall take effect October 1, 2019.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 18, 2019

I respectfully request that **Senate Bill #: 116** relating to Motor Vehicle Racing, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Linda Stewart

Senator Linda Stewart
Florida Senate, District 13

c.c. John Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04-23-19
Meeting Date

116
Bill Number (if applicable)

Topic RACING

Amendment Barcode (if applicable)

Name MICHAEL CROSS

Job Title LIEUTENANT

Address 2500 W. COLONIAL DR
Street

Phone 321-436-4447

ORLANDO FL 32802
City *State* *Zip*

Email MICHAEL.CROSS@OCSO.NET

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

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

Representing ORANGE COUNTY SHERIFF'S OFFICE

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

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 23, 2019
Meeting Date

SB 116
Bill Number (if applicable)

Topic Motor Vehicle Racing
Amendment Barcode (if applicable)

Name Gary Hester

Job Title Chief - Government Affairs

Address P.O. Box 14038
Street

Phone 850-219-3631

Tallahassee FL 32317
City *State* *Zip*

Email ghester@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04-23-19
Meeting Date

114
Bill Number (if applicable)

189694
Amendment Barcode (if applicable)

Topic RACING

Name MICHAEL CRABB

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Email MICHAEL.CRABB@OCFL.NET

Speaking: ☒ For ☐ Against ☐ Information

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

Representing ORANGE COUNTY SHERIFF'S OFFICE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 874
INTRODUCER:	Appropriations Committee; Banking and Insurance Committee; and Senator Rouson
SUBJECT:	Consumer Finance Loans
DATE:	April 22, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Sanders	Kynoch	AP	**Fav/CS**
3.	Matiyow	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 874 establishes the Access to Responsible Credit Pilot Program. The intent of the program is to provide greater access to small dollar consumer loans and to assist consumers in building their credit. The Office of Financial Regulation (OFR) is responsible for regulating this program. The pilot program would operate under the following terms and conditions:

- A program licensee may make loans of at least $300 and no more than $10,000, at a maximum fixed interest rate of 36 percent per annum.
- A program licensee may also charge the borrower an origination fee of six percent of the principal amount of the program loan exclusive of the origination fee or $90, whichever is less.
- The borrower has a right to rescind the program loan and return the principal amount by the end of the next business day.
- A program loan must have a terms of:
  - At least 120 days but not more than 36 months for loans with a principal balance upon origination of at least $300, but not more than $3,000; or
  - At least 12 months but not more than 60 months for loans with a principal balance upon origination of more than $3,000.
- All program loans may not impose a prepayment penalty.
- A program licensee must underwrite each program loan to determine the borrower's ability and willingness to repay. A program licensee must not make a program loan if the borrower's monthly debt service, including the program loan, exceeds 50 percent of the borrower's gross

monthly income when borrowing less than $3,000 and may not exceed 36 percent of the borrower's gross monthly income when borrowing more than $3,000.
- The OFR may examine any program licensee accepted into the program.
- A program licensee may use an access partner to perform marketing, servicing, and other services on behalf of the program licensee.
- In order to participate in the pilot program, a person must be licensed as a consumer finance lender with the OFR under ch. 516, F.S.; must demonstrate financial responsibility and experience; and must not be subject to any enforcement action by a state or federal regulatory agency.

The pilot program changes the maximum interest rates for consumer finance loans, which are loans of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less. The pilot program increases the allowable interest rates by six percent on such loans. The interest rates are tiered and limited based on the principal amount that falls within each tier of the loan, as follows:
- 36 percent a year, computed on the first $3,000 of the principal amount;
- 30 percent a year on that part of principal from $3,001 to $4,000; and
- 24 percent per year on that part of principal from $4,001 to $25,000.

The bill appropriates $407,520 from the Administrative Trust Fund to the OFR for modifications to the Regulatory Enforcement and Licensing system.

The bill has an effective date of January 1, 2020.

II. Present Situation:

Federal Truth in Lending Act (TILA)

The purpose of TILA,[1] is to promote the informed use of credit through "a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available."[2] Regulation Z, which implements TILA, requires the calculation and disclosure of the Annual Percentage Rate (APR) for consumer loans.[3] Finance charges include interest, any charges, or fees payable by the consumer and imposed by the financial institution as an incident to or as a condition of an extension of consumer credit. Regulation Z includes examples, applicable both to open-end and closed-end credit transactions, of what must, must not, or need not be included in the calculation and disclosure of the finance charge.[4]

State Regulation of Consumer Lending

The Office of Financial Regulation (OFR) has regulatory oversight of state-chartered financial institutions, securities brokers, investment advisers, mortgage loan originators, deferred presentment providers or payday loan lenders, consumer finance companies, title loan lenders, debt collectors, and other financial service entities. The OFR's Division of Financial Institutions

[1] 15 U.S.C. s. 1601 et seq., as implemented by Regulation Z, 12 C.F.R. part 226.
[2] 15 U.S.C. s. 1601(a).
[3] 15 U.S.C. s. 1604-1606.
[4] 12 C.F.R. s. 1026.4.

charters and regulates entities that engage in financial institution business in Florida in accordance with the Florida Financial Institutions Codes (codes). [5] The OFR may examine, investigate, and take disciplinary actions against such state-chartered financial institutions for violation of the codes.[6]

Consumer Finance Loans

The Florida Consumer Finance Act (ch. 516, F.S.) sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer loan is authorized in Florida. The act sets forth maximum interest rates for consumer finance loans, which are "loan[s] of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum."[7] The maximum allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan, as provided below:

- 30 percent a year, computed on the first $3,000 of the principal amount;
- 24 percent a year on that part of principal between $3,001 to $4,000; and
- 18 percent a year on that part of principal between $4,001 to $25,000.[8]

These principal amounts are the same as the financed amounts determined by the TILA and Regulation Z.[9] The APR for all loans under the act may equal, but cannot exceed, the APR for the loan as required to be computed and disclosed by the TILA and Regulation Z.[10] Lenders are required to provide written disclosures to consumers that include the APR under Regulation Z. Besides the applicable interest rates described above, the act allows consumer finance lenders to charge borrowers the following charges and fees:[11]

- Up to $25 for investigating the credit and character of the borrower;
- A $25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans and appraisals of real property offered as security;
- Intangible personal property tax, if secured by a loan note on real property;
- Documentary excise tax and lawful fees;
- Insurance premiums;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for recovering the collateral property;
- Delinquency charges of up to $15 for each payment in default for at least ten days, if agreed upon in writing before the charge is imposed; and
- A dishonored check charge of up to $20.

[5] Chapters 655, 657, 658, 660, 663, 665, and 667, F.S.
[6] These entities are also subject to laws and regulation by various federal entities. For example, the Federal Deposit Insurance Corporation (FDIC) supervises state-chartered banks that are not members of the Federal Reserve System and state-chartered savings associations. The FDIC also insures deposits in banks and savings associations in the event of bank failure. The Federal Reserve Board supervises state-chartered banks that are members of the Federal Reserve System.
[7] Section 516.01(2), F.S.
[8] Section 516.031(1), F.S.
[9] Section 516.031(2), F.S.
[10] *Id.*
[11] Section 516.031(3), F.S.

Lastly, the act requires all consumer finance loans must be repaid in equal monthly installments, except for repayment on lines of credit.[12]

California Small Dollar Loan Pilot Programs

Based on a business model developed by California-based Progreso Financiero (Progress Financial), the California State Assembly enacted the Affordable Credit Building Opportunities Pilot Program in 2010.[13] The pilot program covers consumer loans of $250-$2,500. The goal was to increase consumers' access to capital by encouraging development of a more robust small dollar loan market in California. In 2015, California enacted legislation to revise provisions relating to the small-dollar loan pilot program.[14] The new pilot program covers consumer loans of $300-$2,500 and allows the use of "finders" to connect borrowers with lenders. Finders cannot provide advice or counseling to borrowers. They can distribute lenders' marketing materials, provide information about loan terms and conditions, help borrowers with loan applications and obtain borrowers' signatures on documents, and other functions. Their fees are capped at $65 per loan plus $2 for each payment received by a finder. The fees are paid by lenders, cannot be based on the principal amount of loans, and cannot be passed on to borrowers. According to the California Senate staff analysis, the proponents view the use of finders as a means to lower costs of customer acquisition, which is the largest cost of maintaining a small dollar loan program.[15]

The California pilot program legislation also required the state's Department of Business Oversight (DBO) to post a report summarizing findings of the pilot program. In June 2015, the California DBO's report noted the following findings from 2011-2014:

- *Lender participation*: At the end of 2014, six lenders and six finders participated in the program.
- *Loan applications*: Borrower applications increased by 58.5 percent after the state revised the pilot program.
- *Dollar amounts*: Smaller loans ($300-$499) decreased by 42.3 percent, while larger loans ($500-$999) increased by 106 percent.
- *Interest rates:* Smaller loans generally carried an APR of 40-50 percent. Mid-range loans generally carried an APR of 35-50 percent. Larger loans ($1,500-$2,499) saw a more even APR distribution.
- *Delinquency rates*: In 2014, 22.5 percent were delinquent for seven days to 29 days, 7.3 percent were delinquent for 30 days to 59 days, and 3.9 percent were delinquent for 60 days or more.
- *Credit scores*: The share of multiple-loan borrowers who obtained higher credit scores on subsequent loans averaged 61 percent annually over the four-year period.
- *Loan term:* In 2014, of the 164,300 loans made, 50.9 percent were for 360 days or more. The ratios for other terms were from: 120 days to 179 days, essentially zero percent (only two loans); 180 days to 269 days, 20.2 percent; and 270 days to 359 days, 28.8 percent.

[12] Section 516.36, F.S.
[13] See http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB1146 (last visited March 10, 2019).
[14] See http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB235 (last visited March 10, 2019).
[15] Id.

- *Loan purpose:* Of the 164,300 loans made in 2014, borrowers took out 45 percent (74,026) to build or repair credit.

The California DBO noted that while the revised pilot program did increase lender participation from its inception in 2010, the total number of participating lenders remains less than ten. Additionally, the revisions did not significantly affect the amount of lending activity conducted by the individual companies.[16]

III. Effect of Proposed Changes:

The bill establishes the Access to Responsible Credit Pilot Program (program). The program would allow consumers to enter into a program loan with a principal amount of at least $300 and up to a maximum of $10,000 at an interest rate not to exceed 36 percent per annum. Under current law, licensed consumer finance lenders may make loans in this amount at a maximum rate of 30 percent, with no minimum or maximum loan term.

Access to Responsible Credit Pilot Program (Section 1)

Creates s. 516.405, F.S., which states that the Access to Responsible Credit Pilot Program is created within the Office of Insurance Regulation (OFR) to allow more Floridians to obtain responsible consumer finance loans with principal amounts of at least $300 but not more than $10,000.

Definitions (Section 2)

The bill creates s. 516.41, F.S., to provide the following definitions for purposes of the pilot program:

- Access partner
- Consumer reporting agency
- Credit score
- Data furnisher
- Pilot program
- Pilot program license
- Program branch office license
- Program licensee
- Program loan
- Refinance program loan

Regulation of Program Licensees (Lenders) and Access Partners (Sections 3 and 5)

***Program Licensees* (Section 3)**

Persons seeking participation under the program as a lender are required to be licensed to make consumer finance loans under ch. 516, F.S. Licensees must demonstrate financial responsibility,

[16] California Department of Business Oversight, Report of Activity under Small Dollar Loan Pilot Programs (Jun. 2015), at http://www.dbo.ca.gov/Licensees/Finance_Lenders/pdf/Pilot%20Program%20Report%202015%20Final.pdf. (last visited March 10, 2019).

experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.[17] Licensees may not be subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the ability of such person to participate in the program. Application forms are to be adopted by rule. Each branch office of a program licensee must be included in the program application to the OFR.

The bill requires applicants to be accepted as a "data furnisher" with a consumer-reporting agency[18] before the OFR may approve an applicant as a program licensee.

The OFR may deny an initial or renewal application for a program license or program branch office license if the applicant or any person with power to direct the management or policies of the applicant's business:

- Fails to demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter;
- Pled nolo contendere to, or was convicted or found guilty of, a crime involving fraud, dishonest dealing, or any act of moral turpitude, regardless of whether adjudication was withheld; or
- Is subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the applicant's ability to participate in the program.

The bill directs the Financial Services Commission to adopt rules to implement this section.

***Access Partners* (Section 5)**

The bill allows a program licensee to engage in arrangements with access partners. All such arrangements must be in writing; must contain a provision that the access partner agrees to comply with s. 516.44, F.S., and must contain a provision allowing the OFR access to the access partner's books and records related to the access partner's operations under the agreement with the program licensee.

An access partner may engage in the following activities:

[17] Section 516.07, F.S., of the consumer finance act subjects licensees to disciplinary action or denial of licensure for failure to demonstrate such actions.

[18] The bill defines "consumer reporting agency" as the same definition in federal Fair Credit Reporting Act: "Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

- Advertise on behalf of the program licensee;
- Provide written factual information about the pilot program and discuss the program information with a prospective borrower in general terms;
- Notify the prospective borrower of information needed to complete an application under the program;
- Enter information provided by a prospective borrower on a preprinted or electronic application form or in a preformatted computer database;
- Assemble credit applications and other materials obtained in the course of a credit application transaction for submission to the program licensee;
- Contact the program licensee to determine the status of a program loan application;
- Communicate to a borrower a response that is returned by the program licensee's automated underwriting system;
- Obtain a borrower's signature on documents prepared by the program licensee and deliver final copies of the documents to the borrower;
- Disburse program loan proceeds to a borrower, and receive program loan payments from a borrower;
- Receive a program loan payment from the borrower if this method of payment is acceptable to the borrower; and
- Operate an electronic access point through which a prospective borrower may directly access the website of the program licensee to apply for a program loan.

Any program payments received by an access partner must be applied to the program loan and be deemed received by the program licensee at the time the access partner receives the payment. When payment is made, an access partner must deliver a receipt to the borrower that includes certain information. Additionally, the bill holds a borrower harmless if an access partner fails to transmit, or is delayed in transmitting, a payment to the program licensee. An access partner must maintain records related to disbursements and payments for two years.

Access partners are required to provide certain communications and disclosures to program loan applicants related to identifying information of the program licensee and access partner. The bill requires an access partner to make a good faith effort to assist the applicant in making direct contact with the program licensee in cases where an access partner is not permitted to answer questions about the loan program.

The bill allows a program licensee to compensate an access partner. Compensation paid to an access partner may not be passed on to a borrower. The compensation must be made pursuant to a written agreement and a mutually agreed upon compensation schedule. Additionally, the compensation must not be paid to an access partner until the program loan is consummated.

The bill prohibits an access partner from engaging in the following activities:

- Providing counseling or advice to a borrower or prospective borrower;
- Providing to a borrower or prospective borrower loan-related marketing material that has not been approved by the program licensee;
- Negotiate a loan term between a program licensee and a prospective borrower;

- Offering information pertaining to a single prospective borrower to more than one program licensee, except where a program licensee has provided notification of its denial of a program loan to the borrower; and
- Requiring a borrower to pay any fees other than those permitted under the bill.

The program licensee is responsible for any violations of ch. 516, F.S., committed by an access partner.

Terms and Conditions of the Small Dollar Loans (Section 4)

The bill requires a program licensee to comply with certain conditions in making program loans, including the following:

Unsecured Loan Term, Repayment Schedule, and Right of Rescission

- A program loan must be unsecured.
- For a loan with a principal amount upon origination that is at least $300 but no more than $3,000, a program loan must have a minimum term of 120 days and a maximum term of 36 months, for a loan with a principal balance upon origination of more than $3,000, the minimum term is 12 months and the maximum term is 60 months.
- All loans may not impose a prepayment penalty.
- A program loan must be repayable by the borrower in substantially equal periodic installments made every two weeks, semimonthly or monthly.
- A program loan must include a borrower's right to rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and return the principal advanced by the end of the business day after the program loan was consummated.

Interest Rates

A program loan must apply an interest rate that must be fixed for the term of the loan and be calculated on a simple-interest basis through the application of a daily periodic rate to the actual unpaid principal balance each day. The maximum per annum interest rate various with the portion of the unpaid principal on the loan, as follows:

- For the portion of the principal up to and including $3,000, the maximum annual interest rate is 36 percent.
- For the portion of the principal over $3,000, and up to and including $4,000, the maximum annual interest rate is 30 percent.
- For the portion of the principal over $4,000 and up to and including $10,000, the maximum interest rate is 24 percent.

If multiple interest rates are applied to the loan principal, the lender may charge interest at the single annual percentage rate that, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total of interest as would result from the application of multiple interest rates, based on the assumption that all payments are made as agreed.

The program licensee must reduce the rate on each subsequent loan to the same borrower by at least one percent up to six percent if all the following conditions are met:

- The subsequent program loan is originated no more than 180 days after the prior program loan is fully repaid;
- The borrower was never more than 15 days delinquent on the prior program loan;
- The prior program loan was outstanding for at least one half of its original term before its repayment.

Prohibition against Multiple, Contemporaneous Program Loans from the Same Licensee

The bill prohibits a program licensee from inducing or permitting any person from becoming obligated to the program licensee under more than one program loan at the same time with the program licensee.

Refinancing

The bill allows the refinancing of program loan under specified circumstances if the new loan is underwritten in accordance with the underwriting requirements created by the bill. A program licensee may refinance a program loan only if all of the following conditions are met at the time the borrower submits an application to refinance:

- The principal amount payable does not include more than 60 days of unpaid interest accrued on the previous program loan;
- For program loans with an original term of less than 25 months, the borrower has repaid at least 60 percent of the outstanding principal remaining on the existing program loan;
- For program loans with an original term of greater than 25 months but no more than 60 months, the borrower has made current payments for at least nine months on the program loan; and,
- The borrower is current on his or her outstanding program loan.

Consumer Disclosures and Receipts

The bill requires that a program licensee must provide the same disclosures as required in s. 516.15, F.S.[19] However, the bill allows the disclosures to be provided in the languages in which the loans were negotiated.

The bill requires a program licensee or approved access partner to provide the borrower an electronic or physical receipt of payment at the time the borrower makes a payment. The receipt must include specified information that includes:

- The borrower's name,
- The amount paid,
- The date of payment,
- The program loan balance before and after payment,
- The type of payment mad, and
- A statement informing the borrower how to contact the lender to ask questions regarding the loan.

[19] Section 516.15(1), F.S., deliver to the borrower at the time a loan is made a statement in the English language showing in clear and distinct terms the amount and date of the loan and the date of its maturity; the nature of the security, if any, for the loan; the name and address of the borrower and of the licensee; and the rate of interest charged. However, with respect to a line of credit, the statement need not show a maturity date.

The program licensee must maintain an electronic record of each receipt, which must include a copy of the receipt and the date and time the receipt was made.

Fees

The bill allows a program licensee to contract for and receive an origination fee, which may not exceed six percent of the principal amount, exclusive of the origination fee, or $90, whichever is less. A program licensee may not charge a borrower an origination fee more than twice in any 12-month period.

The bill caps the fee for insufficient funds at $20, and any delinquency charge is capped at $15 for each calendar month for payments in default for at least 10 days. In attempting to collect a delinquent payment, a program licensee or its wholly owned subsidiary must attempt to collect the payment for 30 days before selling or assigning the unpaid debt to an independent party for collection.

Credit Education

Before disbursing program proceeds to a borrower, a program licensee must direct a borrower to consumer credit counseling services promoted by the OFR or provide a credit education program or materials to the borrower at no cost to the borrower. The borrower is not required to participate in the program.

Program Loan Underwriting

A program licensee must underwrite each program loan to determine the borrower's willingness and ability to repay the program loan. A program licensee may not make a loan if it determines that a borrower's total monthly debt service payments, including the program loan and all outstanding forms of credit that can be independently verified by the program licensee:

- Exceeds 50 percent of the borrower's gross monthly income when borrowing less than $3,000; and
- May not exceed 36 percent of the borrower's gross monthly income when borrowing more than $3,000.

The program licensee is required to seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The program licensee shall verify such information using a credit report from at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis or through other available electronic debt verification services. The program licensee is not required to consider loans made to a borrower by friends or family in determining the borrower's debt-to-income ratio.

The program licensee is required to verify the borrower's income in determining the debt-to-income ratio using information from:

- Electronic means or services that provide reliable evidence of the borrower's actual income; or

- Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

Waiver of Borrower's Rights

The bill prohibits a program licensee from requiring a borrower to waive any right, penalty, remedy, forum, or procedure. Further, the lender may not require a borrower to agree to the application of laws other than those of Florida or require a borrower to agree to resolve disputes in a jurisdiction outside of Florida. Any waiver, other than a prohibited waiver, must be knowing, voluntary, in writing, and not expressly made as a condition of doing business with the program licensee. A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable. The program licensee has the burden of proving that a waiver of any rights, penalties, forums, or procedures was knowing, voluntary, and not expressly made a condition of the contract with the borrower.

Examination of Program Licensees (Section 6)

The legislation authorizes the OFR to examine program licensees, each branch office of the program licensee, and access partners. The scope of any investigation or examination of a program licensee or access partner is to be limited to those books, accounts, records, documents, materials, and matters reasonably necessary to determine compliance with the program. A program licensee who violates any applicable provision of ch. 516, F.S., is subject to disciplinary action. Any such disciplinary action is subject to s. 120.60, F.S. The program licensee is also subject to disciplinary action for a violation of s. 516.44, F.S., committed by any of its access partners.

The OFR may take any of the following actions against an access partner:
- Bar the access partner from performing services under the program, and
- Bar the access partner from performing services at one or more of its specific locations.

The bill authorizes the OFR to waive branch examinations if the OFR finds such examination are unnecessary for the protection of the public due to the centralized operation of the program licensee or other factors acceptable to the OFR.

The bill provides the OFR rulemaking authority to implement the examination requirements.

Reporting Requirements (Sections 4, 5, and 7)

Credit Reporting (Section 4)

The bill requires a program licensee to report a borrower's payment performance to at least one consumer-reporting agency that compiles and maintains files on consumers on a nationwide basis. In addition, as part of the credit reporting requirements, a licensee must provide the borrower with the name(s) of the credit reporting agency or agencies to which it will report the borrower's payment history.

Notice to the OFR (Section 5)

The program licensee is required to provide certain information to the OFR within 15 days after entering into a contract with an access partner. Such information includes the access partner's identifying information, and a provision that allows the OFR to request any other information. The program licensee must conduct due diligence with respect to the access partner and confirm to the OFR that the access partner has not filed a bankruptcy or reorganization petition and is not currently subject to an administrative or judicial license suspension or revocation proceeding. The program licensee must confirm to the OFR that the access partner or an affiliated party has not been convicted of a felony and is not subject to a felony indictment. Finally, the program licensee must confirm to OFR that it does not suspect that the access partner has committed a criminal act and that there has not been notification that the access partner is under criminal investigation. The access partner must report changes in this information to the program licensee.

OFR Program Report (Section 7)

A program licensee is required to file, on or before March 15 of each year beginning in year 2021, a report with the OFR in a manner prescribed by rule.

The bill directs the OFR to post a report on its website by January 1, 2022, summarizing the results of the program. The report must include the following information:

- The period covered.
- The number of applicants approved for program licensure.
- The number of program loan applications received by participating program licensees.
- The number and total amount of program loans made.
- The distribution of loan lengths, interest rates, and principal amounts upon origination.
- The number of borrowers who obtained more than one program loan.
- The distribution of the number of program loans per borrower.
- Of the number of borrowers who obtained more than one program loan, the percentage of borrowers whose credit scores increased between successive loans.
- The average size of the increased credit score.
- The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained a program loan and who resided in a low-income or moderate-income census tract at the time of loan application.
- The number of borrowers who obtained program loans for the following purposes, based on borrower responses to:
    - Pay medical expenses.
    - Pay for vehicle repair or a vehicle purchase.
    - Pay bills.
    - Consolidate debt.
    - Build or repair credit history.
    - Pay other expenses.
- The number of borrowers who self-report that they did or did not have a bank account at the time of their loan application.

In regards to refinanced program loans, the report must include the following information:

- The number and percentage of borrowers who applied for a refinance program loan.

- Of the borrowers who applied for a refinance program loan, the number and percentage of borrowers who obtained a refinance program loan.

In addition, the report must address the performance of program loans as reflected by the following information:

- The number and percentage of borrowers who experienced at least one delinquency lasting between seven to 29 days, 30 to 59 days, and 60 days or more.
- The distribution of principal loan amounts corresponding to those delinquencies.

The bill provides rulemaking authority for the OFR to implement the reporting requirements.

Section 8 provides that ss. 516.40-516.47, F.S., are subject to repeal on January 1, 2027, unless reenacted or superseded by another enacted law before that date.

Section 9 provides the act shall take effect January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill may need a companion public records exemption bill as information gathered as part of an examination, investigation, or complaint related to a program loan would contain personal identifying and financial information about loan applicants and borrowers. Without a companion public records exemption bill this information could be subject to public inspection.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate at this time. The number of lenders, access partners, and borrowers who would participate in this pilot program is unknown at this time. The intent of the program is to provide greater access to small dollar consumer loans. The maximum annual interest rates for such loans under the bill is increased by six percent over the maximum interest rates currently authorized for consumer finance loans under ch. 516, F.S. The bill requires a reduction of the interest rate on subsequent loans under the pilot program of at least one percent up to six percent on subsequent loans if certain conditions are met.

C. Government Sector Impact:

Office of Financial Regulation (OFR) resources will be required to process applications; process access partner notices; process complaints; examine records of program licensees and access partners; and, if necessary, initiate enforcement actions for non-compliance or fraud. Additionally, the bill will require configuration and other updates to the OFR's Regulatory Enforcement and Licensing (REAL) system internal system and website. The bill will also require the OFR to create electronic forms for applications and reporting. The bill would require the OFR to post on its website a report that includes extensive information regarding the pilot program.[20] The bill appropriates $407,520 in nonrecurring funds from the Administrative Trust Fund to the OFR for modifications to the REAL system.

The bill also provides that the program loan contracts, written disclosures, and statements may be provided to the borrower in English or in the language in which the loan is negotiated; however, the bill does not authorize the OFR to collect fees for translating the contracts as part of its examination requirement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 516.405, 516.41, 516.42, 516.43, 516.44, 516.45, and 516.46.

[20] Office of Financial Regulation, *Bill Analysis of SB 874*, March 4, 2019 (on file with the Banking and Insurance committee).

IX. Additional Information:

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

CS/CS by Appropriations on April 18, 2019:
The committee substitute:

- Clarifies that an application required under s. 516.03, F.S., must be approved and the license issued in order for the applicant to obtain the pilot license; and
- Provides an appropriation of $407,520 from the Administrative Trust Fund to the Office of Financial Regulation for the modification of the Regulatory Enforcement and Licensing system.

CS by Banking and Insurance on March 25, 2019:
The CS:

- Requires a program licensee and program branch office licensee must demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of ch. 517, F.S.
- Allows the office to deny a license if a licensee or applicant has pled nolo contendere to, or was convicted or found guilty of, a crime involving fraud, dishonest dealing, or any act of moral turpitude, regardless of whether adjudication was withheld.
- Adds a maximum term of 36 months for loan with a principal balance upon origination of at least $300, but no more than $3,000.
- Specifies that the OFR may examine program licensees, branch offices, and access partners in accordance with ch. 517, F.S.

B. Amendments:

None.

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

By the Committees on Appropriations; and Banking and Insurance; and Senator Rouson

576-04592-19 2019874c2

A bill to be entitled

An act relating to consumer finance loans; creating s. 516.405, F.S.; creating the Access to Responsible Credit Pilot Program within the Office of Financial Regulation; providing legislative intent; creating s. 516.41, F.S.; providing definitions; creating s. 516.42, F.S.; requiring persons to obtain a program license from the office before making program loans; providing licensure requirements; requiring a program licensee's program branch offices to be licensed; providing program branch office license and license renewal requirements; providing circumstances under which the office may deny initial and renewal applications; requiring the Financial Services Commission to adopt rules; creating s. 516.43, F.S.; providing requirements for program licensees, program loans, interest rates, program loan refinancing, receipts, disclosures and statements provided by program licensees to borrowers, origination fees, insufficient funds fees, and delinquency charges; requiring program licensees to provide certain credit education information to borrowers and to report payment performance of borrowers to a consumer reporting agency; prohibiting the office from approving a program licensee applicant before the applicant has been accepted as a data furnisher by a consumer reporting agency; requiring program licensees to underwrite program loans; prohibiting program licensees from making program loans under certain

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circumstances; requiring program licensees to seek certain information and documentation; prohibiting program licensees from requiring certain waivers from borrowers; providing applicability; creating s. 516.44, F.S.; requiring all arrangements between program licensees and access partners to be specified in written access partner agreements; providing requirements for such agreements; specifying access partner services that may be used by program licensees; specifying procedures for borrowers' payment receipts or access partners' disbursement of program loans; providing recordkeeping requirements; prohibiting certain activities by access partners; providing disclosure statement requirements; providing requirements and prohibitions relating to compensation paid to access partners; requiring program licensees to provide the office with a specified notice after contracting with access partners; defining the term "affiliated party"; requiring access partners to provide program licensees with a certain written notice within a specified time; providing that program licensees are responsible for acts of their access partners; requiring the commission to adopt rules; creating s. 516.45, F.S.; authorizing the office to examine each program licensee, branch office, and access partner; limiting the scope of certain examinations and investigations; authorizing the office to take certain disciplinary action against program licensees and access partners; requiring the

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commission to adopt rules; creating s. 516.46, F.S.; requiring program licensees to file an annual report with the office beginning on a specified date; requiring the office to post an annual report on its website by a specified date; specifying information to be contained in the reports; requiring the commission to adopt rules; providing for future repeal of the pilot program; providing an appropriation; providing an effective date.

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

Section 1. Section 516.405, Florida Statutes, is created to read:

516.405 Access to Responsible Credit Pilot Program.—

(1) The Access to Responsible Credit Pilot Program is created within the Office of Financial Regulation to allow more Floridians to obtain responsible consumer finance loans in principal amounts of at least $300 but not more than $10,000.

(2) The pilot program is intended to assist consumers in building their credit and to provide additional consumer protections for these loans that exceed current protections under general law.

Section 2. Section 516.41, Florida Statutes, is created to read:

516.41 Definitions.—As used in ss. 516.405-516.46, the term:

(1) "Access partner" means an entity that, at the entity's physical business location or through online access, cellular

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telephone, or other means, performs one or more of the services authorized in s. 516.44(2) on behalf of a program licensee. The term does not include a credit service organization as defined in s. 817.7001 or a loan broker as defined in s. 687.14.

(2) "Consumer reporting agency" has the same meaning as the term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" in the Fair Credit Reporting Act, 15 U.S.C. s. 1681a(p).

(3) "Credit score" has the same meaning as in the Fair Credit Reporting Act, 15 U.S.C. s. 1681g(f)(2)(A).

(4) "Data furnisher" has the same meaning as the term "furnisher" in 12 C.F.R. s. 1022.41(c).

(5) "Pilot program" or "program" means the Access to Responsible Credit Pilot Program.

(6) "Pilot program license" or "program license" means a license issued under ss. 516.405-516.46 authorizing a program licensee to make and collect program loans.

(7) "Program branch office license" means a license issued under the program for each location, other than a program licensee's or access partner's principal place of business:

(a) The address of which appears on business cards, stationery, or advertising used by the program licensee in connection with business conducted under this chapter;

(b) At which the program licensee's name, advertising or promotional materials, or signage suggests that program loans are originated, negotiated, funded, or serviced by the program licensee; or

(c) At which program loans are originated, negotiated, funded, or serviced by the program licensee.

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(8) "Program licensee" means a person who is licensed to make and collect loans under this chapter and who is approved by the office to participate in the program.

(9) "Program loan" means a consumer finance loan with a principal amount of at least $300, but not more than $10,000, originated pursuant to ss. 516.405-516.46, excluding the amount of the origination fee authorized under s. 516.43(3).

(10) "Refinance program loan" means a program loan that extends additional principal to a borrower and replaces and revises an existing program loan contract with the borrower. A refinance program loan does not include an extension, a deferral, or a rewrite of the program loan.

Section 3. Section 516.42, Florida Statutes, is created to read:

516.42 Requirements for program participation; program application requirements.—

(1) A person may not advertise, offer, or make a program loan, or impose any charges or fees pursuant to s. 516.43, unless the person obtains a pilot program license from the office.

(2) In order to obtain a pilot program license, a person must:

(a)1. Be licensed to make and collect consumer finance loans under s. 516.05; or

2. Submit the application for the license required in s. 516.03 concurrently with the application for the program license. The application required by s. 516.03 must be approved and the license under that section must be issued in order to obtain the program license.

(b) Be accepted as a data furnisher by a consumer reporting agency.

(c) Demonstrate financial responsibility, experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.

(d) Not be subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the ability of such person to participate in the program.

(3)(a) A program applicant must file with the office a digital application in a form and manner prescribed by commission rule which contains all of the following information with respect to the applicant:

1. The legal business name and any other name under which the applicant operates.

2. The applicant's main address.

3. The applicant's telephone number and e-mail address.

4. The address of each program branch office.

5. The name, title, address, telephone number, and e-mail address of the applicant's contact person.

6. The license number, if the applicant is licensed under s. 516.05.

7. A statement as to whether the applicant intends to use the services of one or more access partners under s. 516.44.

8. A statement that the applicant has been accepted as a data furnisher by a consumer reporting agency and will report to a consumer reporting agency the payment performance of each borrower on all program loans.

9. The signature and certification of an authorized person of the applicant.

(b) A person who desires to participate in the program but who is not licensed to make consumer finance loans pursuant to s. 516.05 must concurrently submit the following digital applications in a form and manner specified in this chapter to the office:

1. An application pursuant to s. 516.03 for licensure to make consumer finance loans.

2. An application for admission to the program in accordance with paragraph (a).

(4) Except as otherwise provided in ss. 516.405-516.46, a program licensee is subject to all the laws and rules governing consumer finance loans under this chapter. A program license must be renewed biennially.

(5) Notwithstanding s. 516.05(3), only one program license is required for a person to make program loans under ss. 516.405-516.46, regardless of whether the program licensee offers program loans to prospective borrowers at its own physical business locations, through access partners, or via an electronic access point through which a prospective borrower may directly access the website of the program licensee.

(6) Each branch office of a program licensee must be licensed under this section.

(7) The office shall issue a program branch office license

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to a program licensee after the office determines that the program licensee has submitted a completed electronic application for a program branch office license in a form prescribed by commission rule. The program branch office license must be issued in the name of the program licensee that maintains the branch office. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form. The application for a program branch office license must contain the following information:

(a) The legal business name and any other name under which the applicant operates.

(b) The applicant's main address.

(c) The applicant's telephone number and e-mail address.

(d) The address of each program branch office.

(e) The name, title, address, telephone number, and e-mail address of the applicant's contact person.

(f) The applicant's license number, if the applicant is licensed under this chapter.

(g) The signature and certification of an authorized person of the applicant.

(8) Except as provided in subsection (9), a program branch office license must be renewed biennially at the time of renewing the program license.

(9) Notwithstanding subsection (7), the office may deny an initial or renewal application for a program license or program branch office license if the applicant or any person with power to direct the management or policies of the applicant's business:

(a) Fails to demonstrate financial responsibility,

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experience, character, or general fitness, such as to command the confidence of the public and to warrant the belief that the business operated at the licensed or proposed location is lawful, honest, fair, efficient, and within the purposes of this chapter.

(b) Pled nolo contendere to, or was convicted or found guilty of, a crime involving fraud, dishonest dealing, or any act of moral turpitude, regardless of whether adjudication was withheld.

(c) Is subject to the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or any other action within the authority of the office, any financial regulatory agency in this state, or any other state or federal regulatory agency that affects the applicant's ability to participate in the program.

(10) The commission shall adopt rules to implement this section.

Section 4. Section 516.43, Florida Statutes, is created to read:

516.43 Requirements for program loans.—

(1) REQUIREMENTS.—A program licensee shall comply with each of the following requirements in making program loans:

(a) A program loan must be unsecured.

(b) A program loan must have:

1. A term of at least 120 days, but not more than 36 months, for a loan with a principal balance upon origination of at least $300, but not more than $3,000.

2. A term of at least 12 months, but not more than 60 months, for a loan with a principal balance upon origination of

more than $3,000.

(c) A program loan must not impose a prepayment penalty. A program loan must be repayable by the borrower in substantially equal, periodic installments, except that the final payment may be less than the amount of the prior installments. Installments must be due either every 2 weeks, semimonthly, or monthly.

(d) A program loan must include a borrower's right to rescind the program loan by notifying the program licensee of the borrower's intent to rescind the program loan and returning the principal advanced by the end of the business day after the day the program loan is consummated.

(e) Notwithstanding s. 516.031, the maximum annual interest rate charged on a program loan to the borrower, which must be fixed for the duration of the program loan, is 36 percent on that portion of the unpaid principal balance up to and including $3,000; 30 percent on that portion of the unpaid principal balance exceeding $3,000 and up to and including $4,000; and 24 percent on that portion of the unpaid principal balance exceeding $4,000 and up to and including $10,000. The original principal amount of the program loan is equal to the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the maximum annual interest rates in this paragraph, the computations used must be simple interest through the application of a daily periodic rate to the actual unpaid principal balance each day and may not be added-on interest or any other computations.

(f) If two or more interest rates are applied to the principal amount of a program loan, the program licensee may

charge, contract for, and receive interest at that single annual percentage rate that, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

(g) The program licensee shall reduce the interest rates specified in paragraph (e) on each subsequent program loan to the same borrower by a minimum of 1 percent, up to a maximum of 6 percent, if all of the following conditions are met:

1. The subsequent program loan is originated within 180 days after the prior program loan is fully repaid.

2. The borrower was never more than 15 days delinquent on the prior program loan.

3. The prior program loan was outstanding for at least one-half of its original term before its repayment.

(h) The program licensee may not induce or permit any person to become obligated to the program licensee, directly or contingently, or both, under more than one program loan at the same time with the program licensee.

(i) The program licensee may not refinance a program loan unless all of the following conditions are met at the time the borrower submits an application to refinance:

1. The principal amount payable may not include more than 60 days' unpaid interest accrued on the previous program loan pursuant to s. 516.031(5).

2. For a program loan with an original term up to and including 25 months, the borrower has repaid at least 60 percent

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of the outstanding principal remaining on his or her existing program loan.

3. For a program loan with an original term of more than 25 months, but not more than 60 months, the borrower has made current payments for at least 9 months on his or her existing program loan.

4. The borrower is current on payments for his or her existing program loan.

5. The program licensee must underwrite the new program loan in accordance with subsection (7).

(j) In lieu of the provisions of s. 687.08, the program licensee or, if applicable, its approved access partner shall make available to the borrower by electronic or physical means a plain and complete receipt of payment at the time that a payment is made by the borrower. For audit purposes, the program licensee must maintain an electronic record for each receipt made available to a borrower, which must include a copy of the receipt and the date and time that the receipt was generated. Each receipt made available to the borrower must show all of the following:

1. The name of the borrower.

2. The name of the access partner, if applicable.

3. The total payment amount received.

4. The date of payment.

5. The program loan balance before and after application of the payment.

6. The amount of the payment that was applied to the principal, interest, and fees.

7. The type of payment made by the borrower.

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8. The following statement, prominently displayed in a type size equal to or larger than the type size used to display the other items on the receipt: "If you have any questions about your loan now or in the future, you should direct those questions to ...(name of program licensee)... by ...(at least two different ways in which a borrower may contact the program licensee)...."

(2) WRITTEN DISCLOSURES AND STATEMENTS.—

(a) Notwithstanding s. 516.15(1), the loan contract and all written disclosures and statements may be provided by a program licensee to a borrower in English or in the language in which the loan is negotiated.

(b) The program licensee shall provide to a borrower all the statements required of licensees under s. 516.15.

(3) ORIGINATION FEES.—Notwithstanding s. 516.031, a program licensee may:

(a) Contract for and receive an origination fee from a borrower on a program loan. The program licensee may either deduct the origination fee from the principal amount of the loan disbursed to the borrower or capitalize the origination fee into the principal balance of the loan. The origination fee is fully earned and nonrefundable immediately upon the making of the program loan and may not exceed the lesser of 6 percent of the principal amount of the program loan made to the borrower, exclusive of the origination fee, or $90.

(b) Not charge a borrower an origination fee more than twice in any 12-month period.

(4) INSUFFICIENT FUNDS FEES AND DELINQUENCY CHARGES.—A program licensee may:

(a) Notwithstanding s. 516.031, require payment from a borrower of no more than $20 for fees incurred by the program licensee from a dishonored payment due to insufficient funds of the borrower.

(b) Notwithstanding s. 516.031(3)(a)9., contract for and receive a delinquency charge of up to $15 in a calendar month for one or more payments that are in default for at least 10 days if the charge is agreed upon, in writing, between the program licensee and the borrower before it is imposed.

The program licensee, or any wholly owned subsidiary of the program licensee, may not sell or assign an unpaid debt to an independent third party for collection purposes unless the debt has been delinquent for at least 30 days.

(5) CREDIT EDUCATION.—Before disbursement of program loan proceeds to the borrower, the program licensee must:

(a) Direct the borrower to the consumer credit counseling services offered by an independent third party; or

(b) Provide a credit education program or seminar to the borrower. The borrower is not required to participate in such education program or seminar. A credit education program or seminar offered pursuant to this paragraph must be provided at no cost to the borrower.

(6) CREDIT REPORTING.—

(a) The program licensee shall report each borrower's payment performance to at least one consumer reporting agency.

(b) The office may not approve an applicant for the program license before the applicant has been accepted as a data furnisher by a consumer reporting agency.

(c) The program licensee shall provide each borrower with the name or names of the consumer reporting agency or agencies to which it will report the borrower's payment history.

(7) PROGRAM LOAN UNDERWRITING.—

(a) The program licensee must underwrite each program loan to determine a borrower's ability and willingness to repay the program loan pursuant to the program loan terms. The program licensee may not make a program loan if it determines that the borrower's total monthly debt service payments at the time of origination, including the program loan for which the borrower is being considered and all outstanding forms of credit that can be independently verified by the program licensee, exceed 50 percent of the borrower's gross monthly income for a loan of not more than $3,000, or exceed 36 percent of the borrower's gross monthly income for a loan of more than $3,000.

(b)1. The program licensee must seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification. The program licensee must verify such information using a credit report from at least one consumer reporting agency or through other available electronic debt verification services that provide reliable evidence of a borrower's outstanding debt obligations.

2. The program licensee is not required to consider loans made to a borrower by friends or family in determining the borrower's debt-to-income ratio.

(c) The program licensee must verify the borrower's income to determine the debt-to-income ratio using information from:

1. Electronic means or services that provide reliable evidence of the borrower's actual income; or

2. The Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.

(8) WAIVERS.—

(a) A program licensee may not require, as a condition of providing the program loan, that the borrower:

1. Waive any right, penalty, remedy, forum, or procedure provided for in any law applicable to the program loan, including the right to file and pursue a civil action or file a complaint with or otherwise communicate with the office, a court, or any other governmental entity.

2. Agree to the application of laws other than those of this state.

3. Agree to resolve disputes in a jurisdiction outside of this state.

(b) A waiver that is required as a condition of doing business with the program licensee is presumed involuntary, unconscionable, against public policy, and unenforceable.

(c) A program licensee may not refuse to do business with or discriminate against a borrower or an applicant on the basis of the borrower's or applicant's refusal to waive any right, penalty, remedy, forum, or procedure, including the right to file and pursue a civil action or complaint with, or otherwise communicate with, the office, a court, or any other governmental entity. The exercise of a person's right to refuse to waive any right, penalty, remedy, forum, or procedure, including a

rejection of a contract requiring a waiver, does not affect any otherwise legal terms of a contract or an agreement.

(d) This subsection does not apply to any agreement to waive any right, penalty, remedy, forum, or procedure, including any agreement to arbitrate a claim or dispute after a claim or dispute has arisen. This subsection does not affect the enforceability or validity of any other provision of the contract.

Section 5. Section 516.44, Florida Statutes, is created to read:

516.44 Access partners.—

(1) ACCESS PARTNER AGREEMENT.—All arrangements between a program licensee and an access partner must be specified in a written access partner agreement between the parties. The agreement must contain the following provisions:

(a) The access partner agrees to comply with this section and all rules adopted under this section regarding the activities of access partners.

(b) The office has access to the access partner's books and records pertaining to the access partner's operations under the agreement with the program licensee in accordance with s. 516.45(3) and may examine the access partner pursuant to s. 516.45.

(2) AUTHORIZED SERVICES.—A program licensee may use the services of one or more access partners as provided in this section. An access partner may perform one or more of the following services for the program licensee:

(a) Distributing, circulating, using, or publishing printed brochures, flyers, fact sheets, or other written materials

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relating to program loans that the program licensee may make or negotiate. The written materials must be reviewed and approved in writing by the program licensee before being distributed, circulated, used, or published.

(b) Providing written factual information about program loan terms, conditions, or qualification requirements to a prospective borrower which has been prepared by the program licensee or reviewed and approved in writing by the program licensee. An access partner may discuss the information with a prospective borrower in general terms.

(c) Notifying a prospective borrower of the information needed in order to complete a program loan application.

(d) Entering information provided by the prospective borrower on a preprinted or an electronic application form or in a preformatted computer database.

(e) Assembling credit applications and other materials obtained in the course of a credit application transaction for submission to the program licensee.

(f) Contacting the program licensee to determine the status of a program loan application.

(g) Communicating a response that is returned by the program licensee's automated underwriting system to a borrower or a prospective borrower.

(h) Obtaining a borrower's signature on documents prepared by the program licensee and delivering final copies of the documents to the borrower.

(i) Disbursing program loan proceeds to a borrower if this method of disbursement is acceptable to the borrower, subject to the requirements of subsection (3). A loan disbursement made by

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an access partner under this paragraph is deemed to be made by the program licensee on the date that the funds are disbursed or otherwise made available by the access partner to the borrower.

(j) Receiving a program loan payment from the borrower if this method of payment is acceptable to the borrower, subject to the requirements of subsection (3).

(k) Operating an electronic access point through which a prospective borrower may directly access the website of the program licensee to apply for a program loan.

(3) RECEIPT OR DISBURSEMENT OF PROGRAM LOAN PAYMENTS.—

(a) A loan payment made by a borrower to an access partner under paragraph (2)(j) must be applied to the borrower's program loan and deemed received by the program licensee as of the date on which the payment is received by the access partner.

(b) An access partner that receives a loan payment from a borrower must deliver or cause to be delivered to the borrower a plain and complete receipt showing all of the information specified in s. 516.43(1)(j) at the time that the payment is made by the borrower.

(c) A borrower who submits a loan payment to an access partner under this subsection is not liable for a failure or delay by the access partner in transmitting the payment to the program licensee.

(d) An access partner that disburses or receives loan payments pursuant to paragraph (2)(i) or paragraph (2)(j) must maintain records of all disbursements made and loan payments received for at least 2 years.

(4) PROHIBITED ACTIVITIES.—An access partner may not:

(a) Provide counseling or advice to a borrower or

prospective borrower with respect to any loan term.

(b) Provide loan-related marketing material that has not previously been approved by the program licensee to a borrower or a prospective borrower.

(c) Negotiate a loan term between a program licensee and a prospective borrower.

(d) Offer information pertaining to a single prospective borrower to more than one program licensee. However, if a program licensee has declined to offer a program loan to a prospective borrower and has so notified the prospective borrower in writing, the access partner may then offer information pertaining to that borrower to another program licensee with whom it has an access partner agreement.

(e) Require a borrower to pay any fees or charges to the access partner or to any other person in connection with a program loan other than those permitted under ss. 516.405-516.46.

(5) DISCLOSURE STATEMENTS.—

(a) At the time that the access partner receives or processes an application for a program loan, the access partner shall provide the following statement to the applicant on behalf of the program licensee, in at least 10-point type, and shall request that the applicant acknowledge receipt of the statement in writing:

Your loan application has been referred to us by ...(name of access partner).... We may pay a fee to ...(name of access partner)... for the successful referral of your loan application. If you are approved

for the loan, ...(name of program licensee)... will become your lender. If you have any questions about your loan, now or in the future, you should direct those questions to ...(name of program licensee)... by ...(insert at least two different ways in which a borrower may contact the program licensee).... If you wish to report a complaint about ...(name of access partner)... or ...(name of program licensee)... regarding this loan transaction, you may contact the Division of Consumer Finance of the Office of Financial Regulation at 850-487-9687 or http://www.flofr.com.

(b) If the loan applicant has questions about the program loan which the access partner is not permitted to answer, the access partner must make a good faith effort to assist the applicant in making direct contact with the program licensee before the program loan is consummated.

(6) COMPENSATION.—

(a) The program licensee may compensate an access partner in accordance with a written agreement and a compensation schedule that is agreed to by the program licensee and the access partner, subject to the requirements in paragraph (b).

(b) The compensation of an access partner by a program licensee is subject to the following requirements:

1. Compensation may not be paid to an access partner in connection with a loan application unless the program loan is consummated.

2. The access partner's location for services and other

information required in subsection (7) must be reported to the office.

(7) NOTICE TO OFFICE.—A program licensee that uses the service of an access partner must notify the office, in a form and manner prescribed by commission rule, within 15 days after entering into a contract with an access partner regarding all of the following:

(a) The name, business address, and licensing details of the access partner and all locations at which the access partner will perform services under this section.

(b) The name and contact information for an employee of the access partner who is knowledgeable about, and has the authority to execute, the access partner agreement.

(c) The name and contact information of one or more employees of the access partner who are responsible for that access partner's referring activities on behalf of the program licensee.

(d) A statement by the program licensee that it has conducted due diligence with respect to the access partner and has confirmed that none of the following apply:

1. The filing of a petition under the United States Bankruptcy Code for bankruptcy or reorganization by the access partner.

2. The commencement of an administrative or a judicial license suspension or revocation proceeding, or the denial of a license request or renewal, by any state, the District of Columbia, any United States territory, or any foreign country in which the access partner operates, plans to operate, or is licensed to operate.

3. A felony indictment involving the access partner or an affiliated party.

4. The felony conviction, guilty plea, or plea of nolo contendere, regardless of adjudication, of the access partner or an affiliated party.

5. Any suspected criminal act perpetrated in this state relating to activities regulated under this chapter by the access partner.

6. Notification by a law enforcement or prosecutorial agency that the access partner is under criminal investigation, including, but not limited to, subpoenas to produce records or testimony and warrants issued by a court of competent jurisdiction which authorize the search and seizure of any records relating to a business activity regulated under this chapter.

As used in this paragraph, the term "affiliated party" means a director, officer, responsible person, employee, or foreign affiliate of an access partner; or a person who has a controlling interest in an access partner.

(e) Any other information requested by the office, subject to the limitations specified in s. 516.45(3).

(8) NOTICE OF CHANGES.—An access partner must provide the program licensee with a written notice sent by registered mail within 30 days after any change is made to the information specified in paragraphs (7)(a)-(c) and within 30 days after the occurrence or knowledge of any of the events specified in paragraph (7)(d).

(9) RESPONSIBILITY FOR ACTS OF AN ACCESS PARTNER.—A program

licensee is responsible for any act of its access partner if such act is a violation of this chapter.

(10) RULEMAKING.—The commission shall adopt rules to implement this section.

Section 6. Section 516.45, Florida Statutes, is created to read:

516.45 Examinations, investigations, and grounds for disciplinary action.—

(1) Notwithstanding any other law, the office may examine each program licensee that is accepted into the program and each branch office of the program licensee in accordance with this chapter.

(2) Notwithstanding any other law, the office may examine each access partner that is accepted into the program in accordance with this chapter.

(3) The scope of any investigation or examination of a program licensee or access partner must be limited to those books, accounts, records, documents, materials, and matters reasonably necessary to determine compliance with this chapter.

(4) A program licensee who violates any applicable provision of this chapter is subject to disciplinary action pursuant to s. 516.07(2). Any such disciplinary action is subject to s. 120.60. The program licensee is also subject to disciplinary action for a violation of s. 516.44 committed by any of its access partners.

(5) The office may take any of the following actions against an access partner who violates s. 516.44:

(a) Bar the access partner from performing services under this chapter.

(b) Bar the access partner from performing services at one or more of its specific locations.

(6) The commission shall adopt rules to implement this section.

Section 7. Section 516.46, Florida Statutes, is created to read:

516.46 Annual reports by program licensees and the office.—

(1) By March 15, 2021, and each year thereafter, a program licensee shall file a report with the office on a form and in a manner prescribed by commission rule. The report must include each of the items specified in subsection (2) for the preceding year using aggregated or anonymized data without reference to any borrower's nonpublic personal information or any program licensee's or access partner's proprietary or trade secret information.

(2) By January 1, 2022, and each year thereafter, the office shall post a report on its website summarizing the use of the program based on the information contained in the reports filed in the preceding year by program licensees under subsection (1). The office's report must publish the information in the aggregate so as not to identify data by any specific program licensee. The report must specify the period to which the report corresponds and must include, but is not limited to, the following for that period:

(a) The number of applicants approved for a program license by the office.

(b) The number of program loan applications received by program licensees, the number of program loans made under the program, the total amount loaned, the distribution of loan

lengths upon origination, and the distribution of interest rates and principal amounts upon origination among those program loans.

(c) The number of borrowers who obtained more than one program loan and the distribution of the number of program loans per borrower.

(d) Of those borrowers who obtained more than one program loan and had a credit score by the time of their subsequent loan, the percentage of those borrowers whose credit scores increased between successive loans, based on information from at least one major credit bureau, and the average size of the increase. In each case, the report must include the name of the credit score, such as FICO or VantageScore, which the program licensee is required to disclose.

(e) The income distribution of borrowers upon program loan origination, including the number of borrowers who obtained at least one program loan and who resided in a low-income or moderate-income census tract at the time of their loan applications.

(f) The number of borrowers who obtained program loans for the following purposes, based on the borrowers' responses at the time of their loan applications indicating the primary purpose for which the program loans were obtained:

1. To pay medical expenses.

2. To pay for vehicle repair or a vehicle purchase.

3. To pay bills.

4. To consolidate debt.

5. To build or repair credit history.

6. To finance a small business.

7. To pay other expenses.

(g) The number of borrowers who self-report that they had a bank account at the time of their loan application and the number of borrowers who self-report that they did not have a bank account at the time of their loan application.

(h) For refinance program loans:

1. The number and percentage of borrowers who applied for a refinance program loan.

2. Of those borrowers who applied for a refinance program loan, the number and percentage of borrowers who obtained a refinance program loan.

(i) The performance of program loans as reflected by all of the following:

1. The number and percentage of borrowers who experienced at least one delinquency lasting between 7 and 29 days and the distribution of principal loan amounts corresponding to those delinquencies.

2. The number and percentage of borrowers who experienced at least one delinquency lasting between 30 and 59 days and the distribution of principal loan amounts corresponding to those delinquencies.

3. The number and percentage of borrowers who experienced at least one delinquency lasting 60 days or more and the distribution of principal loan amounts corresponding to those delinquencies.

(3) The commission shall adopt rules to implement this section.

Section 8. Sections 516.405-516.46, Florida Statutes, are repealed on January 1, 2027, unless reenacted or superseded by

another law enacted by the Legislature before that date.

Section 9. For the 2019-2020 fiscal year, the sum of $407,520 in nonrecurring funds from the Administrative Trust Fund is appropriated to the Office of Financial Regulation for the purpose of implementing this act.

Section 10. This act shall take effect January 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

CS/CS/SB 874
Bill Number (if applicable)

Topic Consumer Finance Loans

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title Associate State Director

Address 200 W. College Ave, Ste 304A
Street

Phone 850-228-6387

Tallahassee, FL 32301
City *State* *Zip*

Email dobarker@aarp.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing AARP FL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

874
Bill Number (if applicable)

Topic Consumer Finance Loans

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.
Street
Tallahassee FL 32303
City *State* *Zip*

Phone 850 556 3121

Email alicevickers@flacp.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing FL Alliance for Consumer Protection

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

874
Bill Number (if applicable)

Topic Consumer Finance Loans

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe Street
Street

Phone 850-425-1344

Tallahassee FL 32301
City *State* *Zip*

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida State Conference of NAACP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

SB 874
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Ezra Garrett

Job Title Senior VP Public Affairs

Address 2 Circle Stacy Way
Street

Phone 650-743-1422

San Carlos CA 94704
City *State* *Zip*

Email ezragarrett@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Oportun

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

874
Bill Number (if applicable)

Topic Consumer Finance Loans

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Av
Street

Phone

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.23
Meeting Date

874
Bill Number (if applicable)

Topic SB 874

Amendment Barcode (if applicable)

Name Oscar Gonzales

Job Title Vice President

Address 333 Bush St
Street

Phone 323 270 6652

City *State* *Zip*

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing AUDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 604
INTRODUCER:	Senator Pizzo
SUBJECT:	Registered Contractor Licensing
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	IT	**Favorable**
2.	Toman	Yeatman	CA	**Favorable**
3.	Kraemer	Phelps	RC	**Favorable**

I. Summary:

SB 604 extends until November 1, 2021, the deadline for eligible electrical contractors, electrical specialty contractors, and alarm system contractors who are registered with the Department of Business and Professional Regulation (DBPR) and authorized to work in local jurisdictions, to apply for a certificate of competency from DBPR. Upon certification, such contractors may engage in their trade category throughout the state, with no geographic limitation. A similar deadline extension expired in 2015. The DBPR estimates there are approximately 1,501 currently registered contractors in the state who may be eligible to apply for certification during the extension period.[1] No mandatory licensure requirement is created by the availability to qualify as a certified contractor.

See Section V, Fiscal Impact Statement.

The bill takes effect July 1, 2019.

II. Present Situation:

Part II of ch. 489, F.S., dealing with electrical and alarm system contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade, and have been tested on technical and business matters.[2] The Electrical Contractors' Licensing Board (board) in the DBPR implements Part II of ch. 489, F.S.[3]

An electrical contractor is a person whose business includes the electrical trade field and who has the experience, knowledge, and skill to install, repair, alter, add to, or design, in compliance with law, electrical wiring, fixtures, and appliances, and any related part, which generates, transmits,

[1] *See 2019 Agency Legislative Bill Analysis (Department of Business and Professional Regulation) for SB 604*, Feb. 18, 2019 (on file with Senate Committee on Innovation, Industries, and Technology) at page 4.
[2] *See* s. 489.501, F.S.
[3] *See* ss. 489.507 through 489.517, F.S., concerning the powers and duties of the board.

or uses electrical energy, in compliance with applicable plans, specifications, codes, laws, and regulations.[4] The term also includes any person, firm, or corporation that engages in the business of electrical contracting under an expressed or implied contract or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.[5]

An alarm system contractor is a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to conduct all alarm services for compensation, for all types of alarm systems for all purposes.[6] The term also includes any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.[7] An alarm system contractor whose business includes all types of alarm systems for all purposes is designated as an "alarm system contractor I;" the practice area of an "alarm system contractor II" is identical except that it does not include fire alarm systems.[8]

The terms "registered alarm system contractor," and "registered electrical contractor" mean those contractors who have registered with DBPR as part of meeting competency requirements for their trade category in the particular jurisdiction for which the registration is issued. Registered contractors may contract only in the jurisdiction for which the registration is issued.[9]

The term "certification" means the act by a contractor obtaining or holding a geographically unlimited certificate of competency from the DBPR.[10] When an alarm system contractor is certified, the contractor possesses a certificate of competency, with some limitations as to the scope of work that may be undertaken, without any mandatory licensure requirement.[11] The term "certified electrical contractor" means an electrical contractor who possesses a certificate of competency.

To be certified a person must be 18 years of age, pass the certification examination, be of good moral character, and meet the eligibility requirements of s. 489.511(1)(b)3., F.S.

Unless an exemption applies, the term "contracting" means engaging in business as a contractor or performing electrical or alarm work for compensation and includes, but is not limited to,

[4] *See* s. 489.505(12), F.S.
[5] *Id.*
[6] *See* s. 489.505(2), F.S.
[7] *Id.*
[8] *Id.*
[9] *See* ss. 489.505(16), (21), and (22), F.S.
[10] *See* ss. 489.505(4), (5), and (6), F.S.
[11] *See* s. 489.505(7), F.S., which describes the limitations on the scope of a certificate of competency as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks. RMS is the abbreviation for "root mean square," a statistical term defined as the square root of mean square. *See* http://www.practicalphysics.org/explaining-rms-voltage-and-current.html (last visited Mar. 28, 2019).

performance of the work that may be performed by electrical or alarm system contractors.[12] The attempted sale of contracting services and the negotiation or bid for a contract on these services also constitutes contracting. If the services offered require licensure or agent qualification, the offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure.[13]

The term "specialty contractor" means a contractor whose scope of practice is limited to a specific category of electrical or alarm system contracting, such as residential electrical contracting, maintenance of electrical fixtures, and fabrication, erection, installation, and maintenance of electrical advertising signs.[14]

Section 489.514, F.S., requires the board to issue certification allowing an electrical, electrical specialty or alarm system contractor to engage in the specified trade category throughout the state, upon:

- Receipt of a completed application;
- Payment of the appropriate fee; and
- Evidence that he or she qualifies for the certification in a trade category based on:
  - Having a valid registered local license;
  - Passing an approved written examination;
  - Having a minimum of five years' contracting experience in the applicable trade category (with an active license and excluding probationary periods);
  - Never having had a contractor's license revoked, and during the last five years, not having had a suspended license or been assessed a fine in excess of $500; and
  - Meeting all required insurance and financial responsibility requirements.[15]

The board has established a $200 fee for applications for certification of registered contractors.[16]

III. Effect of Proposed Changes:

SB 604 extends until November 1, 2021, the deadline for eligible electrical contractors, electrical specialty contractors, and alarm system contractors who are registered with the Department of Business and Professional Regulation (DBPR) and authorized to work in local jurisdictions, to apply and qualify for a certificate of competence. Once certified, such contractors may engage in their trade category throughout the state, with no geographic limitation. A similar extension expired in 2015.[17] The DBPR estimates there are approximately 1,501 currently registered

[12] *See* s. 489.505(9), F.S.; *see also,* ss. 489.505(2) and (12), F.S., for the various services that may be performed, and ss. 489.503(1) through (24) for the persons and types of work that are exempted from the term "contracting."
[13] *See* s. 489.505(9), F.S.
[14] *See* s. 489.505(19), F.S.
[15] *See* s. 489.515(1)(b), F.S., which provides that an applicant must submit satisfactory evidence of workers' compensation insurance or an acceptable exemption issued by DBPR, public liability and property damage insurance in amounts determined by the board, and evidence of financial responsibility, credit, and business reputation of either the contractor or the business sought to be qualified for certification.
[16] *See* s. 489.109, F.S., and Fla. Admin. Code R. 61G6-8.001 (2019).
[17] *See* ch. 2013-193, s. 11, Laws of Florida, which extended the deadline to apply for certification to November 1, 2015 from November 1, 2004.

contractors in the state and approximately 303 inactive registered contractors who may be eligible to apply for certification during the extension period.[18]

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Registered contractors may voluntarily choose to apply for certification for the required $200 fee, if engaging in their trade category throughout the state, with no geographic limitation.

C. Government Sector Impact:

The DBPR estimates as many as 1,501 active registered contractors and 303 inactive registered contractors have the required experience and may voluntarily choose to apply and qualify for a certificate of competence.[19] According to the DBPR, if all such eligible

[18] *See 2019 Agency Legislative Bill Analysis (Department of Business and Professional Regulation) for SB 604*, Feb. 18, 2019 (on file with Senate Committee on Innovation, Industries, and Technology) at page 4.
[19] *Id*.

contractors apply for certification and pay the required $200 application fee, the total associated fees collected could be approximately $360,800.[20]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 489.514 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

[20] *Id*.

By Senator Pizzo

38-01556-19 2019604__

A bill to be entitled

An act relating to registered contractor licensing; amending s. 489.514, F.S.; extending the date by which an applicant must make application for a license to be grandfathered; providing an effective date.

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

Section 1. Section 489.514, Florida Statutes, is amended to read:

489.514 Certification for registered contractors; grandfathering provisions.—

(1) The board shall, upon receipt of a completed application, appropriate fee, and proof of compliance with the provisions of this section, issue:

(a) To an applying registered electrical contractor, a certificate as an electrical contractor, as defined in s. 489.505(12);

(b) To an applying registered alarm system contractor, a certificate in the matching alarm system contractor category, as defined in s. 489.505(2)(a) or (b); or

(c) To an applying registered electrical specialty contractor, a certificate in the matching electrical specialty contractor category, as defined in s. 489.505(19).

(2) Any contractor registered under this part who makes application under this section to the board shall meet each of the following requirements for certification:

(a) Currently holds a valid registered local license in the category of electrical contractor, alarm system contractor, or

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

38-01556-19 2019604__

electrical specialty contractor.

(b) Has, for that category, passed a written, proctored examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Experior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(c) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the 5 years required under this subsection.

(d) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended in the last 5 years, or been assessed a fine in excess of $500 in the last 5 years.

(e) Is in compliance with the insurance and financial responsibility requirements in s. 489.515(1)(b).

(3) An applicant must make application by November 1, 2021 ~~2015~~, to be licensed pursuant to this section.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 2, 2019

I respectfully request that **Senate Bill #604**, relating to Registered Contractor Licensing, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jason W.B. Pizzo
Florida Senate, District 38

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 616
INTRODUCER:	Rules Committee; Community Affairs Committee; Innovation, Industry, and Technology Committee; and Senators Perry and Hutson
SUBJECT:	Engineering
DATE:	April 23, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer/Oxamendi	Imhof	IT	**Fav/CS**
2.	Toman	Yeatman	CA	**Fav/CS**
3.	Kraemer/Oxamendi	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 616 authorizes the Florida Board of Professional Engineers (board) to establish minimum standards of practice for the profession of engineering and to establish responsibility rules for the profession of engineering. The bill revises the licensure requirements for professional engineers by permitting a license applicant to complete the required years of work experience after sitting for the license examination. Currently, an applicant must satisfy the experience work requirement before sitting for the examination. The bill increases the required experience for a person who graduated with a four-year degree from an engineering technology program, from four years to six years of work experience.

The bill repeals the right of an applicant who does not have the required education, to qualify to sit for the license examination if the person was engaged in 10 years or more of active engineering work experience on July 1, 1981. The bill also:

- Requires an engineering license applicant to be at least 18 years of age;
- Tolls the 90-day period within which the board must grant or deny an application when an applicant is required to make a personal appearance before the board;
- Specifies the stages of construction during which a special inspector must perform structural inspections on a threshold building, which is a building greater than three stories or 50 feet in height, or which has an assembly occupancy classification that exceeds 5,000 square feet in area and an occupancy of greater than 500 persons;

- Provides for shortened deadlines and time frames for notices to, and actions by, local building officials when a private provider performs plans review and inspections;
- Provides for shortened time frames for local building officials to issue building permits and notices of plan deficiencies; and
- Authorizes a successor engineer to independently re-create and seal documents that were previously created and sealed by the original engineer, and delineates the obligations of the successor and original engineer.

The bill has no fiscal impact on state government.

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

II. Present Situation:

Florida Board of Professional Engineers

The practice of engineering is regulated by the board. Unlike most Department of Business and Professional Regulation (DBPR) professions, the administrative, investigative, and prosecutorial services for the board are not provided by DBPR. The DBPR contracts with the Florida Engineers Management Corporation (FEMC), a non-profit corporation, to provide such services.[1] The FEMC is a public-private nonprofit association that has contracted with the DBPR to handle administrative, investigative, and prosecutorial services for the Board of Professional Engineers.[2]

Section 471.008, F.S., authorizes the board to adopt rules to implement the provisions of ch. 471, F.S., and ch. 455, F.S., which provides the general licensing procedures for professional licensing by the DBPR and its professional licensing boards.

The board has adopted responsibility rules for the profession of engineering.[3] The responsibility rules address a variety of issues, including minimum requirements for engineering documents,[4] and requirements for the retention of engineering documents.[5]

There were 64,219 licensed professional engineers in Fiscal Year 2017-2018.[6] The FEMC processed 310 complaints regarding engineering practice during that period. Only 261 complaints were found to be legally sufficient to proceed, and the FEMC filed 112

[1] Section 471.038(3), F.S.
[2] *See* the Annual Report of the FEMC for FY 2017-2018 at https://fbpe.org/wp-content/uploads/2018/09/2017-2018-FEMC-Annual-Report.pdf (last visited Apr. 4, 2019), and the contract between DBPR and FEMC for the period between July 1, 2017 and June 30, 2021 at https://fbpe.org/wp-content/uploads/2018/07/FEMC-DBPR-Contract-2017.pdf (last visited Apr. 4, 2019).
[3] The responsibility rules are in Fla. Admin. Code Chapters 61G15-30, 61G15-31, 61G15-32, and 61G15-33 (2019).
[4] Fla. Admin. Code R. 61G15-30.003 (2019).
[5] Fla. Admin. Code R. 61G15-30.009 (2019).
[6] There were 526 inactive professional licenses in that fiscal year. *See Annual Report, Division of Professions, Division of Certified Public Accounting, Division of Real Estate, and Division of Regulation, Fiscal Year 2017-2018*, at p. 19, at http://www.myfloridalicense.com/DBPR/os/documents/ProfessionsAnnualReport2017-2018.pdf (last visited Apr. 4, 2019).

administrative complaints in cases where probable cause was found relating to a violation of the practice act.[7]

Professional Engineer License Qualifications

Section 471.013, F.S., provides the license qualifications for a professional engineer. In order to be licensed as a professional engineer, a person must successfully pass two examinations: the fundamentals examination and the principles and practices examination. Prior to being permitted to sit for the fundamentals examination, an applicant must have:

- Graduated from an approved engineering curriculum of four years or more in a board-approved school, college, or university; and
  - Have a record of four years of active engineering experience of a character indicating competence to be in responsible charge of engineering;[8] or
- Graduated from an approved engineering technology curriculum of four years or more in an board-approved school, college, or university within the State University System, having been enrolled or graduated before July 1, 1979; and
  - Have a record of four years of active engineering experience of a character indicating competence to be in responsible charge of engineering.[9]

Alternatively, if an applicant does not have the required education, the applicant may qualify for an engineer license with work experience consisting of 10 years or more of active engineering work of a character indicating the applicant is competent to be placed in responsible charge of engineering. To qualify for licensure based solely on satisfying the experience requirement, the applicant must have notified the DBPR before July 1, 1984, that she or he was engaged in such work on July 1, 1981.

Licensing Procedure – Appearing Before the Board

Section 471.015(2), F.S., requires the board to certify for licensure any applicant who satisfies the requirements of s. 471.013, F.S.

The board may require personal appearance by any applicant for licensure. The board must give the applicant adequate notice of the time and place of the appearance and provide the applicant a statement of the purpose of and reasons requiring the appearance.[10]

Certificates of Authorization

Section 471.005, F.S., defines "certificate of authorization" as a license to practice engineering issued by the FEMC to a corporation or partnership. Section 471.023, F.S., requires business

[7] *See* the Annual Report of the FEMC for FY 2017-2018 at https://fbpe.org/wp-content/uploads/2018/09/2017-2018-FEMC-Annual-Report.pdf, at pages 4-5 (last visited Mar. 27, 2019), which indicates the FEMC also filed 30 Final Orders with DBPR; entered 15 Settlement Stipulations; dismissed four cases after re-consideration; issued nine reprimands, five suspensions, five probations, five project reviews, and one license restriction; and imposed $36,768.50 in administrative costs and $38,400.00 in fines; The board also issued 30 final orders against licensees.
[8] Section 471.013, F.S.
[9] *Id*.
[10] Section 471.015(6), F.S.

organizations that offer engineering services in Florida to obtain a certificate of authorization. The certification is issued by the FEMC pursuant to qualification by the board. The law requires at least one principal officer or partner, and all personnel who act on its behalf as engineers, of the business to be licensed professional engineers. The certification must be renewed every two years, and each certified business organization is required to notify the board within one month after changing information contained in the application.

Section 471.011, F.S., authorizes the board by rule to establish fees to be paid for applications, examination, reexamination, licensing and renewal, inactive status applications and reactivation of inactive licenses, and recordmaking and recordkeeping. It also provides that the fee for a certificate of authorization shall not exceed $125.

Special Inspectors of Threshold Buildings

Section 471.015(7), F.S., authorizes the board to establish by rule the qualifications for certification of licensees as inspectors of threshold buildings. A "threshold building" is "any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification as defined in the Florida Building Code which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons."[11]

The board is also authorized to establish minimum qualifications for the qualified representative of the special inspector who is authorized to perform inspections of threshold buildings on behalf of the special inspector. Current law does not authorize the board to establish minimum training or education requirements for maintaining a certification or qualification as a special inspector.

The agency charged with enforcing the building code (enforcing agency)[12] must require a special inspector to perform structural inspections on a threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record.[13]

Use of Engineer Seals

Section 471.025(1), F.S., authorizes the board to prescribe, by rule, one or more forms of seal to be used by licensed engineers. Each licensee must obtain at least one seal. All final drawings, specifications, plans, reports, or documents prepared or issued by the licensee and filed for public record and all final documents provided to the owner or the owner's representative must be signed by the licensee, dated, and sealed with the seal. The signature, date, and seal are evidence of the authenticity of the document to which they are affixed.

A licensee may not affix or permit to be affixed his or her seal, name, or digital signature to any plan, specification, drawing, final bid document, or other document that depicts work which he or she is not licensed to perform or which is beyond his or her profession or specialty.[14]

[11] *See* s. 553.71(12), F.S.
[12] *See* s. 553.71(5), F.S., defining the term "local enforcement agency."
[13] Section 553.79(5)(a), F.S.
[14] Section 471.025(3), F.S.

Current law does not authorize a successor engineer to independently re-create and seal documents that were previously created and sealed by the original engineer, or delineate the obligations of the successor or original engineer in regards to prior work and documents assumed by the successor engineer.

III. Effect of Proposed Changes:

Reinstatement of Void Licenses

Sections 1 and 5 of the bill amend s.455.271, F.S., and s. 471.019, F.S., respectively, to eliminate a requirement that a delinquent licensee must apply for licensure when a professional or occupational license expires. Current law providing such expired licenses are void, without any further action by the applicable board or the DBPR, is retained. Rulemaking authority is granted to the applicable board or the DBPR to adopt rules for license reinstatement, including continuing education requirements for professional engineers not to exceed the continuing education required to renew a license, as set forth in s. 471.017, F.S.

Rulemaking Authority

Section 2 of the bill amends s. 471.008, F.S., to authorize the board to establish minimum standards of practice for the profession of engineering and to establish responsibility rules for the profession of engineering.

License Qualifications (Age, Examination Eligibility, and Required Experience)

Section 3 of the bill amends s. 471.013(1)(a), F.S., to delete the requirement that an engineering license applicant have four or more years of active engineering experience before the applicant may sit for the fundamentals examination. The educational requirement for taking the fundamentals examination is amended to allow, in addition to a four-year degree in engineering, a four-year engineering technology degree if the approved curriculum at a program has been approved by the board.

The bill repeals the provision in s. 471.013(1)(a)3., F.S., which permits an applicant who does not have the required education, to qualify to sit for the fundamentals examination if the person was engaged in 10 years or more of active engineering work experience on July 1, 1981, and notified the DBPR before July 1, 1984, that she or he was engaged in such work.

Section 4 of the bill amends s. 471.015(2)(a), F.S., to require license applicants to provide proof to the board that he or she is at least 18 years of age. Current law does not provide a minimum age requirement.

The bill also revises licensure requirements by permitting a license applicant to complete the required experience after sitting for the license examination. Currently, an applicant must satisfy the experience requirement before sitting for the examination. Under the bill, a graduate from an approved four-year engineering curriculum must have a record of four years of active engineering experience of a character indicating competence to be in responsible charge of engineering before the person may qualify for a license. This is the same experience currently required to sit for the license examination.

However, the bill increases the required experience for a person who graduated with a four-year degree in engineering technology from four years to six years of work experience.

Licensing Procedure – Appearing Before the Board

Section 4 of the bill also amends s. 471.015(6), F.S., to provide that the period within which an application must be granted or denied is tolled until such time as the applicant appears when required to make a personal appearance before the board. The bill provides the board may deny a license if the applicant fails to appear before the board at either of the next two regularly scheduled board meetings.[15]

Use of Engineer Seals

Section 6 of the bill amends s. 471.025(4), F.S., to require a successor engineer seeking to reuse documents previously sealed by another engineer to independently re-create all of the work done previously.

A successor engineer assumes full professional and legal responsibility by signing and affixing his or her seal to the assumed documents, which must be treated as though they were the successor engineer's original product. The original engineer is released from any professional responsibility or civil liability for prior work assumed by the successor engineer.

Special Inspections of Threshold Buildings

Section 7 of the bill amends s. 553.79, F.S., relating to building construction permits, to provide that the authority of an enforcement agency to require a special inspector to perform structural inspections on the threshold building applies during new construction or during repair or restoration projects in which the structural system or structural loading of a building is being modified.

Alternative Plans Review and Inspection Notices to Local Building Officials

Section 8 of the bill provides for shortened deadlines for various notices required by s. 553.791(4) and (5), F.S., to be provided to a local building official when a private provider is retained to perform construction inspection services on a project. Notices that a private provider will perform required inspections must be provided to the local building official either:

- At the time of application; or
- No later than 2 p.m. local time, 2 business days before the first scheduled inspection (previously not less than seven days before).

Once construction begins, if the local building official is unable to provide inspection services in a timely manner, a notice that the owner has elected to retain a private provider to provide inspection services must be provided to the local building official no later than 2 p.m. local time, 2 business days before the next scheduled inspection (previously no less than seven days before).

[15] Section 120.60(1), F.S.

The bill also amends s. 553.791(9), F.S., to provide that a local building official may not prohibit a private provider from performing inspections outside of normal operating hours, on weekends, or on holidays.

Time Frames for Issuance of Building Permits for Private Providers

Section 8 of the bill also amends s. 553.791(7), F.S., to shorten time frames to 20 days from 30 days, for local building officials to issue building permits and notices of construction plan deficiencies.

Other Revisions

The bill includes technical drafting changes, conforming changes, and elimination of obsolete language.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 455.271, 471.008, 471.013, 471.015, 471.019, 471.025, 553.79, and 553.791.

IX. Additional Information:

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

CS/CS/CS by Rules on April 23, 2019:
The committee substitute:

- Eliminates a reduction in the years of experience and length of licensure in other jurisdictions for applicants to qualify for licensure by endorsement without passing license examinations;
- Deletes a change in the designation of the Department of State as a temporary licensee's agent for service of process as a requirement for licensure, retaining current law that such a designation occurs upon filing an application for temporary licensure;
- Revises shortened deadlines and time frames for notices to, and actions by, local building officials when a private provider performs plans review and inspections by one day (to 2 pm two days before inspections); and
- Expands shortened time frames for local building officials to issue building permits and notices of plan deficiencies, by five additional days (from 15 days, to 20 days).

CS/CS by Community Affairs on April 9, 2019:

- Restores a previously deleted requirement for engineering firms to obtain and pay for certifications of authorization as well as the fee amount for such certifications;
- Removes provisions for registration of engineering firms; and
- Removes requirements for qualifying agents and engineering firms, when the agent is no longer affiliated with the engineering firm, to allow work to continue temporarily.

CS by Innovation, Industry, and Technology on March 26, 2019:

The committee substitute:

- Revises the licensure requirements for professional engineers by permitting a license applicant to complete the required years of work experience after sitting for the license examination;
- Repeals right of an applicant who does not have the required education, to qualify to sit for the license examination if the person was engaged in 10 years or more of active engineering work experience on July 1, 1981;
- Reduces requirements for experience and length of licensure in other jurisdictions for applicants to qualify for licensure by endorsement without passing license examinations;
- Eliminates a requirement for engineering firms to obtain and pay for certifications of authorization;
- Provides for registration of engineering firms;
- Requires an engineering license applicant to be at least 18 years of age;
- Tolls the 90-day period within which the board must grant or deny an application when an applicant is required to make a personal appearance before the board;
- Specifies the stages of construction during which a special inspector must perform structural inspections on a threshold building, which is a building greater than three stories or 50 feet in height, or which has an assembly occupancy classification that exceeds 5,000 square feet in area and an occupancy of greater than 500 persons;
- Provides for shortened deadlines and time frames for notices to, and actions by, local building officials when a private provider performs plans review and inspections;
- Provides for shortened time frames for local building officials to issue building permits and notices of plan deficiencies;
- Adds requirements for qualifying agents and engineering firms, when the agent is no longer affiliated with the engineering firm, to allow work to continue temporarily; and
- Authorizes a successor engineer to independently re-create and seal documents that were previously created and sealed by the original engineer, and delineates the obligations of the successor and original engineer.

B. Amendments:

None.

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

495484

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2019	.	
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The Committee on Rules (Perry) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 147 - 338
and insert:
(6) The board may require a personal appearance by any applicant for licensure under this chapter. Any applicant of whom a personal appearance is required must be given adequate notice of the time and place of the appearance and provided with a statement of the purpose of and reasons requiring the appearance. If an applicant is required to appear, the time period within which a licensure application must be granted or

denied is tolled until such time as the applicant appears. However, if the applicant fails to appear before the board at either of the next two regularly scheduled board meetings, the application for licensure may be denied.

Section 5. Section 471.019, Florida Statutes, is amended to read:

471.019 Reactivation.—The board shall prescribe by rule a reinstatement process for void licenses which includes establishing appropriate continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license for a licensed engineer may not exceed the continuing education requirements prescribed pursuant to s. 471.017 ~~12 classroom hours~~ for each year the license was inactive.

Section 6. Subsection (4) is added to section 471.025, Florida Statutes, to read:

471.025 Seals.—

(4) A successor engineer seeking to reuse documents previously sealed by another engineer must be able to independently re-create all of the work done by the original engineer. A successor engineer assumes full professional and legal responsibility by signing and affixing his or her seal to the assumed documents. Such documents must be treated as though they were the successor engineer's original product, and the original engineer is released from any professional responsibility or civil liability for prior work assumed by the successor engineer. For the purposes of this subsection, the term "successor engineer" means an engineer who is using or relying upon the work, findings, or recommendations of the

engineer who previously sealed the pertinent documents.

Section 7. Paragraph (a) of subsection (5) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(5)(a) During new construction or during repair or restoration projects in which the structural system or structural loading of a threshold building is being modified, the enforcing agency shall require a special inspector to perform structural inspections on the ~~a~~ threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record. The structural inspection plan must be submitted to and approved by the enforcing agency before the issuance of a building permit for the construction, repair, or restoration of a threshold building. The purpose of the structural inspection plan is to provide specific inspection procedures and schedules so that the building can be adequately inspected for compliance with the permitted documents. The special inspector may not serve as a surrogate in carrying out the responsibilities of the building official, the architect, or the engineer of record. The contractor's contractual or statutory obligations are not relieved by any action of the special inspector. The special inspector shall determine that a professional engineer who specializes in shoring design has inspected the shoring and reshoring for conformance with the shoring and reshoring plans submitted to the enforcing agency. A fee simple title owner of a building, which does not meet the minimum size, height, occupancy, occupancy classification, or number-of-stories criteria which would result in classification as a threshold building under s. 553.71(12), may designate such

building as a threshold building, subject to more than the minimum number of inspections required by the Florida Building Code.

Section 8. Subsections (4) and (5), paragraphs (a), (b), and (c) of subsection (7), and subsection (9) of section 553.791, Florida Statutes, are amended to read:

553.791 Alternative plans review and inspection.—

(4) A fee owner or the fee owner's contractor using a private provider to provide building code inspection services shall notify the local building official at the time of permit application, or by 2 p.m. local time, 2 ~~no less than 7~~ business days prior to the first scheduled inspection by the local building official or building code enforcement agency for a private provider performing required inspections of construction under this section, on a form to be adopted by the commission. This notice shall include the following information:

(a) The services to be performed by the private provider.

(b) The name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform such services, his or her professional license or certification number, qualification statements or resumes, and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider's firm, the private provider, and any duly authorized representative in the amounts required by this section.

(c) An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide building code plans review and/or inspection services on the building or structure that is the subject of the enclosed permit application, as authorized by s. 553.791, Florida Statutes. I understand that the local building official may not review the plans submitted or perform the required building inspections to determine compliance with the applicable codes, except to the extent specified in said law. Instead, plans review and/or required building inspections will be performed by licensed or certified personnel identified in the application. The law requires minimum insurance requirements for such personnel, but I understand that I may require more insurance to protect my interests. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and the level of their insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the local government, the local building official, and their building code enforcement personnel from any and all claims arising from my use of these licensed or certified personnel to perform building code inspection services with respect to the building or structure that is the subject of the enclosed permit application.

If the fee owner or the fee owner’s contractor makes any changes

to the listed private providers or the services to be provided by those private providers, the fee owner or the fee owner's contractor shall, within 1 business day after any change, update the notice to reflect such changes. A change of a duly authorized representative named in the permit application does not require a revision of the permit, and the building code enforcement agency shall not charge a fee for making the change. In addition, the fee owner or the fee owner's contractor shall post at the project site, prior to the commencement of construction and updated within 1 business day after any change, on a form to be adopted by the commission, the name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform building code inspection services, the type of service being performed, and similar information for the primary contact of the private provider on the project.

(5) After construction has commenced and if the local building official is unable to provide inspection services in a timely manner, the fee owner or the fee owner's contractor may elect to use a private provider to provide inspection services by notifying the local building official of the owner's or contractor's intention to do so by 2 p.m. local time, 2 ~~no less than 7~~ business days prior to the next scheduled inspection using the notice provided for in paragraphs (4)(a)-(c).

(7)(a) No more than 20 ~~30~~ business days after receipt of a permit application and the affidavit from the private provider required pursuant to subsection (6), the local building official shall issue the requested permit or provide a written notice to the permit applicant identifying the specific plan features that

495484

do not comply with the applicable codes, as well as the specific code chapters and sections. If the local building official does not provide a written notice of the plan deficiencies within the prescribed 20-day ~~30-day~~ period, the permit application shall be deemed approved as a matter of law, and the permit shall be issued by the local building official on the next business day.

(b) If the local building official provides a written notice of plan deficiencies to the permit applicant within the prescribed 20-day ~~30-day~~ period, the 20-day ~~30-day~~ period shall be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to subsection (13) or to submit revisions to correct the deficiencies.

(c) If the permit applicant submits revisions, the local building official has the remainder of the tolled 20-day ~~30-day~~

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

And the directory clause is amended as follows:

Delete line 116

and insert:

Section 4. Subsections (2), (3), and (6) of section

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

And the title is amended as follows:

Delete lines 26 - 29

and insert:

license; amending s. 471.025, F.S.; requiring

By the Committees on Community Affairs; and Innovation, Industry, and Technology; and Senators Perry and Hutson

578-04060-19 2019616c2

A bill to be entitled

An act relating to engineering; amending s. 455.271, F.S.; deleting a provision requiring a delinquent status licensee to apply for active or inactive status; requiring rulemaking to authorize licensees whose licenses are void to apply for reinstatement; amending s. 471.008, F.S.; revising the Board of Professional Engineers' rulemaking authority; amending s. 471.013, F.S.; revising the prerequisites for a person to take an examination that determines whether she or he is qualified to practice in this state as an engineer; deleting an obsolete provision; amending s. 471.015, F.S.; revising licensure certification requirements to include active engineering experience and a minimum age; revising requirements for licensure by endorsement by the board; providing that the time period in which a licensure application must be granted or denied is tolled if an applicant is required to make a personal appearance before the board; authorizing the board to deny a license if such an applicant fails to appear before the board within a specified timeframe; amending s. 471.019, F.S.; requiring the board to adopt rules relating to a reinstatement process for void licenses; revising continuing education requirements for reactivating a license; amending s. 471.021, F.S.; requiring an applicant to appoint the Department of State as an agent of the applicant for service of process of certain actions; amending s. 471.025, F.S.; requiring

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

578-04060-19 2019616c2

a successor engineer to be able to independently re-create certain work when seeking to reuse certain documents; specifying that a successor engineer assumes full professional and legal responsibility by signing or affixing his or her seal to assumed documents; releasing the engineer who previously sealed the documents from any professional responsibility or civil liability for her or his work that is assumed by a successor engineer; defining the term "successor engineer"; amending s. 553.79, F.S.; requiring that structural inspections on a threshold building be performed during new construction or during certain repair or restoration projects; amending s. 553.791, F.S.; revising notice requirements for certain building code inspection services by private providers; decreasing the amount of time a local building official has to take certain actions after receiving a permit application and affidavit from a private provider; prohibiting a local building official from prohibiting a private provider from performing any inspection outside the local building official's normal operating hours; providing an effective date.

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

Section 1. Paragraph (a) of subsection (6) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

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

(6)(a) ~~A delinquent status licensee must affirmatively apply with a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which a licensee becomes delinquent.~~ Failure by a delinquent status licensee to become active or inactive before the expiration of the current licensure cycle shall render the license void without any further action by the board or the department. The board, or the department if there is no board, shall adopt rules allowing a licensee whose license is void to apply for reinstatement.

This subsection does not apply to individuals subject to regulation under chapter 473.

Section 2. Section 471.008, Florida Statutes, is amended to read:

471.008 Rulemaking authority.—The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to:

(1) Implement provisions of this chapter or chapter 455 which confer ~~conferring~~ duties upon it.

(2) Ensure competence in the practice of engineering.

(3) Ensure accuracy, completeness, and quality in the engineering products provided.

Section 3. Paragraph (a) of subsection (1) of section 471.013, Florida Statutes, is amended to read:

471.013 Examinations; prerequisites.—

(1)(a) A person shall be entitled to take an examination for the purpose of determining whether she or he is qualified to practice in this state as an engineer if the person is of good moral character and:

1. Is a graduate from an approved engineering curriculum of 4 years or more in a school, college, or university which has been approved by the board ~~and has a record of 4 years of active engineering experience of a character indicating competence to be in responsible charge of engineering~~; or

2. Is a graduate of an approved engineering technology curriculum of 4 years or more in a school, college, or university which has been approved by the board ~~within the State University System, having been enrolled or having graduated prior to July 1, 1979, and has a record of 4 years of active engineering experience of a character indicating competence to be in responsible charge of engineering; or~~

~~3. Has, in lieu of such education and experience requirements, 10 years or more of active engineering work of a character indicating that the applicant is competent to be placed in responsible charge of engineering. However, this subparagraph does not apply unless such person notifies the department before July 1, 1984, that she or he was engaged in such work on July 1, 1981~~.

The board shall adopt rules providing for the review and approval of schools or colleges and the courses of study in engineering in such schools and colleges. The rules must ~~shall~~ be based on the educational requirements for engineering as defined in s. 471.005. The board may adopt rules providing for the acceptance of the approval and accreditation of schools and courses of study by a nationally accepted accreditation organization.

Section 4. Subsections (2), (3), (5), and (6) of section

471.015, Florida Statutes, are amended to read:

471.015 Licensure.—

(2)(a) The board shall certify for licensure any applicant who has submitted proof satisfactory to the board that he or she is at least 18 years of age and who:

1. Satisfies the requirements of s. 471.013(1)(a)1. and has a record of 4 years of active engineering experience of a character indicating competence to be in responsible charge of engineering; or

2. Satisfies the requirements of s. 471.013(1)(a)2. and has a record of 6 years of active engineering experience of a character indicating competence to be in responsible charge of engineering ~~s. 471.013~~.

(b) The board may refuse to certify any applicant who has violated ~~any of the provisions of~~ s. 471.031.

(3) The board shall certify as qualified for a license by endorsement an applicant who:

(a) Qualifies to take the fundamentals examination and the principles and practice examination as set forth in s. 471.013, has passed a United States national, regional, state, or territorial licensing examination that is substantially equivalent to the fundamentals examination and principles and practice examination required by s. 471.013, and has satisfied the experience requirements set forth in paragraph (2)(a) and s. 471.013; or

(b) Holds a valid license to practice engineering issued by another state or territory of the United States, if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in this state at the time the

license was issued.

(5)(a) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination when such applicant has held a valid professional engineer's license in another state for 10 ~~15~~ years and has had 15 ~~20~~ years of continuous professional-level engineering experience.

(b) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination and the principles and practices examination when such applicant has held a valid professional engineer's license in another state for 20 ~~25~~ years and has had 25 ~~30~~ years of continuous professional-level engineering experience.

(6) The board may require a personal appearance by any applicant for licensure under this chapter. Any applicant of whom a personal appearance is required must be given adequate notice of the time and place of the appearance and provided with a statement of the purpose of and reasons requiring the appearance. If an applicant is required to appear, the time period within which a licensure application must be granted or denied is tolled until such time as the applicant appears. However, if the applicant fails to appear before the board at either of the next two regularly scheduled board meetings, the application for licensure may be denied.

Section 5. Section 471.019, Florida Statutes, is amended to read:

471.019 Reactivation.—The board shall prescribe by rule a reinstatement process for void licenses which includes

establishing appropriate continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license for a licensed engineer may not exceed the continuing education requirements prescribed pursuant to s. 471.017 ~~12 classroom hours~~ for each year the license was inactive.

Section 6. Subsection (3) of section 471.021, Florida Statutes, is amended to read:

471.021 Engineers and firms of other states; temporary certificates to practice in Florida.—

(3) The application for a temporary license shall require the ~~constitute~~ appointment of the Department of State as an agent of the applicant for service of process in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to the practice of engineering for which the temporary license was issued.

Section 7. Subsection (4) is added to section 471.025, Florida Statutes, to read:

471.025 Seals.—

(4) A successor engineer seeking to reuse documents previously sealed by another engineer must be able to independently re-create all of the work done by the original engineer. A successor engineer assumes full professional and legal responsibility by signing and affixing his or her seal to the assumed documents. Such documents must be treated as though they were the successor engineer's original product, and the original engineer is released from any professional responsibility or civil liability for prior work assumed by the successor engineer. For the purposes of this subsection, the

term "successor engineer" means an engineer who is using or relying upon the work, findings, or recommendations of the engineer who previously sealed the pertinent documents.

Section 8. Paragraph (a) of subsection (5) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(5)(a) During new construction or during repair or restoration projects in which the structural system or structural loading of a threshold building is being modified, the enforcing agency shall require a special inspector to perform structural inspections on the ~~a~~ threshold building pursuant to a structural inspection plan prepared by the engineer or architect of record. The structural inspection plan must be submitted to and approved by the enforcing agency before the issuance of a building permit for the construction, repair, or restoration of a threshold building. The purpose of the structural inspection plan is to provide specific inspection procedures and schedules so that the building can be adequately inspected for compliance with the permitted documents. The special inspector may not serve as a surrogate in carrying out the responsibilities of the building official, the architect, or the engineer of record. The contractor's contractual or statutory obligations are not relieved by any action of the special inspector. The special inspector shall determine that a professional engineer who specializes in shoring design has inspected the shoring and reshoring for conformance with the shoring and reshoring plans submitted to the enforcing agency. A fee simple title owner of a building, which does not meet the minimum size, height, occupancy, occupancy classification, or

number-of-stories criteria which would result in classification as a threshold building under s. 553.71(12), may designate such building as a threshold building, subject to more than the minimum number of inspections required by the Florida Building Code.

Section 9. Subsections (4) and (5), paragraphs (a), (b), and (c) of subsection (7), and subsection (9) of section 553.791, Florida Statutes, are amended to read:

553.791 Alternative plans review and inspection.—

(4) A fee owner or the fee owner's contractor using a private provider to provide building code inspection services shall notify the local building official at the time of permit application, or no later than 2 p.m. of the business day before ~~less than 7 business days prior to~~ the first scheduled inspection by the local building official or building code enforcement agency for a private provider performing required inspections of construction under this section, on a form to be adopted by the commission. This notice shall include the following information:

(a) The services to be performed by the private provider.

(b) The name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform such services, his or her professional license or certification number, qualification statements or resumes, and, if required by the local building official, a certificate of insurance demonstrating that professional liability insurance coverage is in place for the private provider's firm, the private provider, and any duly authorized representative in the amounts required by this section.

(c) An acknowledgment from the fee owner in substantially the following form:

I have elected to use one or more private providers to provide building code plans review and/or inspection services on the building or structure that is the subject of the enclosed permit application, as authorized by s. 553.791, Florida Statutes. I understand that the local building official may not review the plans submitted or perform the required building inspections to determine compliance with the applicable codes, except to the extent specified in said law. Instead, plans review and/or required building inspections will be performed by licensed or certified personnel identified in the application. The law requires minimum insurance requirements for such personnel, but I understand that I may require more insurance to protect my interests. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified personnel and the level of their insurance and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the local government, the local building official, and their building code enforcement personnel from any and all claims arising from my use of these licensed or certified personnel to perform building code inspection services with respect to the building or structure that is the subject of the enclosed permit

application.

If the fee owner or the fee owner's contractor makes any changes to the listed private providers or the services to be provided by those private providers, the fee owner or the fee owner's contractor shall, within 1 business day after any change, update the notice to reflect such changes. A change of a duly authorized representative named in the permit application does not require a revision of the permit, and the building code enforcement agency shall not charge a fee for making the change. In addition, the fee owner or the fee owner's contractor shall post at the project site, prior to the commencement of construction and updated within 1 business day after any change, on a form to be adopted by the commission, the name, firm, address, telephone number, and facsimile number of each private provider who is performing or will perform building code inspection services, the type of service being performed, and similar information for the primary contact of the private provider on the project.

(5) After construction has commenced and if the local building official is unable to provide inspection services in a timely manner, the fee owner or the fee owner's contractor may elect to use a private provider to provide inspection services by notifying the local building official of the owner's or contractor's intention to do so no later than 2 p.m. of the business day before ~~less than 7 business days prior to~~ the next scheduled inspection using the notice provided for in paragraphs (4)(a)-(c).

(7)(a) No more than 15 ~~30~~ business days after receipt of a

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

permit application and the affidavit from the private provider required pursuant to subsection (6), the local building official shall issue the requested permit or provide a written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes, as well as the specific code chapters and sections. If the local building official does not provide a written notice of the plan deficiencies within the prescribed 15-day ~~30-day~~ period, the permit application shall be deemed approved as a matter of law, and the permit shall be issued by the local building official on the next business day.

(b) If the local building official provides a written notice of plan deficiencies to the permit applicant within the prescribed 15-day ~~30-day~~ period, the 15-day ~~30-day~~ period shall be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to subsection (13) or to submit revisions to correct the deficiencies.

(c) If the permit applicant submits revisions, the local building official has the remainder of the tolled 15-day ~~30-day~~ period plus 5 business days to issue the requested permit or to provide a second written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes, with specific reference to the relevant code chapters and sections. If the local building official does not provide the second written notice within the prescribed time period, the permit shall be issued by the local building official on the next business day.

(9) A private provider performing required inspections under this section shall provide notice to the local building

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

official of the date and approximate time of any such inspection no later than the prior business day by 2 p.m. local time or by any later time permitted by the local building official in that jurisdiction. The local building official may not prohibit the private provider from performing any inspection outside of the local building official's normal operating hours, including before and after normal business hours, on weekends, or on holidays. The local building official may visit the building site as often as necessary to verify that the private provider is performing all required inspections. A deficiency notice must be posted at the job site by the private provider, the duly authorized representative of the private provider, or the building department whenever a noncomplying item related to the building code or the permitted documents is found. After corrections are made, the item must be reinspected by the private provider or representative before being concealed. Reinspection or reaudit fees shall not be charged by the local jurisdiction as a result of the local jurisdiction's audit inspection occurring before the performance of the private provider's inspection or for any other administrative matter not involving the detection of a violation of the building code or a permit requirement.

Section 10. This act shall take effect October 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/19 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 616

Meeting Date *Bill Number (if applicable)*

Topic Engineering *Amendment Barcode (if applicable)*

Name Allen Douglas

Job Title Exec Dir

Address 125 S. Gadsden St Phone 224 7121

Street

Tall FL 32301 Email allen@flengr.org

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information Waive Speaking: ☐ In Support ☐ Against

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

Representing Fl Engineering Society

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1494
INTRODUCER:	Senator Perry
SUBJECT:	Small-scale Comprehensive Plan Amendments
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	**Favorable**
2.	Price	Miller	IS	**Favorable**
3.	Peacock	Phelps	RC	**Favorable**

I. Summary:

SB 1494 revises the conditions under which local government "small-scale" comprehensive plan amendments may be adopted. Specifically, the bill repeals the 120-acre cumulative annual limit on small-scale development amendments that may be approved by a local government.

The fiscal impact of the bill is indeterminate. See the Fiscal Impact Statement heading for additional information.

The bill takes effect July 1, 2019.

II. Present Situation:

Community Planning Act

The Community Planning Act provides counties and municipalities the power to plan for future development by the adoption of comprehensive plans.[1] Each county and municipality must maintain a comprehensive plan.[2] Municipal comprehensive plans cover the total area of the municipality's jurisdiction, as well as any unincorporated areas adjacent to the municipality that the municipality and the county have agreed should be covered by the municipality's plan.[3] County comprehensive plans cover the total unincorporated area of the county, but may include municipalities in charter counties.[4] Counties and municipalities may also enter into interlocal agreements with other counties and/or municipalities to exercise their planning powers.[5]

[1] Section 163.3167(1), F.S.
[2] Section 163.3167(2), F.S. The Ready Creek Improvement District, an independent special district created by ch. 67-764, Laws of Fla., may exercise the powers of the act as if it were a municipality. Section 163.3167(6), F.S.
[3] Section 163.3171(1), F.S.
[4] Section 163.3171(2), F.S.
[5] Section 163.3171(3), F.S.

Each county and municipality must establish a local planning agency.[6] The local planning agency is responsible for managing the comprehensive planning program.[7] The duties of the local planning agency include:[8]

- Preparing the comprehensive plan and plan amendments;
- Monitoring the effectiveness and status of the comprehensive plan and recommending changes to the local governing body, including periodic evaluation and appraisal of the plan as required by s. 163.3191, F.S.;
- Reviewing proposed land development regulations and land development codes for consistency with the adopted comprehensive plans; and
- Performing any other functions, duties, and responsibilities assigned by local governing body, general law, or special law.

The local governing body may designate itself as the local planning agency or assign the powers to a local planning commission, a planning department, or another body.[9]

The Department of Economic Opportunity serves as the state land planning agency.[10]

Comprehensive Plans and Plan Amendments

Comprehensive plans are intended to provide for "orderly and balanced future economic, social, physical, environmental, and fiscal development" in a county or municipality.[11] A comprehensive plan must take into account:[12]

- Projected seasonal and permanent population growth;
- Current and existing public facilities needs;
- Coordination with the local comprehensive plans of adjacent municipalities and counties;
- Consideration of two planning periods, one covering at least five years and another covering at least ten years; and
- A future land use plan element.[13]

[6] Section 163.3174(1), F.S. If a county or municipality has entered into an interlocal agreement under s. 163.3171, F.S. to exercise its planning powers under the Community Planning Act, those counties and municipalities may establish a joint local planning agency.
[7] Section 163.3174(4), F.S.
[8] Section 163.3174(4)(a)-(d), F.S.
[9] Section 163.3174(1), F.S.
[10] Section 163.3164(44), F.S.
[11] Section 163.3177(1), F.S.
[12] Section 163.3177(1), (3)-(6), F.S.
[13] A future land use plan element designates proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public facilities, and other categories of the public and private uses of land and includes the approximate acreage and the general range of density or intensity of use for the gross land area included in each existing land use category. This element of a local comprehensive plan is intended to "establish the long-term end toward which land use programs and activities are ultimately directed." Section 163.3177 (6)(a), F.S.

Comprehensive plan amendments fit into one of three categories based on both the size and nature of the area impacted by the proposed amendment. These categories include:[14]

- General amendments subject to the expedited state review process;[15]
- Small-scale development amendments subject to the small-scale review process; and
- Amendments subject to the state coordinated review process.[16]

Small-Scale Comprehensive Plan Amendments

A small-scale comprehensive plan amendment must meet four criteria for local government adoption:[17]

- The proposed amendment involves a use of ten acres of land or fewer (20 acres in a rural area of opportunity);[18]
- The cumulative annual effect for all small-scale development amendments adopted by the local government does not exceed 120 acres in a calendar year;
- The amendment does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity, except for text changes that relate directly to, and are adopted simultaneously with, the small scale future land use map amendment.; and
- The property is not located in an area of critical state concern, unless the project involves the construction of housing units meeting the definition of "affordable" in s. 420.0004(3), F.S., and is located within an area of critical state concern designated by s. 380.0552, F.S., (the Florida Keys) or by the Administrative Commission[19] pursuant to s. 380.05(1), F.S.

All comprehensive plan amendments, including small-scale development amendments, must preserve the internal consistency of the overall local comprehensive plan.

Small-scale comprehensive plan amendments require only a single hearing before the governing body of the county or municipality for approval.[20] Small-scale comprehensive plan amendments do not require review by DEO or other state agencies.[21]

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[14] Section 163.3184(2), F.S.
[15] This process applies to all comprehensive plan amendments statewide, except for small-scale development amendments and amendments subject to the state coordinated review process. *See* Section 163.3184(3) and (4), F.S.
[16] Section 163.3184(2)(c), F.S. The amendments include amendments which are in areas of critical state concern pursuant to s. 380.05, F.S., propose a rural land stewardship area pursuant to s. 163.3248, F.S., propose or amend a sector plan pursuant to s. 163.3245, F.S., update a comprehensive plan based on evaluation and appraisal pursuant to s. 163.3191, F.S., propose a development that is subject to state coordinated review pursuant to s. 380.06, F.S., and plans for newly incorporated municipalities adopted pursuant to s. 163.3167, F.S.
[17] Section 163.3187(1)(a)-(d), (4), F.S. *See also* Department of Economic Opportunity, Small Scale Amendments Defined; Adoption; Challenge; Effective Date, *available at* http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/small-scale-amendments-defined-adoption-challenge-effective-date (last visited March 11, 2019).
[18] Section 163.3187(3), F.S.
[19] The Administration Commission is composed of the Governor and Cabinet (The cabinet is composed of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. Section 20.03(1), F.S.). Section 14.202, F.S.
[20] Section 163.3187(2), F.S.
[21] *Compare* s. 163.3187, F.S. (small-scale plan amendments are only reviewed by DEO if the plan is challenged) *with* s. 163.3184(3)-(4), F.S. (expedited state review process and state coordinated review process for comprehensive plan amendments require review by DEO and other state agencies).

Any affected person may challenge the amendment by filing a petition with the Division of Administrative Hearings.[22] The challenge must be filed within 30 days of the local government's adoption of the amendment. The challenge must be heard in the affected jurisdiction by an administrative law judge (ALJ) between 30 to 60 days after the petition is filed. The ALJ must determine the plan amendment to be in compliance if the local government's determination that the amendment is in compliance is "fairly debatable."[23]

If the ALJ finds that the amendment is in compliance, the ALJ sends a recommended order to DEO. Upon receipt of the recommended order, DEO may issue a final order within 30 days or send the matter to the Administration Commission (if DEO thinks the amendment is not in compliance).[24] If the ALJ does not find that the amendment is in compliance, the ALJ must send the recommended order directly to the Administration Commission, which has 90 days to issue a final order upon receipt.[25]

A small-scale comprehensive plan amendment may not become effective until 31 days after adoption by the governing body of the county or municipality.[26] If the amendment is challenged, the amendment may not become effective until DEO or the Administration Commission issues a final order determining that the amendment is in compliance with the overall comprehensive plan.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3187, F.S., to repeal the 120-acre cumulative annual limit on small-scale development amendments that may be approved by a local government. Local government adoption of small-scale development amendments to their comprehensive plans would no longer be subject to the cumulative annual acreage restriction, thereby allowing amendments to local comprehensive plans that meet the remaining three criteria for adoption.

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.

[22] Section 163.3187(5)(a), F.S.
[23] *Id*.
[24] Section 163.3187(5)(b), F.S.
[25] Section 120.569, F.S. *See also* s. 120.57, F.S.
[26] Section 163.3187(5)(c), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The provisions of the bill would expedite the granting of small-scale development amendments, to the extent local governments are currently limited by the annual acreage cap, potentially reducing costs for developers. However, the number of applications for, and the nature and complexity of, any proposed plan amendments are unknown; therefore, the fiscal impact is indeterminate.

C. Government Sector Impact:

The bill will enable local governments to process more small-scale comprehensive plan amendments per year, increasing revenue to the extent additional applications are filed. However, the number of applications for, and the nature and complexity of, any proposed plan amendments are unknown. The bill would increase expenditures by local governments to the extent additional staff may be needed to review the increase in applications for small-scale comprehensive plan amendments. The extent to which, if any, the potential increased revenue would be offset by possibly increased expenditures to local governments is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.3187 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Perry

8-01235-19 20191494__

A bill to be entitled

An act relating to small-scale comprehensive plan amendments; amending s. 163.3187, F.S.; removing the acreage limitations that apply to small-scale comprehensive plan amendments; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 163.3187, Florida Statutes, is amended to read:

163.3187 Process for adoption of small-scale comprehensive plan amendment.—

(1) A small scale development amendment may be adopted under the following conditions:

~~(b) The cumulative annual effect of the acreage for all small scale development amendments adopted by the local government does not exceed a maximum of 120 acres in a calendar year.~~

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

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 10, 2019

I respectfully request that **Senate Bill #1494**, relating to Small-scale Comprehensive Plan Amendments, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23
Meeting Date

1494
Bill Number (if applicable)

Topic Comp Planning

Amendment Barcode (if applicable)

Name Dan Peterson

Job Title President

Address Box 1875 Phone

Street

Mimmds FL 34755 Email

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing Coalition for Property Rights

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7044
INTRODUCER:	Criminal Justice Committee
SUBJECT:	OGSR/Concealed Carry License/Department of Agriculture and Consumer Services
DATE:	April 22, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Cellon	Jones		**CJ Submitted as Committee Bill**
1.	Ponder	McVaney	GO	**Favorable**
2.	Cellon	Phelps	RC	**Favorable**

I. Summary:

SB 7044 amends s. 790.0601, F.S., to save from repeal the current exemption from public records disclosure for the personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm, by removing the October 2, 2019, repeal date.

The exemption was created in conjunction with s. 790.0625, F.S., which authorizes the Division of Licensing (DOL) of the Department of Agriculture and Consumer Services (DACS) to enter into agreements with local tax collector's offices to accept and submit concealed weapon or firearm license applications or renewal applications to the DOL of the DACS for processing and decisions on whether the license should be issued.

The same information is exempted from the public records law if the applicant provides it directly to the DOL of the DACS at one of the DACS regional offices.

The bill requires a majority vote for passage.

The bill takes effect October 1, 2019.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.[3] The Public Records Act states that

> [i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[4]

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.[5] Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

Only the Legislature may create an exemption to public records requirements.[10] An exemption must be created by general law and must specifically state the public necessity justifying the exemption.[11] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[12]

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[3] Public records laws are found throughout the Florida Statutes.
[4] Section 119.01(1), F.S.
[5] *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST., art. I, s. 24(c).
[11] *Id.*
[12] The bill may, however, contain multiple exemptions that relate to one subject.

and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[13]

When creating or expanding a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[14] Records designated as "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[15]

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,[16] with specified exceptions.[17] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[18] The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[19]

Public Records Exemption Under Review

The personal identifying information of persons who apply for a concealed weapon or firearm license, or renew an existing license, through a local tax collector's office was made confidential and exempt from public disclosure in 2014.[20] The exemption is scheduled to repeal on October 2, 2019, unless it is reviewed and saved from repeal by the Legislature in accordance with s. 119.15, F.S.[21]

The exemption was created in conjunction with a bill authorizing the Division of Licensing (DOL) of the Department of Agriculture and Consumer Services (DACS), which administers the concealed weapon and firearm licensure program, to enter into agreements with local tax collectors to accept applications on behalf of the DOL of the DACS.[22]

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[13] FLA. CONST., art. I, s. 24(c).
[14] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[16] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).
[17] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[18] Section 119.15(3), F.S.
[19] Section 119.15(6)(b), F.S.
[20] Section 790.0601(2), F.S.
[21] Section 790.0601(4), F.S.
[22] Section 790.0625, F.S., Appointment of tax collectors to accept applications for a concealed weapon or firearm license; fees; penalties; Section 790.06, F.S., License to carry concealed weapon or firearm; [As of June 30, 2018 there were 1,927,724 concealed weapon or firearm licensees in Florida. DACS, DOL, *Number of Valid Florida Concealed Weapon Licenses As Reported at the End of Each Fiscal Year (June 30) Since Program Inception in October 1987*, available at https://www.freshfromflorida.com/content/download/7504/118881/NumberOfValidCWLicenses_FiscalYearEndSince1987-1988.pdf (last visited January 17, 2019)].

The exemption was created as an extension of the public records exemption for the same personal identifying information of an applicant or a person who has received a concealed weapon or firearm license, by applying for the license directly through the DOL of the DACS. The exemption for the information held by the DOL of the DACS was created in s. 790.0601(1), F.S., in 2006 and reenacted in 2011.[23]

On behalf of the DOL of the DACS, tax collectors obtain the following personal identifying information from a person who is applying for a new concealed weapons or firearms license through the tax collector's office, pursuant to s. 790.06, F.S., including, in part:

- The name, address, place of birth, date of birth, and race of the applicant;
- A full set of fingerprints of the applicant; and
- A full frontal view color photograph of the applicant taken within the preceding 30 days, in which the head, including hair, measures 7/8 of an inch wide and 1 1/8 inches high.[24]

The application and accompanying information required by s. 790.06, F.S., is submitted to the DOL of the DACS via the Concealed Weapon Intake System (CWIS) by the tax collector's office.[25] The tax collector only performs the ministerial function of submitting applications and information to the DOL of the DACS for processing, as a convenience for the applicant.

Currently, 55 of Florida's 67 county tax collectors are providing the concealed weapon and firearm license application submission process authorized in s. 790.0625, F.S.[26] Twenty eight of the 35 tax collectors responding to legislative staff's questionnaire reported a total of 194,078 applications for new licenses and renewals have been processed and submitted to the DOL of the DACS from July 2014 to December 2019.[27]

The tax collectors have entered into a memoranda of understanding with the DOL of the DACS, memorializing the duties and responsibilities of the two parties.[28] For instance, the DOL of the DACS provides tax collector employee training, a computer configuration, and network equipment such as CWIS which is necessary for the tax collector's office to submit completed applications to the DOL of the DACS. The tax collectors provide a secure location for the

[23] Chapters 2006-102 and 2011-136, L.O.F.
[24] Sections 790.06(4) and (5), F.S.
[25] The process is explained in the tax collectors' answers to questions sent to them by legislative staff. The completed questionnaires are on file with the Senate Committee on Criminal Justice. An application can be downloaded and additional eligibility requirements and application instructions are available at DACS, *Applying for a Concealed Weapon License*, available at https://www.freshfromflorida.com/Consumer-Resources/Concealed-Weapon-License/Applying-for-a-Concealed-Weapon-License (last visited January 17, 2019).
[26] In addition to the participating local tax collectors, the DACS has nine regional offices throughout the state that perform the same function as the tax collectors. DACS, *Concealed Weapon License Service Locations*, available at https://www.freshfromflorida.com/Consumer-Resources/Concealed-Weapon-License/Concealed-Weapon-License-Service-Locations (last visited January 17, 2019).
[27] The completed questionnaires are on file with the Senate Committee on Criminal Justice. It should be noted that not all 28 of the tax collectors responding to the questionnaire began participation in the program at the same time.
[28] Section 790.0625(3), F.S.

computer configuration and the CWIS, remit application and fingerprint processing fees to the DOL of the DACS, and agree to abide by the confidentiality requirements in s. 790.0601, F.S.[29]

Pursuant to s. 790.0625, F.S., the tax collector may collect and retain a convenience fee of $22 for new license applications and $12 for each license renewal.[30] Tax collectors are authorized in s. 790.0625, F.S, to print and deliver license renewals if the renewal applicant provides a completed application and new color photograph, and pays the appropriate fees, and if the DOL of the DACS approves issuance of the license.[31]

Section 790.0601, F.S., provides that the confidential and exempt personal identifying information held by a tax collector shall be disclosed under the following circumstances:

- With the express written consent of the applicant or licensee or his or her legally authorized representative;
- By court order upon a showing of good cause; or
- Upon request by a law enforcement agency in connection with the performance of lawful duties, which shall include access to any automated database containing such information maintained by the DACS.[32]

III. Effect of Proposed Changes:

The bill amends s. 790.0601(2), F.S., to continue the public record exemption for the personal identifying information of applicants for a new or renewal license to carry a concealed weapon or firearm, held by a tax collector for submission to the DOL of the DACS.[33]

Specifically, the bill continues the exemption by deleting the October 2, 2019, repeal date.

The bill requires a majority vote for passage.

The bill takes effect October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

[29] Copies of memoranda of understanding, provided by tax collector's offices pursuant to request by legislative staff, are on file with the Senate Committee on Criminal Justice.
[30] Section 790.0625(5), F.S.
[31] Section 790.0625(8), F.S.
[32] Section 790.0601(3), F.S.
[33] Section 790.0601(2), F.S.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption beyond its current date of repeal; thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public meetings exemption without expansion.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill preserves the public records exemption for the personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm. The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

By preserving the public records exemption for the personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm, an agency in possession of these records will continue to incur costs related to the redaction of records in response to a public records request.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.0601 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By the Committee on Criminal Justice

591-02475-19 20197044__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 790.0601, F.S., relating to an exemption from public records requirements for personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm through a tax collector appointed by the Department of Agriculture and Consumer Services to receive applications and fees; abrogating the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 790.0601, Florida Statutes, is amended to read:

790.0601 Public records exemption for concealed weapons.—

(1) Personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.06 held by the Division of Licensing of the Department of Agriculture and Consumer Services is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by the division before, on, or after the effective date of this section.

(2) Personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm pursuant to s. 790.0625 which is held by a tax collector appointed by the Department of Agriculture and Consumer Services

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

591-02475-19 20197044__

to receive applications and fees is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by the tax collector before, on, or after the effective date of this subsection.

(3) Information made confidential and exempt by this section shall be disclosed:

(a) With the express written consent of the applicant or licensee or his or her legally authorized representative.

(b) By court order upon a showing of good cause.

(c) Upon request by a law enforcement agency in connection with the performance of lawful duties, which shall include access to any automated database containing such information maintained by the Department of Agriculture and Consumer Services.

~~(4) Subsection (2) is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2019.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 13, 2019

I respectfully request that **Senate Bill #7044**, relating to OGSR/Concealed Carry License/Department of Agriculture and Consumer Services, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 7086
INTRODUCER:	Rules Committee, Judiciary Committee, and Criminal Justice Committee
SUBJECT:	Voting Rights Restoration
DATE:	April 24, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Cox	Jones		**CJ Submitted as Committee Bill**
1.	Cox	Cibula	JU	**Fav/CS**
2.	Cox	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 7086 makes a number of conforming changes to ensure the Amendment 4 ballot initiative approved by the Florida voters in 2018 is uniformly implemented and relevant terms are defined.

Specifically, the bill creates s. 98.0751, F.S., codifying that a person who has been disqualified from voting based on a felony conviction for an offense other than murder or a felony sexual offense must have such disqualification removed and his or her voting rights restored pursuant to Article VI, section 4 of the Florida Constitution upon the completion of all terms of his or her sentence, including parole or probation. Additionally, the bill defines necessary terms, including "completion of all terms of sentence," "felony sexual offense," and "murder."

The bill requires a local supervisor of elections to verify whether a person who has been convicted of a felon offense and subsequently registers or applies to register to vote has completed all the terms of his or her sentence as required in this bill and pursuant to Article VI, section 4 of the Florida Constitution. The bill also authorizes the supervisor of elections to request assistance from the Department of State (DOS) to make such determination.

The bill requires that, for purposes of determining a voter registration applicant's eligibility, any provisions of s. 98.0751, F.S., must be strictly construed. Additionally, the bill provides that if a provision is susceptible to differing interpretations that it must be construed in favor of the applicant.

The bill amends s. 98.075, F.S., requiring the supervisor of elections to include documentation about any conviction from another jurisdiction that is determined to be a similar offense to murder or felony sexual offense as defined in s. 98.0751, F.S., in the statement it provides to a registered voter of the basis of his or her potential ineligibility to register to vote.

The bill prohibits a person from being charged or convicted for providing false voter registration information in violation of s. 104.011, F.S., when the violation is alleged to have occurred on or after January 8, 2019, but before the effective date of the bill, and such violation is related to affirming that he or she has not been convicted of a felony or that, if convicted, he or she has had voting right restored.

The bill also creates an undesignated section of law which establishes the Restoration of Voting Rights Work Group within the DOS for the purpose of conducting a comprehensive review of the process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony but who may be eligible for restoration of voting rights. The bill establishes the Work Group membership and appointment procedures and also provides duties. The Work Group is required to submit a report of its specified recommendations to the Legislature by November 1, 2019.

The bill amends s. 940.061, F.S., requiring the Department of Corrections (DOC) to inform inmates and offenders of voting rights restoration pursuant to Article VI, section 4 of the Florida Constitution, in addition to executive clemency and restoration of civil rights.

The bill requires the DOC, the Florida Commission on Offender Review, and county detention facilities to notify specified persons of all outstanding terms of the sentence to assist the inmate or offender in determining his or her status with regard to the completion of all terms of sentence, as defined in s. 98.0751, F.S.

Sections 97.052, 97.053, 98.045, and 98.075, F.S., are amended to revise the term “civil” to “voting” clarifying that these provisions relate to the restoration of voting rights. Section 98.075, F.S., is also amended to require county supervisors of elections to notify a potential voter of instructions for seeking restoration of voting rights pursuant to Article VI, section 4 of the Florida Constitution, in addition to restoration of civil rights pursuant to Article IV, section 8 of the Florida Constitution. Lastly, s. 944.292, F.S., is amended to reference the voting rights restoration process.

The Amendment 4 ballot initiative, rather than the bill, will likely result in an increased workload to the DOS as a result of additional duties necessary to verify certain voters’ eligibility to vote pursuant Article VI, section 4 of the Florida Constitution. Additionally, certain entities will likely see increased workload and a positive fiscal impact (i.e. increase in costs) as a result of the requirement for such entities to notify inmates or offenders of outstanding terms of sentence. *See* Section V. Fiscal Impact Statement.

The bill is effective upon becoming law.

II. Present Situation:

Voting Registration in Florida

Eligibility to Register to Vote

The Florida Constitution and Florida Statutes provide for a person's eligibility to vote in an election[1] and specifically state that a person is eligible to vote in Florida only if that person is:

- At least 18 years old;
- A United States citizen;
- A legal resident of Florida;
- A legal resident of the county in which the person seeks to register; and
- Registered pursuant to the Florida Election Code.[2]

In part, a person is not qualified to register to vote in Florida, without having his or her voting rights restored, if he or she has been convicted of a felony[3] by any court of record.[4] The Secretary of State, who is the head of the Florida Department of State (DOS), is designated as the chief election officer of Florida[5] and is required, in part, to:

- Obtain and maintain uniformity in the interpretation and implementation of the election laws;[6]
- Enact rules to provide uniform standards for the proper and equitable implementation of the registration laws;[7] and
- Create and administer a uniform statewide voter registration system as required by the Help America Vote Act of 2002.[8]

Uniform Statewide Voter Registration

The statewide voter registration system must contain the name and registration information of every legally registered voter in the state. The voter registration system is the official list of registered voters in the state and must provide secured access by authorized voter registration

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[1] Section 97.021(12), F.S., defines "election" to mean any primary election, special primary election, special election, general election, or presidential preference primary election.

[2] FLA. CONST. art. VI, s. 2; s. 97.041(1), F.S. *See also* s. 97.011, F.S., providing that chs. 97-106, F.S., are known as the "Florida Election Code."

[3] Article X, section 10 of the Florida Constitution defines "felony" to mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or by imprisonment in the state penitentiary. Additionally, s. 775.08(1), F.S., defines "felony" to mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary. "State penitentiary" is further defined to include state correctional facilities. A person must be imprisoned in the state penitentiary for each sentence which, except an extended term, exceeds 1 year.

[4] FLA. CONST., art. VI, s. 4(a); s. 97.041(2), F.S.

[5] Section 97.012, F.S.

[6] Section 97.012(1), F.S.

[7] Section 97.012(2), F.S.

[8] Section 97.012(11), F.S. The secretary may delegate voter registration duties and records maintenance activities to voter registration officials provided that any responsibilities delegated are performed in accordance with state and federal law. Section 97.021(17), F.S., defines "lists of registered electors" to mean names and associated information of registered electors maintained by the DOS in the statewide voter registration system or generated or derived from the statewide voter registration system and provides that lists may be produced in printed or electronic format.

officials.[9] The DOS may not contract with any other entity for the operation of the statewide voter registration system.[10]

A supervisor of elections is an elected position whose primary duties include updating voter registration information, entering new voter registrations into the statewide voter registration system, and acting as the official custodian of documents received related to the registration of electors and changes in voter registration status of electors of the supervisor's county.[11] The supervisor of elections must also ensure that all voter registration and list maintenance procedures conducted and the voter registration system used are in compliance with any federal and state laws as well as the DOS rules through the statewide voter registration system.[12]

As mentioned above, the DOS develops a uniform statewide voter registration application (application) for distribution to any person seeking to register to vote.[13] The application elicits specified information from the applicant, including, in part, the applicant's:

- Name;
- Date of birth;
- Address;
- County of residence;
- Race or ethnicity;
- State or county of birth;
- Sex; and
- Party affiliation.[14]

Additionally, the application must contain a question as to whether the applicant has been convicted of a felony, and, if convicted, has had his or her civil rights restored. The convicted felon who has gained his or her rights back must not be made to divulge the existence of such a conviction when filling out an application. The affirmative statement required to be included in the application is: "I affirm I am not a convicted felon, or, if I am, my rights relating to voting have been restored."[15]

In part, applications must be accepted in the office of any supervisor of elections,[16] the DOS, or a voter registration agency during the hours that office is open or when mailed.[17] An application is complete and becomes the official voter registration record of that applicant when all information necessary to establish the applicant's eligibility as discussed above is received by a

[9] Section 97.021(43), F.S., defines "voter registration official" to mean any supervisor of elections or individual authorized by the DOS to accept voter registration applications and execute updates to the statewide voter registration system.
[10] Section 98.035(2) and (3), F.S.
[11] Section 98.015, F.S.
[12] Section 98.015(10), F.S. The specific federal laws that are cited relating to compliance are the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Help America Vote Act of 2002.
[13] Section 97.052(1)(b), F.S.
[14] Section 97.052(2), F.S.
[15] Section 97.052(2)(t), F.S. Section 97.053(5)(a)6., F.S., further provides that this requirement is satisfied in the application with a mark in the checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, has had his or her civil rights restored.
[16] Section 97.021(43), F.S., includes supervisors of election in the definition of "voter registration official" and provides that such entities accept voter registration applications and execute updates to the statewide voter registration system.
[17] Section 97.053(1), F.S.

voter registration official.[18] The supervisor of elections must notify an applicant by mail within five business days if the applicant fails to provide any of the required information on the application and the applicant must be given an opportunity to complete the application to vote in the next election up until the book closing for that next election.[19]

Verification of Eligibility and Maintenance of the Voting Registration System

A supervisor of elections is prohibited from removing a voter from the statewide voter registration system except in limited circumstances, including, in part, as a result of a felony conviction.[20] The DOS identifies ineligible registered voters who qualify for removal from the registration system by comparing information received from specified entities, including, in part:

- The Florida Commission on Offender Review (FCOR);[21]
- The Department of Corrections (DOC);[22]
- The Florida Department of Law Enforcement (FDLE);[23] or
- A United States Attorney's Office.[24]

The DOS reviews ineligibility information, including relevant information provided by such entities, and makes an initial credibility and reliability determination.[25] The DOS notifies the voter's supervisor of elections if it determines the information is credible and reliable and provides a copy of supporting documentation indicating the voter's potential ineligibility.[26] A supervisor of elections must notify the registered voter of his or her potential ineligibility by mail within seven days after receiving the notice or information from the DOS. The notice must include:

- A statement regarding the basis for potential ineligibility and a copy of any supporting documentation;
- A statement that failing to respond within 30 days after receiving the notice may result in an ineligibility determination and removal from the statewide voter registration system;
- A return form requiring the registered voter to admit or deny the accuracy of the information used to make the initial ineligibility determination;
- Instructions for contacting the supervisor of elections if the person requires assistance; and

[18] *See* s. 97.053(5)(a) and (6), F.S.
[19] Section 97.052(6), F.S.
[20] Section 98.045(2)(a), F.S.
[21] Section 98.093(2)(e), F.S., requires the FCOR to provide information on a bimonthly frequency that identifies persons granted clemency in the preceding month or any updates to prior records which occurred in the preceding month.
[22] Section 98.093(2)(f), F.S., requires the DOC to provide information identifying persons convicted of a felony and committed to the custody of or supervision with the DOC. This information must be provided in a time and in a manner that allows the DOC to identify registered voters who are convicted felons and to meet its obligations under state and federal law.
[23] Section 98.093(2)(d), F.S., requires the FDLE to provide information identifying persons convicted of a felony whose name appears in the voter registration records supplied by the statewide voter registration system, in a time and manner that enables the FDLE to meet its obligations under state and federal law.
[24] Section 98.093(2)(c), F.S., requires the United States Attorney to provide information to the DOS listing persons convicted of a felony in federal court.
[25] Section 98.075(5), F.S.
[26] *Id*. Further, ss. 98.075(6) and 98.093(3), F.S., also authorize the supervisor of elections to remove the name of an ineligible person from the statewide voter registration system based on information received from other sources.

- Instructions for seeking restoration of civil rights following a felony conviction, if applicable.[27]

If a registered voter fails to respond to the notice, or responds without requesting a hearing, the supervisor of elections makes a final ineligibility determination and may remove the voter from the statewide voter registration system and provide a notification of removal.[28]

If the voter denies the accuracy of the information and requests a hearing, the supervisor of elections must conduct a hearing at which the registered voter may present evidence, prior to making an eligibility determination. If the supervisor of elections determines the voter is ineligible following a hearing, the supervisor of elections may remove the voter from the statewide voter registration system and notify the voter of such action.[29] An eligibility determination must be supported by a preponderance of the evidence, and upon removal, a voter has the right to appeal the determination of ineligibility in the circuit court of the county where the person registered.[30]

Any voter whose name was removed from the statewide voter registration system on the basis of a determination of ineligibility who subsequently becomes eligible to vote must reregister in order to have his or her name restored to the statewide voter registration system.[31] When the name of any elector has been erroneously or illegally removed from the statewide voter registration system, the name of the elector must be restored by a voter registration official upon satisfactory proof, even though the registration period for that election is closed.[32]

In addition to updating the voter registration system as described above, the supervisor of elections is required to conduct a general registration list maintenance program to protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records.[33]

Conditions Placed Upon Regaining the Right to Vote Subsequent to a Felony Conviction

Poll taxes began in the 1890s and essentially operated as a voting fee. Eligible voters were required to pay a tax before they could cast a ballot.[34] In 1964, the 24th Amendment to the United States Constitution was ratified, which prohibited the use of poll taxes for federal

[27] Section 98.075(7)(a), F.S. Further, if the mailed notice is returned as undeliverable, the supervisor of elections must publish a specified notice once in a newspaper of general circulation in the county.
[28] Section 98.075(7)(a)3., F.S.
[29] Section 98.075(7)(a)5., F.S.
[30] Sections 98.075(7)(b) and 98.0755, F.S. Section 98.0755, F.S., further provides that notice of appeal must be filed within the time and in the manner provided by the Florida Rules of Appellate Procedure and the voter must bear the cost of the trial in the circuit court unless there is a finding that his or her name was erroneously or illegally removed from the statewide voter registration system, or that he or she is indigent.
[31] Section 98.075(7)(b)5., F.S.
[32] Section 98.081(2), F.S.
[33] Section 98.065(1), F.S. Further, s. 98.065(2), F.S., requires that a registration list maintenance program be conducted by each supervisor of elections, at a minimum, in each odd-numbered year and must be completed not later than 90 days prior to the date of any federal election.
[34] The National Museum of American History, *Poll Taxes*, available at http://americanhistory.si.edu/democracy-exhibition/vote-voice/keeping-vote/state-rules-federal-rules/poll-taxes (last visited March 20, 2019).

elections.[35] Despite the federal ban on the use of poll taxes, states tried to keep them in operation. The United States Supreme Court held those attempts unconstitutional by finding that, "[A] state violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard."[36]

However, the issue of whether the imposition of fees or fines as a requisite to a completion of a sentence to *restore* voting rights has not been resolved. Florida's suspension of a person's voting rights subsequent to a felony conviction has been challenged on constitutional grounds a number of times. In *Beacham v. Braterman*, the court held that such suspension does not violate the Equal Protection nor the Due Process Clause of the United States Constitution, holding that a state may constitutionally exclude persons otherwise qualified to vote who have been convicted of a felony.[37]

In *Johnson v. Bush*, the plaintiffs' alleged that the imposition of financial conditions on regaining the right to vote, specifically the requirement to pay all victim restitution, constituted a practical equivalent of a poll tax.[38] The court rejected this argument, reasoning that Florida had permissibly suspended the plaintiffs' right to vote along with other civil rights based on their felony convictions and that the state's requirement for the plaintiffs seeking to have their civil rights fully restored to satisfy victim restitution is one made within the state's authority. Furthermore, the court held that payment of restitution to the victim was *part of the sentence* and thus, the sentence was not complete without such payment. The court further reasoned that the payment of restitution to the victim was not a condition precedent to the plaintiffs' right to vote, but rather a prerequisite to having their civil rights restored.[39]

Restoration of Civil Rights

As discussed above, a person convicted of a felony forfeits specified rights as a result of the conviction under the Florida Constitution.[40] Additional civil rights are lost in accordance with statute, including the right to serve on a jury[41] and possess a firearm.[42] Prior to 2019, the civil

[35] *Id*.; U.S. CONST., amend. IV.
[36] *See Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666 (U.S. 1966).
[37] *Beacham v. Braterman*, 300 F.Supp. 182, 184 (S.D. Fla. 1969).
[38] *Johnson v. Bush*, 353 F.3d 1287, 1308 (11th Cir. 2003); *See also Johnson v. Bush*, 405 F.3d 1214, 1228 (11th Cir. 2005).
[39] *Id.* at 1343. *See also Howard v. Gilmore*, 205 F.3d 1333 (4th Cir. 2000), where the court in that case held that requiring felons to pay a $10 fee to the Circuit Court of Richmond in order to begin the process of having a person's civil rights restored did not constitute an unconstitutional poll tax. *See also Johnson v. Bredesen*, 624 F.3d 742, 750-751 (6th Cir. 2010); *Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010).
[40] Article VI, section 4 of the Florida Constitution provides that a person loses their right to hold office subsequent to a felony conviction.
[41] Section 40.013, F.S.
[42] Section 790.23, F.S. *See also* s. 790.06(2)(d) and (k), F.S.

rights of a convicted felon were suspended until restored by a pardon[43] or restoration of civil rights.[44]

The Florida Constitution, in part, grants the power of restoring civil rights to the Governor with the consent of at least two Cabinet members.[45] The Governor and Cabinet sit as the Executive Board of Clemency (Clemency Board).[46] The Rules of Executive Clemency (Clemency Rules) outline the eligibility criteria for the process of restoration of civil rights, are adopted by the Governor with the approval of two members of the Clemency Board.[47] The Clemency Rules provide, in part, that the unfettered discretion to:

- Deny the restoration of civil rights at any time, for any reason, rests with the Governor; and
- Grant the restoration of civil rights at any time, for any reason, rests with the Governor, provided at least two members of the Clemency Board also approve.[48]

The current Clemency Rules define the restoration of civil rights as a process that restores all of the applicant's rights of citizenship enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms.[49] The Clemency Rules further provide the specific authority to own, possess, or use a firearm must be restored through a separate process for such rights.[50]

Restoration of Civil Rights Under Governor Scott's Administration

The current Clemency Rules, which have not been amended since Governor DeSantis and the new Cabinet members were sworn into office on January 8, 2019, became effective March 9, 2011 under then Governor Scott.[51] Eligibility for restoration of civil rights is separated out between applications that require a hearing in front of the Clemency Board for approval and those that do not. The investigations for the applications requiring a hearing are more intensive than applications that do not require a hearing.[52]

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[43] Florida provides for several types of pardons applicable to felony convictions. A full pardon unconditionally releases a person from punishment and forgives guilt for any Florida convictions. It restores to an applicant all of the rights of citizenship possessed by the person before his or her conviction, including the right to own, possess, or use firearms. A pardon without firearm authority releases a person from punishment and forgives guilt. It entitles an applicant to all of the rights of citizenship enjoyed by the person before his or her conviction, except the specific authority to own, possess, or use firearms. The FCOR, *Clemency Overview*, available at https://www.fcor.state.fl.us/clemencyOverview.shtml (last visited March 19, 2019).

[44] Section 944.292, F.S.

[45] FLA. CONST. art. VI, s. 2. This authority is also codified in s. 940.01, F.S.

[46] Rules of Executive Clemency (2017), Rule 1., available at https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf (last visited March 20, 2019)(hereinafter cited as "Clemency Rule").

[47] Section 940.03, F.S. *See also* Clemency Rule 2.A.

[48] Clemency Rule 4.

[49] Clemency Rule 4.I.G. Restoration of civil rights in accordance with the Clemency Rules does not relieve an applicant from the registration and notification requirements or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.

[50] *See* Clemency Rule 4.I.F.

[51] Clemency Rule 2.B. *See also* The FCOR, *Executive Clemency Timeline: 1991-2015*, p. 2 (on file with the Senate Committee on Criminal Justice)(hereinafter cited as "Clemency Timeline").

[52] *See* The FCOR, *Annual Report 2016-17*, p. 15, available at https://www.fcor.state.fl.us/docs/reports/FCORannualreport201617.pdf (last visited March 20, 2019).

For a person to qualify for civil rights restoration without a hearing an applicant must have not committed or been arrested for any crime for five years from the date of completion of all sentences, conditions of supervision imposed, and meet the following requirements:

- Complete all sentences imposed and all conditions of supervision must have expired or been completed, including but not limited to, imprisonment, parole, probation, community control, control release, and conditional release;
- Have no outstanding detainers or pending criminal charges;
- Owe no restitution pursuant to a court order, civil judgment, or ch. 960, F.S.;[53]
- Not have a conviction for:
  - Murder, attempted murder, attempted felony murder, or manslaughter (ch. 782, F.S.);
  - Driving under the influence (DUI) manslaughter or DUI causing serious bodily injury (s. 316.193, F.S.);
  - Leaving the scene of an accident involving injury or death (s. 316.027, F.S.);
  - Sexual battery, attempted sexual battery, unlawful sexual activity with a minor, or female genital mutilation (ch. 794, F.S.);
  - Any violation of lewdness or indecent exposure (ch. 800, F.S.);
  - Lewd or lascivious offense on an elderly or disabled person (s. 825.1025, F.S.);[54]
  - Sexual performance by a child (s. 827.071, F.S.);[55]
  - Aggravated child abuse (s. 827.03, F.S.);
  - Failure to register as a sexual predator or sexual offender (s. 775.21 or s. 943.0435, F.S.);
  - Computer pornography, transmission of computer pornography, or any crime involving a minor (ch. 847, F.S.);
  - Kidnapping, false imprisonment, or luring or enticing a child (ch. 787, F.S.);[56]
  - Aggravated battery (s. 784.045, F.S.);[57]
  - Felony battery or domestic battery by strangulation (s. 784.041, F.S.);
  - Robbery, carjacking, home invasion (ch. 812, F.S.);[58]
  - Poisoning food or water (s. 859.01, F.S.);
  - Abuse of a dead human body (s. 872.06, F.S.);
  - Burglary of a dwelling or first degree burglary (s. 810.02, F.S.);[59]
  - Arson (s. 806.01, F.S.);[60]
  - Aggravated assault (s. 784.021, F.S.);
  - Aggravated stalking (s. 784.048, F.S.);
  - Battery, aggravated battery, or aggravated assault on an officer (s. 784.07, F.S.);
  - Trafficking or conspiracy to traffic in a controlled substance or any other first or second degree felony (ch. 893, F.S.);

[53] The FCOR reports that the current Clemency Rules require all restitution to be paid even if such restitution is converted to a civil lien. However, the FCOR reports that other financial obligations do not have to be paid to be eligible for clemency unless the other obligation was ordered by the court as restitution. Email from Alexander Yarger, Legislative Affairs Director, the FCOR, January 2, 2019 (on file with the Senate Criminal Justice Committee). Chapter 960, F.S., provides compensation for crime victim assistance services including, but not limited to, mental health counseling, forensic physical examinations, and relocation assistance for specified crimes.

[54] Clemency Rule 9.A.4. A conviction for attempt to commit the offense also disqualifies a person from eligibility.

[55] *Id*. A conviction for attempt to commit the offense also disqualifies a person from eligibility.

[56] *Id*. A conviction for attempt to commit any of the offenses also disqualifies a person from eligibility.

[57] *Id*. A conviction for attempt to commit arson also disqualifies a person from eligibility.

[58] Clemency Rule 9.A.4. A conviction for attempt to commit any of the offenses also disqualifies a person from eligibility.

[59] Clemency Rule 9.A.4. An attempt to commit an offense also disqualifies a person from eligibility.

[60] The attempt or conspiracy to commit an offense also disqualifies a person from eligibility.

- Aircraft piracy (s. 860.16, F.S.);
- Unlawful throwing, placing, or discharging of a destructive device or bomb (s. 790.161, F.S.);
- Facilitating or furthering terrorism (s. 775.31, F.S.);
- Treason (s. 876.32, F.S.);
- Possession of a firearm by a convicted felon or violent career criminal (s. 790.23 or s. 790.235, F.S.);
- Bribery, misuse of public office (ch. 838, F.S.), extortion by a state officer (s. 839.11, F.S.), misappropriation of money by a commission to make a sale (s. 839.17, F.S.), or any crime committed by an elected official while in office;
- Illegal use of explosives (ch. 552, F.S.);
- Racketeering (ch. 895, F.S);
- Exploitation of an elderly person (s. 825.103, F.S.);
- Public corruption;
- Any felony violation of election law;
- A "dangerous crime" as defined by s. 907.041, F.S.; or
- A similar offense committed in another jurisdiction.

Additionally, an applicant may not be previously declared a:
- Habitual felony offender;[61]
- Three-time violent felony offender;[62]
- Violent career criminal;[63]
- Prison Releasee Reoffender;[64] or
- Sexual predator.[65]

The FCOR reviews an applicant's eligibility for restoration of civil rights without a hearing, and if so qualified, the Clemency Board may restore civil rights. If approval is denied, FCOR notifies the applicant who may pursue a hearing to restore the applicant's civil rights.[66]

To qualify for restoration of civil rights with a hearing, an applicant must:
- Not be convicted of a felony for seven years or more after completing all sentences imposed for the applicant's most recent felony conviction, and all conditions of supervision are expired or completed, including but not limited to, imprisonment, parole, community control, control release, and conditional release; and
- Pay all restitution pursuant to a court order, civil judgment, or ch. 960, F.S.[67]

Clemency hearings occur four times a year and the Clemency Board allows an applicant to make a five-minute presentation. Following a hearing, the Clemency Board may issue an Executive Order restoring a person's civil rights. For each case, the applicant is entitled to a letter stating

[61] Section 775.084(1)(b), F.S.
[62] Section 775.084(1)(c), F.S.
[63] Section 775.084(1)(d), F.S.
[64] Section 775.082(9)(a), F.S.
[65] Section 775.21, F.S.
[66] Clemency Rule 9.B.
[67] Clemency Rule 10.A.

the official disposition of his or her case.[68] A person granted or denied any form of executive clemency may not apply for further relief for at least two years from the date of final action.[69]

Role of Specified Entities in the Restoration of Civil Rights Process

The FCOR's Office of Executive Clemency, in part, assists in the acceptance, review, and recommendation of applications for restoration of civil rights, as well as the agenda for Clemency Board meetings.[70] A coordinator must be appointed by the Clemency Board and serves as the official custodian of the records.[71] The FCOR's Office of Clemency Investigations, in part, conducts comprehensive, confidential investigations of persons that have applied for restoration of civil rights.[72] An individual seeking restoration of civil rights submits an application to the Office of Executive Clemency and the application is forwarded to the FCOR for investigation, report, and recommendation.[73]

The DOC is required to inform inmates and offenders on community supervision about the restoration of civil rights. Additionally, DOC is required to electronically send to the FCOR a list of the names of inmates who have been released from incarceration and offenders who have been terminated from supervision that may be eligible for restoration of civil rights.[74]

Amendment 4 (2018) Ballot Measure

As mentioned above, until the 2018 election, Article VI, section 4 of the Florida Constitution disqualified a person convicted of a felony from voting or holding office until restoration of his or her civil rights.[75] At that time, Florida was one of only four states, including Iowa, Kentucky, and Virginia, that did not restore voting rights to a convicted felon unless and until restored by a state officer or board.[76]

In the 2018 General Election, Florida voters approved Amendment 4 with 64 percent of the vote, amending the Florida Constitution to provide voting rights restoration to specified voters. Specifically, the ballot language provided that "any disqualification arising from a felony

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[68] Clemency Rule 12.D.
[69] Clemency Rule 14.
[70] Clemency Rule 2.B. *See also* Clemency Timeline, p. 2.
[71] Clemency Timeline, p. 2.
[72] Section 947.13(1)(d), F.S., requires the FCOR to conduct investigations as may be necessary. *See also* Clemency Timeline, p. 2.
[73] Section 940.03, F.S. *See also* Clemency Rules 6 and 7.
[74] Section 940.061, F.S.
[75] Article VI, s. 4, FLA. CONST.
[76] Florida Association of Counties, *Amendment 4: Voting Rights Restoration for Felons Initiative*, available at http://www.fl-counties.com/amendment-4. Additionally, the National Conference of State Legislatures (NCSL) provides a summary of state laws related to felon voting rights as of December 2018, including: that in two states, felons never lose their right to vote, even while they are incarcerated; in 14 states and the District of Columbia, felons lose their voting rights only while incarcerated, and receive automatic restoration upon release; in 22 states, felons lose their voting rights during incarceration, and for a period of time after, typically while on parole and/or probation, voting rights are automatically restored after this time period, and former felons may also have to pay any outstanding fines, fees or restitution before their rights are restored; and in 12 states felons lose their voting rights indefinitely for some crimes, or require a governor's pardon in order for voting rights to be restored, or face an additional waiting period after completion of sentence (including parole and probation) before voting rights can be restored. *See* the NCSL, *Felon Voting Rights*, December 21, 2018, available at http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx (all sites last visited on March 20, 2019).

conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation."[77] The provision excludes a "person convicted of murder or a felony sexual offense" from restoration of voting rights unless and until his or her civil rights are restored.[78]

Following the passage of Amendment 4, advocates have asserted the amendment is self-executing and required no legislative implementation.[79] However, officials responsible for determining voter eligibility expressed considerable confusion and concerns about uniform implementation of the provisions across the state. As a result, the DOS has suspended the process of reviewing criminal records it receives to verify a voter's eligibility for registration discussed above or sending such records to the supervisors of elections.[80]

The DOS, various supervisors of elections, and other entities involved in verifying an applicant's eligibility have reported, including during committee workshops in both the Florida Senate and the Florida House of Representatives, that much of the confusion with implementing Amendment 4 provisions centers around ambiguity related to which crimes qualify as "murder" or a "felony sexual offense" and what it means for an offender to have "completed all terms of sentence."[81]

During the Senate workshop, the political director for the Florida Rights Restoration Coalition (FRRC), which is the grassroots organization that was instrumental in the passage of Amendment 4, stated that the FRRC supports efforts to clarify what constitutes eligibility under the amendment, provided it does not infringe on the rights of people to vote. The political director of the FRRC also acknowledged that there is confusion about eligibility and stated that they are advising people to wait to register to vote if a potential applicant is unsure about whether he or she qualifies for voting restoration under the ballot measure.[82]

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[77] *Id*. *See also* Time, *'Our Voice Will Count.' Former Felon Praises Florida Passing Amendment 4, Which Will Restore Voting Rights to 1.4 Million People*, Alejandro De Le Garza, November 7, 2018, available at http://time.com/5447051/florida-amendment-4-felon-voting/ (last visited on March 20, 2019).

[78] The DOS, Division of Elections, *Proposed Constitutional Amendments and Revisions for the 2018 General Election*, p. 11, available at https://dos.myflorida.com/media/699824/constitutional-amendments-2018-general-election-english.pdf (last visited on March 19, 2019).

[79] The Florida Rights Restoration Coalition (FRRC), *Amendment 4 Implementation, Frequently Asked Questions*, March 14, 2019 (on file with the Senate Criminal Justice Committee). This webpage has been subsequently taken down, however, the on file copy was printed from the website on such date.

[80] Herald Tribune, *Florida elections officials confused on how to give felons the vote*, Zac Anderson, December 4, 2018, available at https://www.heraldtribune.com/news/20181204/florida-elections-officials-confused-on-how-to-give-felons-vote (last visited on March 20, 2019).

[81] Orlando Sentinel, *Florida election supervisors will register ex-felons Jan. 8, despite confusion over amendment*, Steven Lemongello, December 20, 2018, available at http://www.orlandosentinel.com/news/politics/political-pulse/os-ne-former-felons-register-vote-20181220-story.html; *See also* Senate Criminal Justice Committee, Workshop on Amendment 4, January 22, 2019, available at https://thefloridachannel.org/videos/1-22-19-senate-criminal-justice-committee/ (hereinafter cited as "Senate Workshop Video") and House of Representatives Judiciary Committee and Criminal Justice Subcommittee Joint Workshop on Amendment 4, available at https://thefloridachannel.org/videos/2-14-19-joint-house-meeting-of-the-criminal-justice-subcommittee-and-the-judiciary-committee/ (all sites last visited on March 20, 2019).

[82] Senate Workshop Video, at 1:06-1:07.

In December 2018, then Governor-elect, Ron DeSantis, stated that Amendment 4 should take effect after lawmakers pass and he approves "implementing language" in a bill.[83] Additionally, the Secretary of State called for the Legislature to direct the DOS as to "implementation, definitions, [and other ambiguities raised by the supervisors of elections]."[84] On January 8, 2019, supervisors of elections began registering new voters eligible under Amendment 4 and continued to register new voters. However, supervisors of elections are registering such voters without an initial eligibility verification from the DOS. The DOS reports that there have been 132,532 new persons registered since January 8, 2019, which was the implementation date included in the Amendment 4 constitutional ballot language. However, this number is inclusive of all persons who have registered to vote in Florida since the implementation date, not just persons who have registered that may qualify under the new provisions of Article VI, section 4 of the Florida Constitution.[85]

Completion of All Terms of Sentence

As of March 14, 2019, the FRRC stated on its website that "completion of all terms of sentence" includes any period of incarceration, probation, parole, and financial obligations imposed as part of an individual's sentence.[86] The FRRC further stated that the financial obligations contemplated may include restitution, fines, and fees imposed as part of a sentence or a condition of probation under existing Florida statutes. However, it stated that "fees not specifically identified as part of a sentence or a condition of probation are therefore not necessary for 'completion of sentence' and thus, do not need to be paid before an individual may register."[87] The statement relates its position to the policies used by the FCOR to determine "completion of sentence." However, the language in the statement by the FRRC does not align with the language used by the FCOR on its website or in the Rules adopted by Governor Scott's Cabinet, which are still in effect today.[88]

Additionally, during oral arguments in front of the Florida Supreme Court concerning the single subject of the proposed Amendment 4 ballot language and whether the title and summary page provided a clear explanation of the initiative, the justices asked several questions about the intent of the ballot language to the FRRC counsel, Jon Mills. The questions specifically addressed the intent of the group for the terms in the amendment.[89] The FRRC counsel answered in the affirmative on multiple occasions when asked by the Court about whether certain terms, such as "the full payment of any fines," "payment of fines and costs" and "payment of restitution when it

[83] Tampa Bay Times, *Ron DeSantis says Amendment 4 should be delayed until he signs bill from lawmakers*, Michael Van Sickler, December 13, 2018, available at https://www.tampabay.com/florida-politics/buzz/2018/12/13/ron-desantis-says-amendment-4-should-be-delayed-until-he-signs-bill-from-lawmakers/ (last visited on March 20, 2019).
[84] Orlando Sentinel, *Florida elections officials express confusion over restoring felon voting rights*, Dara Kam, December 4, 2018, http://www.orlandosentinel.com/news/politcs/political-pulse/os-ne-election-felon-voting-rights-20181204-story.html (last visited on March 20, 2019).
[85] Email from Brittany Dover, the DOS Legislative Affairs Director, March 25, 2019 (on file with the Senate Criminal Justice Committee). The DOS further states that this number is accurate as of March 25, 2019.
[86] *Supra* n. 79.
[87] *Id*.
[88] *See Id*.; *see also* Clemency Rules.
[89] The WFSU, Gavel to Gavel Video Portal, *Advisory Opinion to the Attorney General Re: Voting Rights Restoration Amendment and Advisory Opinion to the Attorney General Re: Voting Restoration Amendment (FIS), Case Number(s): SC16-1785, SC16-1981*, March 6, 2017 available at https://wfsu.org/gavel2gavel/viewcase.php?eid=2421 (last visited on March 19, 2019).

was ordered to a victim as part of a sentence," were contemplated by the "completion of all terms of sentence" provision.[90]

Incarceration

A court may sentence a defendant convicted of a felony offense to any term of incarceration authorized under s. 775.082, F.S.[91] The Criminal Punishment Code (Code) is Florida's primary sentencing policy. Generally, the permissible sentencing range under the Code is the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.[92]

Upon release, s. 944.705(6), F.S., requires the DOC to notify every inmate, in no less than 18-point type in the inmate's release documents, that the inmate may be sentenced pursuant to s. 775.082(9), F.S., if the inmate commits any enumerated felony offense within 3 years after the inmate's release. Additionally, the notice must be prefaced by the word "WARNING" in boldfaced type.[93]

Parole

Prior to 1983, Florida law authorized defendants who were sentenced to certain felonies to be eligible for release onto parole supervision prior to the expiration of the inmate's court-ordered sentence. Parole is a period of supervision to be successfully completed by complying with the conditions and terms of the release agreement ordered by the FCOR. The decision of the FCOR to parole an inmate is considered an act of grace and is not a right. Currently, all inmates whose crimes were committed prior to October 1, 1983, may be considered for release on parole. There are a number of additional specified inmates that may be eligible for release on parole based on the type of offense committed and the date of such commission.[94]

Community Supervision

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.[95] The DOC supervises more than 166,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional

[90] *See* Transcript for *Advisory Opinion to the Attorney General Re: Voting Rights Restoration Amendment and Advisory Opinion to the Attorney General Re: Voting Restoration Amendment (FIS), Case Number(s): SC16-1785, SC16-1981*, p. 4 and 10-11, available at https://wfsu.org/gavel2gavel/transcript/pdfs/16-1785_16-1981.pdf (last visited on March 21, 2019).
[91] Section 775.082, F.S., provides that the statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.
[92] Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Section 921.0024, F.S., provides that if the total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.
[93] Section 944.705(6), F.S., further provides that evidence that the DOC failed to provide this notice to an inmate will not prohibit a person from being sentenced pursuant to s. 775.082(9), F.S. The state is not be required to demonstrate that a person received any notice from the DOC in order for the court to impose a sentence pursuant to s. 775.082(9), F.S.
[94] The FCOR, *Release Types, Parole*, available at https://www.fcor.state.fl.us/release-types.shtml (last visited March 20, 2019). Sections 947.16-947.24, F.S., provide for the eligibility criteria, process for the hearing and granting of parole, terms of parole, etc.
[95] Section 948.01, F.S.

release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control.[96]

Probation

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose.[97] There are also specialized forms of supervision such as drug offender probation[98] and mental health probation.[99] Section 948.03, F.S., requires a court to determine the terms and conditions of probation. A court may order additional specific terms and conditions of probation that it considers proper, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.[100] Standard conditions of probation that are enumerated in s. 948.03, F.S., are not required to be announced on the record. The standard terms and conditions of probation include, but are not limited to, a probationer to:

- Report to a probation officer as directed;
- Permit a probation officer to visit his or her workplace or home;
- Maintain employment, if possible;
- Live without violating the law;
- Make restitution to a victim, if applicable;
- Make payment of a debt due to a county or municipal detention facility for medical care;
- Support his or her legal dependents to the best of his or her ability;
- Pay the state any debt due for crime victim compensation;[101]
- Pay specified application[102] and attorney fees;[103]
- Not associate with persons engaging in criminal activity;
- Submit to random drug or alcohol testing; and
- Submit to drawing of blood or other biological specimens, for specified reasons.[104]

[96] The DOC, *Probation Services*, available at http://www.dc.state.fl.us/cc/index.html (last visited March 21, 2019).
[97] Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.
[98] Section 948.001(4), F.S., defines "drug offender probation" as a form of intensive supervision that emphasizes treatment of drug offenders in accordance with individualized treatment plans administered by probation officers with reduced caseloads.
[99] Section 948.001(5), F.S., "mental health probation" means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans.
[100] Section 948.03(1) and (2), F.S.
[101] Section 960.17, F.S.
[102] Section 27.52(1)(b), F.S.
[103] Section 938.29, F.S.
[104] Section 948.03, F.S.

Community Control

Community control[105] is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.[106] The community control program is rigidly structured and designed to accommodate offenders who, in the absence of such a program, will be committed to the custody of the DOC or a county jail.[107] A person on community control (controlee) has an individualized program and is restricted to his or her home or noninstitutional residential placement, unless working, attending school, performing public service hours, participating in treatment or another special activity that has been approved in advance by his or her parole and probation officer.[108]

Conditions of community control are determined by the court when the offender is placed on such supervision. There are standard conditions of community control with which all controlees must comply as well as additional terms of supervision as part of his or her community control sentence.[109]

Financial Obligations of a Sentence

Restitution

Unless a clear and compelling reason is found for not ordering restitution, a court must order the defendant to make restitution to the victim, if applicable,[110] in addition to any punishment. The restitution may be ordered for:

- Damage or loss caused directly or indirectly by the defendant's offense; and
- Damage or loss related to the defendant's criminal episode.[111]

[105] Section 948.001(3), F.S.
[106] Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.
[107] Section 948.10(1), F.S.
[108] *Id*.
[109] *See* s. 948.101(1) and (2), F.S.
[110] Section 775.089(1)(c), F.S., defines the term "victim" to mean each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, and the victim's next of kin if the victim is deceased as a result of the offense. The term includes governmental entities and political subdivisions, as those terms are defined in s. 11.45, F.S., when such entities are a direct victim of the defendant's offense or criminal episode and not merely providing public services in response to the offense or criminal episode. The term also includes the victim's trade association if the offense is a violation of s. 540.11(3)(a)3., F.S., involving the sale, or possession for purposes of sale, of physical articles and the victim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect restitution on the victim's behalf. The restitution obligation relating to violations of s. 540.11(3)(a)3., F.S., applies only to physical articles and does not apply to electronic articles or digital files that are distributed or made available online. The term "trade association" means an organization founded and funded by businesses that operate in a specific industry to protect their collective interests.
[111] Section 775.089(1)(a), F.S. Section 960.001(1)(j), F.S., also speaks to a victim's right to request, receive, and enforce restitution pursuant to s. 775.089, F.S., or s. 985.437, F.S.

Restitution may be monetary or nonmonetary restitution. If a court places an offender on probation, it must make the payment of restitution a condition of probation.[112] A court may require an offender to make restitution payments within a specified period or in installments. An offender must pay restitution no later than:

- The end of the period of probation ordered;
- Five years after the end of the term of imprisonment, if the court does not order probation; or
- Five years after the sentencing date in any other case.[113]

A court may order the clerk of courts to collect and dispense restitution payments in any case or the DOC to collect and dispense restitution and other payments from a person remanded to its custody or supervision.[114] A court may also order an income deduction order related to restitution. The clerk of court receives a payment made pursuant to an income deduction order.[115]

Court Costs, Fines, and Fees

A person convicted of a felony offense is assessed court costs and fines upon the disposition of a case. Chapter 938, F.S., provides a number of court costs that are associated with criminal cases in Florida. Some of these costs are mandatory in all cases.[116] There are a number of other costs that are mandatory costs for specific types of cases,[117] mandatory court costs authorized by local governmental entities,[118] or discretionary costs in specific types of cases.[119] Fines are generally proscribed by the degree of offense committed, but there can be additional fines added for specific offenses.[120] There are also fees that may be assessed at the conclusion of a case, such as an application fee for the services of a public defender or regional conflict counsel.[121]

In addition to standard court costs and fines, a person ordered to supervision must pay the DOC monthly supervision fees and may be subject to fees for additional conditions such as electronic monitoring or urinalysis. Failure to pay supervision fees may result in revocation of probation; however, the DOC can exempt a person from payment of supervision fees if it makes specified findings related to the offender's financial or employment status.[122]

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[112] *Id*. An order requiring the defendant to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund pursuant to ch. 960, F.S. Payment of an award by the Crimes Compensation Trust Fund creates an order of restitution to the Crimes Compensation Trust Fund, unless specifically waived.
[113] Section 775.089(3), F.S.
[114] Section 775.089(1)(a) and (b), F.S.
[115] Section 775.089(12), F.S.
[116] Some of the mandatory costs imposed in all cases include s. 938.01, F.S. (additional court costs clearing trust fund); s. 938.03, F.S. (Crimes Compensation Trust Fund), s. 938.04, F.S. (additional costs with respect to criminal fines); s. 938.05, F.S. (additional costs for felonies, misdemeanors, and criminal traffic offenses); s. 938.055, F.S. (Operating Trust Fund of the Department of Law Enforcement); and s. 938.06, F.S. (cost for crime stoppers programs).
[117] *See* ss. 938.07-938.13, F.S.
[118] *See* ss. 938.15 and 938.17, F.S.
[119] *See* ss. 938.21-938.301, F.S.
[120] Section 775.083, F.S. Additionally, specific fines can occur throughout Florida statute related to specific offenses. For example, s. 893.135, F.S., imposes mandatory fines related to drug trafficking, while s. 817.568, F.S., imposes additional surcharge fines for the offense of the criminal use of personal identification information.
[121] Section 938.29, F.S.
[122] *See* ss. 948.03 and 948.09, F.S.

Civil Judgment Liens

Any person liable for payment of any financial obligation, such as restitution, fines, or fees discussed above, in any criminal case is subject to s. 938.30, F.S., and courts have jurisdiction over such financial obligations to ensure compliance. A court has the authority, in part, to:

- Require a person liable for payment of an obligation to appear and be examined under oath concerning the person's financial ability to pay the obligation.
- Convert the statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining the person's inability to pay.[123]
- Order that any nonexempt property of the person which is in the hands of another be applied toward satisfying the obligation.[124]

The outstanding unpaid amount accrues interest, and when properly recorded, becomes a lien on any real estate owned by the defendant.[125]

If a civil judgment has not been previously entered on any court-imposed financial obligation, the court may enter judgment and issue any writ necessary to enforce the judgment in the manner allowed in civil cases.[126] However, if a criminal or civil judgment has previously been entered on a court-imposed financial obligation, the judgment constitutes a civil lien against the judgment debtor's presently owned or after-acquired real or personal property when recorded pursuant to s. 55.10, F.S.[127]

The judgment must secure all unpaid court-imposed financial obligations that are due and may accrue subsequent to the recording of the judgment, as well as interest and reasonable costs for issuing a satisfaction and recording the satisfaction in the official records.[128]

The clerk of the court must enforce, satisfy, compromise, settle, subordinate, release, or otherwise dispose of any debts or liens imposed and collected through the civil lien process.[129] Additionally, the court may order the person to comply with a payment schedule to satisfy the obligation.[130]

A judgment, order, or decree becomes a lien on real property in any county when a certified copy of it is recorded in the official records or judgment lien record of the county, provided that the judgment contains the address of the person who has a lien as a result of such judgment is recorded simultaneously stating the address of the person who has a lien as a result of such

[123] Section 938.30, F.S. Community service may be ordered subject to the provisions of s. 318.18(8), F.S. Additionally, any person who fails to attend a hearing may be arrested on warrant or capias issued by the clerk upon order of the court.
[124] Section 938.30(5), F.S.
[125] *Id*.
[126] Section 938.30(6), F.S.
[127] Section 938.30, F.S. Additionally, authority to convert and enforce restitution as a civil lien is addressed in s. 775.089(3), F.S. However, s. 938.30(8), F.S., provides a judgment on a court-imposed financial obligation is not subject to the 10-year rerecording requirement of s. 55.10, F.S.
[128] *Id*.
[129] Section 938.30(9), F.S.
[130] Section 938.30(10), F.S.

judgment, order, or decree.[131] Such a lien must expire after 20 years from the date of the entry of the judgment.[132]

Felony Sexual Offense

Florida law does not define "felony sexual offense," however, several places in statute define the term "sexual offense."[133] Florida law requires a person convicted of specified offenses that are sexual in nature to register as a sexual offender or sexual predator.[134] Qualifying offenses for registration as a sexual offender, which subsumes all offenses required for registration as a sexual predator, include:

- Sexual misconduct with a person having a developmental disability (s. 393.135(2), F.S.);
- Sexual misconduct with a mental health patient by an employee (s. 394.4593(2), F.S.);
- Specified violations of kidnapping or falsely imprisoning a minor (s. 787.01 or s. 787.02, F.S.);[135]
- Luring or enticing a child, by a person with a prior sexual conviction (s. 787.025(2), F.S.);
- Human trafficking for commercial sexual activity (s. 787.06(3)(b), (d), (f), or (g), F.S.);
- Sexual battery (s. 794.011, excluding s. 794.011(10), F.S.);
- Unlawful sexual activity with a minor (s. 794.05, F.S.);
- Lewd or lascivious battery, molestation, conduct, or exhibition (s. 800.04, F.S.);
- Video voyeurism, involving a minor victim (s. 810.145(8), F.S.);
- Lewd or lascivious offense on an elderly or disabled person (s. 825.1025, F.S.);
- Sexual performance by a child (s. 827.071, F.S.);
- Providing obscene materials to a minor (s. 847.0133, F.S.);
- Computer pornography involving a minor (s. 847.0135(2), F.S.);
- Soliciting a minor over the internet (s. 847.0135(3), F.S.);
- Traveling to meet a minor (s. 847.0135(4), F.S.);
- Lewd or lascivious exhibition over the internet (s. 847.0135(5), F.S.);
- Transmitting child pornography by electronic device or equipment (s. 847.0137, F.S.);
- Transmitting material harmful to a minor by electronic device (s. 847.0138, F.S.);
- Selling or buying a minor to engage in sexually explicit conduct (s. 847.0145, F.S.);
- Racketeering involving a sexual offense (s. 895.03, F.S.);
- Sexual misconduct with a forensic client (s. 916.1075(2), F.S.); and
- Sexual misconduct by an employee with a juvenile offender (s. 985.701(1), F.S.).

[131] Section 55.10(1), F.S.
[132] Sections 55.10(2) and 55.081, F.S.
[133] For example, s. 92.55, F.S., relating to protections for specified witnesses, defines the term to include any offense for which a conviction requires an offender to register as a sexual predator or sexual offender pursuant to s. 775.21 or s. 943.0435, F.S., respectively. Additionally, s. 90.404, F.S., relating to admissibility of character evidence, defines the term to mean specified enumerated offenses that also require an offender to register on the sexual predator and sexual offender registries.
[134] *See generally*, ss. 775.21, 943.0435, and 944.607, F.S. In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred. A sexual predator or sexual offender must comply with a number of statutory registration requirements.
[135] However, the Florida Supreme Court has held there must be a sexual element to the kidnapping or false imprisonment when the victim is a minor.

In addition to the above listed offenses, there are a number of offenses that are classified as a felony that have an element that is sexual in nature, but that do not require registration as a sexual predator or sexual offender, including:

- Prostitution or soliciting a prostitute, subsequent conviction (ss. 796.07 and 796.08, F.S.);
- Video voyeurism (s. 810.145(6) and (7), F.S.);[136]
- Incest (s. 826.04, F.S.);
- Lewd or lascivious exhibition in the presence of a correctional facility employee (s. 800.09(2), F.S.);
- Sexual offenses against a student by an authority figure (s. 800.101(2), F.S.);
- Locating an adult entertainment store within 2,500 feet of a school (s. 847.0134(1), F.S.);
- Committing an enumerated offense by a person who is HIV positive (s. 775.0877, F.S.);
- Sexual cyberharassment, second or subsequent offense (s. 784.049(3)(b), F.S.);
- Sexual misconduct between a detention facility employee and an inmate (s. 951.221(1), F.S.);
- Sexual misconduct by a psychotherapist with a client, or former client when the professional relationship was terminated primarily for the purpose of engaging in sexual contact (s. 491.0112(1) and (2), F.S.);
- Sexually abusing a dead human body (s. 872.06(2), F.S.);
- Sexual misconduct by a correctional facility employee with an inmate (s. 944.35(3)(b)2., F.S.);
- Committing specified acts with obscene, lewd, etc. materials, second or subsequent offense (s. 847.011(1), F.S.);
- Requiring as a condition to sale or delivery for resale of a publication that a purchaser or consignee receive for resale any other obscene publication (s. 847.011(3), F.S.);
- Knowingly promoting, conducting, performing, or participating in an obscene show, second or subsequent offense (s. 847.011(4), F.S.);
- Sale or distribution to minors or using minors in production of harmful materials (s. 847.012, F.S.); and
- Wholesale promotion of obscene materials (s. 847.07(2) and (3), F.S.).

Murder

Chapter 782, F.S., establishes a number of offenses that impose penalties for the killing of another person.

Section 782.04, F.S., prohibits the unlawful killing of a human being in a number of circumstances and specifically provides that:

- Murder in the first degree, which is a capital felony,[137] is the unlawful killing of a human being when committed:
  - With premeditation to cause the death of the person killed or any human being; or
  - By a person engaged in perpetrating, or attempting to perpetrate, any:
    - Drug trafficking offense (s. 893.135, F.S.);

[136] This provides penalties for when the offense is committed by a person 19 or older, or when the offense is a second or subsequent offense. These specific provisions do not require registration as a sexual offender as required by a violation of s. 810.145(8), F.S.

[137] A capital felony is punishable by death or life imprisonment. Section 775.082(1)(a), F.S.

- Arson (s. 806.01, F.S.);
- Sexual battery (s. 794.011, F.S.);
- Robbery or home-invasion robbery (s. 812.13 or s. 812.135, F.S.);
- Burglary (s. 810.02, F.S.);
- Kidnapping (s. 787.01, F.S.);
- Escape (s. 944.40, F.S.);
- Aggravated child abuse (s. 827.03, F.S.);
- Aggravated abuse of an elderly person or disabled adult (s. 825.1025, F.S.);
- Aircraft piracy (s. 860.16, F.S.);
- Unlawful throwing, placing, or discharging of a destructive device or bomb (s. 790.1615, F.S.);
- Carjacking (s. 812.133, F.S.);
- Aggravated stalking (s. 784.048, F.S.);
- Murder of a human being (s. 782.04, F.S.);
- Resisting an officer with violence (s. 843.01, F.S.);
- Aggravated fleeing or eluding with serious bodily injury or death (s. 316.1935(4)(b), F.S.);
- A felony act of terrorism;[138]
- Human trafficking (s. 787.06, F.S.); or

  - Unlawful distribution of a specified controlled substance,[139] which is the proximate cause of a user's death.[140]

- Murder in the second degree, which is a felony of the first degree punishable by imprisonment for a term of years not exceeding life,[141] is the unlawful killing of a human being when:
  - Perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, but without any premeditated design to effect the death of any particular individual;[142]
  - Committed by a person other than the person engaged in the commission of, or attempt to commit, an enumerated felony[143] during such felony.[144]

[138] Or an act in furtherance of terrorism, including a felony under s. 775.30, F.S., s. 775.32, F.S., s. 775.33, F.S., s. 775.34, F.S., or s. 775.35, F.S.
[139] A substance controlled under s. 893.03(1), F.S., includes substances such as cocaine, opium or any synthetic or natural salt, compound, derivative, or preparation of opium; methadone, alfentanil, carfentanil, fentanyl, sufentanil, or specified controlled substance analogs.
[140] Section 782.04(1)(a), F.S.
[141] A first degree felony is punishable by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment, and a fine of $10,000. Sections 775.082(3)(b)1. and 775.083, F.S.
[142] Section 782.04(2), F.S.
[143] Enumerated felonies include drug trafficking under s. 893.135(1), F.S.; arson; sexual battery; robbery or home-invasion robbery; burglary; kidnapping; escape; aggravated child abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; aggravated stalking; murder of another human being; aggravated fleeing or eluding with serious bodily injury or death; resisting an officer with violence; and a felony act of terrorism or act in furtherance of terrorism. Section 782.04(3), F.S.
[144] Section 782.04(3), F.S.

- Murder in the third degree, which is a second degree felony,[145] is the unlawful killing of a human being, without design to effect death, by a person engaged in the commission of, or the attempt to commit, any felony not enumerated by statute.[146]

Other offenses included in ch. 782, F.S., which result in the killing of a human being, but are not specifically included in s. 782.04, include:

- Attempted felony murder (s. 782.051, F.S.);
- Manslaughter and aggravated manslaughter (s. 782.07, F.S.);
- Vehicular homicide and vessel homicide (ss. 782.071 and 782.072, F.S.);
- Assisting self-murder and commercial exploitation of self-murder (ss. 782.08 and 782.081, F.S.);
- Killing of an unborn child by injury to its mother (s. 782.09, F.S.);
- Unnecessary killing to prevent an unlawful act (s. 782.11, F.S.); and
- Partial-birth abortion (s. 782.34, F.S.).

III. Effect of Proposed Changes:

Codification of Article VI, Section 4 of the Florida Constitution and Relevant Definitions

The bill creates s. 98.0751, F.S., codifying the language passed in Amendment 4 (2018) and defining specified relevant terms. The bill provides that a person who has been disqualified from voting based on a felony conviction for an offense other than murder or a felony sexual offense must have such disqualification removed and his or her voting rights restored pursuant to Article VI, section 4, of the Florida Constitution upon the completion of all terms of his or her sentence, including parole or probation. The bill further provides that the voting disqualification that arises from a felony conviction of murder or a felony sexual offense, or if the person has not completed all terms of sentence, as defined below does not terminate unless a person's civil rights are restored pursuant to Article IV, section 8 of the Florida Constitution.

Completion of All Terms of Sentence

The bill defines "completion of all terms of sentence" to mean any portion of a sentence that is contained in the four corners of the sentencing document, including, but not limited to:

- Release from any term of imprisonment ordered by the court as a part of the sentence;
- Termination from any term of probation or community control ordered by the court as a part of the sentence;
- Fulfillment of any term ordered by the court as a part of the sentence;
- Termination from any term of parole supervision which is monitored by the FCOR, including, but not limited to, parole;
- Payment of all restitution ordered by the court as a part of the sentence, regardless of whether such restitution is converted to a civil lien; and
- Payment of all fees and fines ordered by the court as part of the sentence or that are ordered as a condition of probation, community control, or parole.

[145] A second degree felony is punishable by a maximum of 15 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[146] Section 782.04(4), F.S. *See also supra* n. 142.

The definition further provides that a financial obligation, other than restitution, required to be paid in accordance with the bill is deemed to have been completed to the extent that the financial obligation has been converted to a civil lien. The definition does not include court costs.

Additionally, the bill provides that an above-mentioned term of sentence must be deemed completed if the court modifies the original sentencing order to no longer require the completion of such term.

Felony Sexual Offense

The bill defines the term "felony sexual offense" to include any of the following:

- An offense that requires registration as a sexual offender on the sexual offender registry in accordance with s. 943.0435, F.S.;[147]
- A violation of s. 872.06, F.S. (abuse of a dead human body); or
- Any similar offense committed in another jurisdiction which would be an offense included in this definition if it had been committed in violation of the laws of Florida.

Murder

The bill defines "murder" to include:

- A violation of s. 775.33(4), F.S. (providing material support or resources for terrorism or to terrorist organizations that results in death), which results in the actual killing of a human being;
- A violation of s. 782.04(1) or (2), F.S. (murder in the first degree and murder in the second degree mentioned above, excluding felony murder in the second degree), which results in the actual killing of a human being;
- A violation of s. 782.09, F.S. (killing of an unborn child by injury to the mother), that results in the actual killing of the unborn child; or
- Any similar offense committed in another jurisdiction which would be an offense included in this definition if it had been committed in violation of the laws of Florida.

Construction of Provisions

The bill requires that, for purposes of determining a voter registration applicant's eligibility, any provisions of s. 98.0751, F.S., must be strictly construed. Additionally, the bill provides that if a provision is susceptible to differing interpretations that it must be construed in favor of the applicant.

Verification of Eligibility

The bill requires local supervisors of elections to verify whether a person who has been convicted of a felony offense and subsequently registers or applies to register to vote has completed all the terms of his or her sentence as required by Article VI, section 4 of the Florida Constitution and s. 98.0751, F.S. The bill also authorizes the supervisors of elections to request the assistance of the DOS to make such determination and provides that the verification must be conducted when such person registers or applies to register to vote.

[147] As mentioned above, this definition includes any offenses that require registration as a sexual predator.

The bill also amends s. 98.075, F.S., requiring the supervisor of elections to include documentation about any conviction from another jurisdiction that is determined to be a similar offense to murder or felony sexual offense as defined in s. 98.0751, F.S., in the statement it provides to a registered voter of the basis of his or her potential ineligibility to register to vote in accordance with s. 98.075, F.S.

Immunity From Prosecution

The bill prohibits a person from being charged or convicted for providing false voter registration information in violation of s. 104.011, F.S., when the violation is alleged to have occurred on or after January 8, 2019, but before the effective date of the bill, and such violation is related to affirming that he or she has not been convicted of a felony or that, if convicted, he or she has had voting right restored.

The bill directs the Division of Law Revision to replace the phrase "the effective date of this act" with the date this act becomes a law in order to define the date parameters of the immunity discussed above.

Notification of All Outstanding Terms of Sentence

The bill requires the DOC and county detention facilities to notify specified persons of all outstanding terms of the sentence to assist the inmate in determining his or her status with regard to the completion of all terms of sentence, as defined in s. 98.0751, F.S.

The bill amends s. 944.705, F.S., and creates s. 948.041, F.S., requiring the DOC to notify an inmate or offender in writing of all outstanding terms of sentence at the time of release or termination of probation or community control. The bill references the newly created s. 98.0751, F.S., for a list of potential terms of sentence that must be included in the written notification.

The bill amends s. 947.24, F.S., requiring the Florida Commission on Offender Review (FCOR) to notify an offender in writing of all outstanding terms at the time of termination to assist the offender in determining his or her status with regard to the completion of all terms of sentence, as that term is defined in s. 98.0751, F.S. The bill provides that notification must occur upon the termination of such offender's term of supervision, which is monitored by the FCOR, including, but not limited to, parole.

The bill also amends s. 951.29, F.S., requiring all county detention facilities to provide a prisoner in writing of specified information at least two weeks prior to his or her discharge, if possible. The specified information required to be provided includes:

- Information explaining voting rights restoration pursuant to Article VI, section 4 of the Florida Constitution; and
- Written notification of all outstanding terms of the prisoner's sentence at the time of release to assist the prisoner in determining his or her status with regard to the completion of all terms of sentence, as defined in s. 98.0751, F.S.

For inmates being released from imprisonment with the DOC or county detention facilities, the bill provides that written notification does not have to be given if the inmate or prisoner is being released to a term of supervision with the DOC.

Additionally, the bill amends s. 940.061, F.S., requiring the DOC to inform inmates and offenders of voting rights restoration pursuant to Article VI, section 4 of the Florida Constitution, in addition to executive clemency and restoration of civil rights.

The Restoration of Voting Rights Work Group

The bill creates an undesignated section of statute that establishes the Restoration of Voting Rights Work Group (Work Group) within the DOS for the purpose of conducting a comprehensive review of the DOS's process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony, but who may be eligible for restoration of voting rights under Article VI, section 4 of the Florida Constitution.

The bill provides the Work Group is comprised of the following specific members:
- The Secretary of the DOS or his or her designee.
- The Secretary of the DOC or his or her designee.
- The Executive director of the FDLE or his or her designee.
- The Chairman of the FCOR or his or her designee.
- Two clerks of the circuit court who must be appointed by the Governor.
- Two supervisors of elections who must be appointed by the Governor.

The bill provides that the designee from the DOS will serve as chair for the Work Group. The bill requires the appointments of all members to be made within 30 days and to serve for the duration of the Work Group. If a vacancy occurs, the original appointing authority must appoint a new member to fill the vacancy.

The Work Group is authorized and directed to study, evaluate, analyze, and undertake a comprehensive review of the DOS's process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony, but who may be eligible for restoration of voting rights under Article VI, section 4 of the Florida Constitution, to develop recommendations for the Legislature, related to:
- The consolidation of all relevant data necessary to verify the eligibility of a registered voter, applicant, or potential applicant for restoration of voting rights.
- Informing a registered voter, applicant, or potential applicant of the entity or entities which are custodians of the relevant data necessary for verifying his or her eligibility for restoration of voting rights under Article VI, section 4 of the Florida Constitution.
- Any other relevant policies or procedures for verifying the eligibility of a registered voter, applicant, or potential applicant for restoration of voting rights under Article VI, section 4 of the Florida Constitution.

The bill specifically provides that if any entity is recommended to manage the consolidated relevant data, the recommendations must provide the feasibility of such entity to manage the consolidated relevant data and a timeline for implementation of such consolidation.

The bill requires the Work Group to submit a report of its findings, conclusions, and recommendations to the President of the Senate and the Speaker of the House of Representatives by November 1, 2019. Further, the Work Group must dissolve upon the submission of the report and all members are discharged of further duties. The DOS is required to provide support for the Work Group in performing its duties and Work Group members are required to serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.

Conforming Changes

The following conforming changes are made to conform the language to the Florida Constitution and implement the act, including:

- Sections 97.052, 97.053, and 98.045, F.S., are amended to revise the term "civil" to "voting" to clarify that these provisions relate to the restoration of voting rights.
- Section 98.075, F.S., is amended to revise the term "civil" to "voting" as it relates to voting rights restoration provisions and to require supervisors of elections to notify the voter of instructions for seeking restoration of voting rights pursuant to Article VI, section 4 of the Florida Constitution, in addition to restoration of civil rights pursuant to Article IV, section 8 of the Florida Constitution.
- Section 944.292, F.S., is amended to clarify that, notwithstanding the suspension of civil rights, a person's voting rights may be obtained pursuant to Article VI, section 4 of the Florida Constitution.

The bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill requires all county detention facilities to notify a prisoner, in writing upon discharge, of all outstanding terms of the prisoner's sentence at the time of release, unless the prisoner is being discharged to the custody or control of the DOC. It is possible that the requirements of the bill related to notification of outstanding terms of sentence will result in an increased workload or expenditures by the local governments. However, because any such local funding resulting from the requirements of the bill will directly relate to the detention and imprisonment of persons who have been arrested or convicted of criminal offenses, under Article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Verification of Eligibility

The bill provides clarification related to the terms included in the Amendment 4 ballot language so that the DOS can resume its verification process to determine an applicant's eligibility to register to vote subsequent to obtaining voting rights restoration pursuant to Article VI, section 4 of the Florida Constitution. Additionally, to assist with applicant verification determinations, the bill utilizes existing information sharing relationships to ensure that the DOS receives any relevant information. Therefore, the Amendment 4 ballot initiative, rather than the bill, will likely result in an increased workload to entities such as the DOS. *See* Section VII. Related Issues.

Notification of Outstanding Terms of Sentence

The provision to notify specified offenders or inmates of any outstanding terms of his or her sentence is similar to a provision that was included in SB 642. When analyzing these similar provisions, the DOC reported that it does not track various costs associated with an inmate's resolved case, with the exception of certain inmates in various forms of paid employment, such as work release, prison industries, etc. To comply with the requirements, the DOC stated it will have to research clerk of court records prior to release for updated information on what an inmate, who is not being released to supervision, presently owes in regard to each case for which a sentence was imposed. Additionally, the DOC states that this will be a significant workload increase as it could generate a significant volume of contacts to the clerk of court to determine the current status of various assessed costs. The DOC estimated it will need additional FTE to achieve this requirement to provide notification.[148]

[148] The DOC, *Agency Analysis for SB 642*, p. 5, February 27, 2019 (on file with the Senate Judiciary Committee).

Additionally, there will likely be an increased workload on the FCOR and county detention facilities who are also required to notify offenders and prisoners of the outstanding terms of sentence as these entities will need to research information in a similar manner as the DOC.

Voting Rights Restoration Work Group

The bill establishes the Voting Rights Restoration Work Group within the DOS. The DOS reports it will incur additional duties and expenses to provide administrative support to the Voting Rights Work Group, as well as expenses to provide reimbursement for per diem and travel expenses until such time the group is dissolved no later than November 1, 2019. The DOS' analysis is silent on the need for additional staff or resources and therefore it appears that the DOS can comply with this requirement within its existing resources.[149]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Fiscal Impact of the Amendment 4 Ballot Initiative

The DOS reports that there will be an increased workload related to its staff having to conduct more involved research related to the credible and reliable determination of an applicant's eligibility to register to vote under the provisions of the Amendment 4 ballot initiative and the implementing language of the bill. The DOS reports that the time frame for making such determinations may be extended if certain records necessary to make such a determination are not readily available through various online databases. The DOS' analysis provides that it will need an additional 21 FTEs.[150] Any additional resources needed by the DOS involved in conducting a proper eligibility verification of a potential voter who may be eligible to register to vote pursuant to the Amendment 4 ballot initiative should be addressed through the standard budgeting process.

The DOS also reports a positive indeterminate fiscal impact (i.e. unquantifiable increase in costs) as a result of necessary IT modifications that will update the current matching processes and internal applications to the new process created. Such modifications will need to be developed, implemented, and maintained after working with the FDLE, DOC, FCOR, and the supervisors of elections to facilitate the exchange and transfer of files. Additionally, the DOS reports it will need additional memory storage for the image files that are created and electronically transferred.[151]

[149] The DOS, *Agency Analysis for SB 7086*, p. 5 (hereinafter cited as "SB 7086 Agency Analysis")(on file with the Senate Judiciary Committee).
[150] The DOS SB 7086 Agency Analysis, p. 4-5.
[151] The DOS SB 7086 Agency Analysis, p. 6.

Legislative Implementation of Constitutional Amendments

One of the issues to consider with implementing language of a constitutional amendment is whether the amendment itself is self-executing and thus, doesn't require further legislation. In *Gray v. Bryant*, the Supreme Court of Florida established that, "[T]he basic guide in determining whether a constitutional provision should be construed to be self-executing or not is whether the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment."[152]

In *Florida Hospital Waterman, Inc. v. Buster*, the court held that the amendment at issue in that case was self-executing. The court considered the fact that the amendment provided definitions and there was an expressed intent made in its provisions that, "[E]xisting law was sufficient to implement the provisions of the amendment and that no further legislation was necessary." Furthermore, the amendment in that case stated it was to be effective upon passage, which effectively left no time for the enactment of implementing language.[153]

There is a presumption that constitutional amendments are intended to be self-executing. However, the courts have held that, even with provisions that expressly indicate such a self-executing operation, the Legislature may provide additional laws addressing a self-executing constitutional scheme assuming that such laws supplement, protect, or further the availability of the constitutionally conferred right.[154]

Amendment 4 is silent on all of these factors. The amendment does not define "completion of all terms of sentence," "felony sexual offense," or "murder." As discussed above, the lack of definitions could result in inconsistent implementation of the amendment throughout the state. Additionally, the amendment does not have any language indicating that it is self-executing or that it is effective upon becoming law.[155]

Constitutionality of Re-enfranchisement of Felons' Voting Rights

The courts have consistently held that states may strip convicted felons of their voting rights. It is well-settled that Florida can remove certain rights from a person convicted of a felony under Section Two of the Fourteenth Amendment.[156]

In determining whether a statute violates the United States Constitution, the courts will use one of three levels of scrutiny: rational basis, intermediate, or strict. The courts have used rational basis scrutiny to determine whether statutes that re-enfranchise a felon are constitutional. This level of scrutiny is used because laws that aim to restore the voting rights of a felon do not implicate a fundamental right nor target a suspect class. The right to vote is a fundamental right. However, the courts have drawn an important distinction in noting that the right of felons to vote

[152] *Gray v. Bryant*, 125 So.2d 846, 951 (Fla. 1960).
[153] *Florida Hosp. Waterman, Inc. v. Buster*, 984 So.2d 478, 485 (Fla. 2008).
[154] *Browning v. Florida Hometown Democracy, Inc. v. PAC*, 29 So.3d 1053, 1064 (Fla. 2010).
[155] *Supra* n. 81 and 83.
[156] *Hand v. Scott*, 285 F. Supp. 3d 1289, 1294 (N.D. Fla. 2018), citing *Richardson v. Ramirez*, 418 U.S. 24, 56 (1974) and *Johnson v. Bush*, 405 F.3d 1214, 1228 (11th Cir. 2005) (en banc).

is not fundamental. Therefore, the statutes must only survive rational basis scrutiny, where by the statute only needs to be "rationally related to legitimate government interests."[157]

Rulemaking Authority

Section 97.012(1), F.S., provides broad rulemaking authority to the DOS to implement all provisions of the Florida Election Code (chs. 97-102, F.S.). Additionally, s. 98.075(1), F.S., provides the DOS with specific rulemaking authority to implement the protection of the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records, including the authority to create rules for reviewing information collected and making initial determinations of ineligibility related to, in part, felony convictions, and the procedures for forwarding such initial determinations and supporting documentation to the local supervisors of election for making a final determination of ineligibility and removal of ineligible voters names from the statewide voter registration system.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 97.052, 97.053, 98.045, 98.075, 104.011, 940.061, 944.292, 944.705, 947.24, and 951.29.

This bill creates the following sections of the Florida Statutes: 98.0751 and 948.041.

IX. Additional Information:

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

CS/CS by Rules on April 23, 2019:
The Committee Substitute:

- Codifies the language of the Amendment 4 ballot initiative and defines necessary terms, including "completion of the terms of sentence," "felony sexual offense," and "murder;"
- Adds that "completion of the terms of sentence" means any portion of a sentence that is contained in the four corners of the sentencing document and enumerates specific parts of a sentence and that a term required to be completed as a part of the sentence is deemed to be completed if the court modifies the original sentencing order to no longer require completion of such term;
- Adds to the definition of "felony sexual offense" a violation of s. 872.06, F.S. (abuse of a dead body);
- Adds to the definition of "murder" a violation of s. 775.33(4), F.S. (providing material support or resources for terrorism or to terrorist organizations that results in death);
- Requires the supervisors of elections to verify the eligibility of an applicant who has been convicted of a felony to register to vote;
- Authorizes the supervisors of election to request assistance from the DOS in the verification process of an applicant's eligibility to register to vote;

[157] *Johnson v. Bredesen*, 624 F.3d 742, 746 (6th Cir. 2010).

- Requires certain entities to notify or provide information on the voting rights restoration process in addition to executive clemency and restoration of civil rights process;
- Requires the DOC, the FCOR, and county detention facilities to notify specified persons of all outstanding terms of the sentence;
- Prohibits a person from being charged or prosecuted for submitting false voter identification information if the alleged violation occurred between January 8, 2019, and the effective date of the bill;
- Provides that for purposes of determining an applicant's eligibility, the provisions of the act must be strictly construed and if a provision has differing interpretations then it must be construed in favor of the applicant;
- Creates the Restoration of Voting Rights Work Group for the purpose of conducting a comprehensive review of the Department of State's process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony, but who may be eligible for restoration of voting rights under Amendment 4; and
- Makes a number of conforming changes.

CS by Judiciary Committee on April 8, 2019:
The Committee Substitute:

- Removes attempted murder in violation of s. 782.04, F.S., from the definition of "murder."
- Authorizes the DOS to verify potential voters for eligibility to register based upon the provisions of the bill that implement the Amendment 4 ballot initiative.
- Provides specific rulemaking authority to the DOS to implement the bill.

B. Amendments:

None.

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

116400

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2019	.	
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The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

97.052 Uniform statewide voter registration application.—

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

(a) Last, first, and middle name, including any suffix.

(b) Date of birth.

(c) Address of legal residence.

(d) Mailing address, if different.

(e) E-mail address and whether the applicant wishes to receive sample ballots by e-mail.

(f) County of legal residence.

(g) Race or ethnicity that best describes the applicant:

1. American Indian or Alaskan Native.

2. Asian or Pacific Islander.

3. Black, not Hispanic.

4. White, not Hispanic.

5. Hispanic.

(h) State or country of birth.

(i) Sex.

(j) Party affiliation.

(k) Whether the applicant needs assistance in voting.

(l) Name and address where last registered.

(m) Last four digits of the applicant’s social security number.

(n) Florida driver license number or the identification number from a Florida identification card issued under s. 322.051.

(o) An indication, if applicable, that the applicant has not been issued a Florida driver license, a Florida identification card, or a social security number.

(p) Telephone number (optional).

(q) Signature of applicant under penalty for false swearing pursuant to s. 104.011, by which the person subscribes to the oath required by s. 3, Art. VI of the State Constitution and s.

116400

97.051, and swears or affirms that the information contained in the registration application is true.

(r) Whether the application is being used for initial registration, to update a voter registration record, or to request a replacement voter information card.

(s) Whether the applicant is a citizen of the United States by asking the question "Are you a citizen of the United States of America?" and providing boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(t) Whether the applicant has been convicted of a felony, and, if convicted, has had his or her voting ~~civil~~ rights restored by including the statement "I affirm I am not a convicted felon, or, if I am, my rights relating to voting have been restored." and providing a box for the applicant to check to affirm the statement.

(u) Whether the applicant has been adjudicated mentally incapacitated with respect to voting or, if so adjudicated, has had his or her right to vote restored by including the statement "I affirm I have not been adjudicated mentally incapacitated with respect to voting, or, if I have, my competency has been restored." and providing a box for the applicant to check to affirm the statement.

The registration application must be in plain language and designed so that convicted felons whose voting ~~civil~~ rights have been restored and persons who have been adjudicated mentally incapacitated and have had their voting rights restored are not required to reveal their prior conviction or adjudication.

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Section 2. Paragraph (a) of subsection (5) of section 97.053, Florida Statutes, is amended to read:

97.053 Acceptance of voter registration applications.—

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

1. The applicant’s name.

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

3. The applicant’s date of birth.

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

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

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

In case an applicant has not been issued a current and valid Florida driver license, Florida identification card, or social security number, the applicant shall affirm this fact in the

116400

manner prescribed in the uniform statewide voter registration application.

6. A mark in the checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, has had his or her voting ~~civil~~ rights restored.

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

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

Section 3. Paragraph (c) of subsection (1) of section 98.045, Florida Statutes, is amended to read:

98.045 Administration of voter registration.—

(1) ELIGIBILITY OF APPLICANT.—The supervisor must ensure that any eligible applicant for voter registration is registered to vote and that each application for voter registration is processed in accordance with law. The supervisor shall determine whether a voter registration applicant is ineligible based on any of the following:

(c) The applicant has been convicted of a felony for which his or her voting ~~civil~~ rights have not been restored.

Section 4. Subsections (5) and (6) and paragraph (a) of subsection (7) of section 98.075, Florida Statutes, are amended

to read:

98.075 Registration records maintenance activities; ineligibility determinations.—

(5) FELONY CONVICTION.—The department shall identify those registered voters who have been convicted of a felony and whose voting rights have not been restored by comparing information received from, but not limited to, a clerk of the circuit court, the Board of Executive Clemency, the Department of Corrections, the Department of Law Enforcement, or a United States Attorney's Office, as provided in s. 98.093. The department shall review such information and make an initial determination as to whether the information is credible and reliable. If the department determines that the information is credible and reliable, the department shall notify the supervisor and provide a copy of the supporting documentation indicating the potential ineligibility of the voter to be registered. Upon receipt of the notice that the department has made a determination of initial credibility and reliability, the supervisor shall adhere to the procedures set forth in subsection (7) prior to the removal of a registered voter's name from the statewide voter registration system.

(6) OTHER BASES FOR INELIGIBILITY.—If the department or supervisor receives information from sources other than those identified in subsections (2)-(5) that a registered voter is ineligible because he or she is deceased, adjudicated a convicted felon without having had his or her voting ~~civil~~ rights restored, adjudicated mentally incapacitated without having had his or her voting rights restored, does not meet the age requirement pursuant to s. 97.041, is not a United States citizen, is a fictitious person, or has listed a residence that

116400

is not his or her legal residence, the supervisor must adhere to the procedures set forth in subsection (7) prior to the removal of a registered voter's name from the statewide voter registration system.

(7) PROCEDURES FOR REMOVAL.—

(a) If the supervisor receives notice or information pursuant to subsections (4)-(6), the supervisor of the county in which the voter is registered shall:

1. Notify the registered voter of his or her potential ineligibility by mail within 7 days after receipt of notice or information. The notice shall include:

a. A statement of the basis for the registered voter's potential ineligibility and a copy of any documentation upon which the potential ineligibility is based. Such documentation shall include any conviction from another jurisdiction determined to be a similar offense to murder or a felony sexual offense as defined in s. 98.0751.

b. A statement that failure to respond within 30 days after receipt of the notice may result in a determination of ineligibility and in removal of the registered voter's name from the statewide voter registration system.

c. A return form that requires the registered voter to admit or deny the accuracy of the information underlying the potential ineligibility for purposes of a final determination by the supervisor.

d. A statement that, if the voter is denying the accuracy of the information underlying the potential ineligibility, the voter has a right to request a hearing for the purpose of determining eligibility.

e. Instructions for the registered voter to contact the supervisor of elections of the county in which the voter is registered if assistance is needed in resolving the matter.

f. Instructions for seeking restoration of civil rights pursuant to s. 8, Art. IV of the State Constitution and information explaining voting rights restoration pursuant to s. 4., Art. VI of the State Constitution following a felony conviction, if applicable.

2. If the mailed notice is returned as undeliverable, the supervisor shall publish notice once in a newspaper of general circulation in the county in which the voter was last registered. The notice shall contain the following:

a. The voter’s name and address.

b. A statement that the voter is potentially ineligible to be registered to vote.

c. A statement that failure to respond within 30 days after the notice is published may result in a determination of ineligibility by the supervisor and removal of the registered voter’s name from the statewide voter registration system.

d. An instruction for the voter to contact the supervisor no later than 30 days after the date of the published notice to receive information regarding the basis for the potential ineligibility and the procedure to resolve the matter.

e. An instruction to the voter that, if further assistance is needed, the voter should contact the supervisor of elections of the county in which the voter is registered.

3. If a registered voter fails to respond to a notice pursuant to subparagraph 1. or subparagraph 2., the supervisor shall make a final determination of the voter’s eligibility. If

116400

the supervisor determines that the voter is ineligible, the supervisor shall remove the name of the registered voter from the statewide voter registration system. The supervisor shall notify the registered voter of the supervisor's determination and action.

4. If a registered voter responds to the notice pursuant to subparagraph 1. or subparagraph 2. and admits the accuracy of the information underlying the potential ineligibility, the supervisor shall make a final determination of ineligibility and shall remove the voter's name from the statewide voter registration system. The supervisor shall notify the registered voter of the supervisor's determination and action.

5. If a registered voter responds to the notice issued pursuant to subparagraph 1. or subparagraph 2. and denies the accuracy of the information underlying the potential ineligibility but does not request a hearing, the supervisor shall review the evidence and make a final determination of eligibility. If such registered voter requests a hearing, the supervisor shall send notice to the registered voter to attend a hearing at a time and place specified in the notice. Upon hearing all evidence presented at the hearing, the supervisor shall make a determination of eligibility. If the supervisor determines that the registered voter is ineligible, the supervisor shall remove the voter's name from the statewide voter registration system and notify the registered voter of the supervisor's determination and action.

Section 5. Section 98.0751, Florida Statutes, is created to read:

98.0751 Restoration of voting rights; termination of

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ineligibility subsequent to a felony conviction.—

(1) A person who has been disqualified from voting based on a felony conviction for an offense other than murder or a felony sexual offense must have such disqualification terminated and his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon the completion of all terms of his or her sentence, including parole or probation. The voting disqualification does not terminate unless a person's civil rights are restored pursuant to s. 8, Art. IV of the State Constitution if the disqualification arises from a felony conviction of murder or a felony sexual offense, or if the person has not completed all terms of sentence, as specified under subsection (2).

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

(a) "Completion of all terms of sentence" means any portion of a sentence that is contained in the four corners of the sentencing document, including, but not limited to:

1. Release from any term of imprisonment ordered by the court as a part of the sentence;

2. Termination from any term of probation or community control ordered by the court as a part of the sentence;

3. Fulfillment of any term ordered by the court as a part of the sentence;

4. Termination from any term of any supervision, which is monitored by the Florida Commission on Offender Review, including, but not limited to, parole; and

5. Payment of all:

a. Restitution ordered by the court as a part of the sentence, regardless of whether such restitution is converted to

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a civil lien; and

b. Fees or fines ordered by the court as part of the sentence or that are ordered by the court as a condition of any form of supervision including, but not limited to, probation, community control, or parole. A financial obligation required under this sub-subparagraph is deemed to have been completed to the extent that the financial obligation has been converted to a civil lien.

A term required to be completed in accordance with this paragraph shall be deemed completed if the court modifies the original sentencing order to no longer require completion of such term.

(b) "Felony sexual offense" means any of the following:

1. Any felony offense that serves as a predicate to registration as a sexual offender in accordance with s. 943.0435;

2. Section 872.06; or

3. Any similar offense committed in another jurisdiction which would be an offense listed in this paragraph if it had been committed in violation of the laws of this state.

(c) "Murder" means either of the following:

1. A violation of any of the following sections which results in the actual killing of a human being:

a. Section 775.33(4).

b. Section 782.04(1) or (2).

c. Section 782.09.

2. Any similar offense committed in another jurisdiction which would be an offense listed in this paragraph if it had

116400

been committed in violation of the laws of this state.

(3) A local supervisor of elections shall verify whether a person who has been convicted of a felony offense and subsequently registers or applies to register to vote has completed all the terms of his or her sentence as required by this section. The supervisor of elections may request the assistance of the department to make such determination.

(4) For the purpose of determining a voter registration applicant's eligibility, the provisions of this section shall be strictly construed. If a provision is susceptible to differing interpretations, it shall be construed in favor of the applicant.

Section 6. Section 104.011, Florida Statutes, is amended to read:

104.011 False swearing; submission of false voter registration information; prosecution prohibited.—

(1) A person who willfully swears or affirms falsely to any oath or affirmation, or willfully procures another person to swear or affirm falsely to an oath or affirmation, in connection with or arising out of voting or elections commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who willfully submits any false voter registration information commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person may not be charged or convicted for a violation of this section for affirming that he or she has not been convicted of a felony or that, if convicted, he or she has had voting right restored, if such violation is alleged to have

occurred on or after January 8, 2019, but before the effective date of this act.

Section 7. Section 940.061, Florida Statutes, is amended to read:

940.061 Informing persons about executive clemency, ~~and~~ restoration of civil rights, and restoration of voting rights.—The Department of Corrections shall inform and educate inmates and offenders on community supervision about the restoration of civil rights and the restoration of voting rights resulting from the removal of the disqualification to vote pursuant to s. 4, Art. VI of the State Constitution. Each month, the Department of Corrections shall send to the Florida Commission on Offender Review by electronic means a list of the names of inmates who have been released from incarceration and offenders who have been terminated from supervision who may be eligible for restoration of civil rights.

Section 8. Subsection (1) of section 944.292, Florida Statutes, is amended to read:

944.292 Suspension of civil rights.—

(1) Upon conviction of a felony as defined in s. 10, Art. X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution. Notwithstanding the suspension of civil rights, such a convicted person may obtain restoration of his or her voting rights pursuant to s. 4, Art. VI of the State Constitution and s. 98.0751.

Section 9. Subsection (6) of section 944.705, Florida

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Statutes, is amended to read:

944.705 Release orientation program.—

(6)(a) The department shall notify every inmate~~, in no less than 18-point type~~ in the inmate's release documents:~~,~~

1. Of all outstanding terms of the inmate's sentence at the time of release to assist the inmate in determining his or her status with regard to the completion of all terms of sentence, as that term is defined in s. 98.0751. This subparagraph does not apply to inmates who are being released from the custody of the department to any type of supervision monitored by the department; and

2. In not less than 18-point type, that the inmate may be sentenced pursuant to s. 775.082(9) if the inmate commits any felony offense described in s. 775.082(9) within 3 years after the inmate's release. This notice must be prefaced by the word "WARNING" in boldfaced type.

(b) ~~Nothing in~~ This section does not preclude ~~precludes~~ the sentencing of a person pursuant to s. 775.082(9), and ~~nor shall~~ evidence that the department failed to provide this notice does not prohibit a person from being sentenced pursuant to s. 775.082(9). The state is ~~shall~~ not ~~be~~ required to demonstrate that a person received any notice from the department in order for the court to impose a sentence pursuant to s. 775.082(9).

Section 10. Subsection (3) of section 947.24, Florida Statutes, is renumbered as subsection (4), respectively, and subsection (3) is added to that section, to read:

947.24 Discharge from parole supervision or release supervision.—

(3) Upon the termination of an offender's term of

116400

supervision, which is monitored by the commission, including, but not limited to, parole, the commission must notify the offender in writing of all outstanding terms at the time of termination to assist the offender in determining his or her status with regard to the completion of all terms of sentence, as that term is defined in s. 98.0751.

Section 11. Section 948.041, Florida Statutes, is created to read:

948.041 Notification of outstanding terms of sentence upon termination of probation or community control.—Upon the termination of an offender's term of probation or community control, the department must notify the offender in writing of all outstanding terms at the time of termination to assist the offender in determining his or her status with regard to the completion of all terms of sentence, as that term is defined in s. 98.0751.

Section 12. Subsection (1) of section 951.29, Florida Statutes, is amended to read:

951.29 Procedure for requesting restoration of civil rights or restoration of voting rights of county prisoners convicted of felonies.—

(1) With respect to a person who has been convicted of a felony and is serving a sentence in a county detention facility, the administrator of the county detention facility shall provide the following to the prisoner, at least 2 weeks before discharge, if possible:~~,~~

(a) An application form obtained from the Florida Commission on Offender Review which the prisoner must complete in order to begin the process of having his or her civil rights

restored;.

(b) Information explaining voting rights restoration pursuant to s. 4, Art. VI of the State Constitution; and

(c) Written notification of all outstanding terms of the prisoner's sentence at the time of release to assist the prisoner in determining his or her status with regard to the completion of all terms of sentence, as that term is defined in s. 98.0751.

Section 13. Restoration of Voting Rights Work Group.—The Restoration of Voting Rights Work Group is created within the Department of State for the purpose of conducting a comprehensive review of the department's process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony, but who may be eligible for restoration of voting rights under s. 4, Article VI of the State Constitution.

(1) MEMBERSHIP.—The work group is comprised of the following members:

(a) The Secretary of State or his or her designee, who shall serve as chair for the work group.

(b) The Secretary of Corrections or his or her designee.

(c) The executive director of the Department of Law Enforcement or his or her designee.

(d) The Chairman of the Florida Commission on Offender Review or his or her designee.

(e) Two clerks of the circuit court appointed by the Governor.

(f) Two supervisors of elections appointed by the Governor.

(2) TERMS OF MEMBERSHIP.—Appointments to the work group

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shall be made within 30 days of the effective date of this act. All members shall serve for the duration of the work group. Any vacancy shall be filled by the original appointing authority for the remainder of the work group's existence.

(3) DUTIES.—The work group is authorized and directed to study, evaluate, analyze, and undertake a comprehensive review of the Department of State's process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony, but who may be eligible for restoration of voting rights under s. 4, Article VI of the State Constitution, to develop recommendations for the Legislature, related to:

(a) The consolidation of all relevant data necessary to verify the eligibility of a registered voter, applicant, or potential applicant for restoration of voting rights under s. 4, Article VI of the State Constitution. If any entity is recommended to manage the consolidated relevant data, the recommendations must provide the feasibility of such entity to manage the consolidated relevant data and a timeline for implementation of such consolidation.

(b) The process of informing a registered voter, applicant, or potential applicant of the entity or entities that are custodians of the relevant data necessary for verifying his or her eligibility for restoration of voting rights under s. 4, Article VI of the State Constitution.

(c) Any other relevant policies or procedures for verifying the eligibility of a registered voter, applicant, or potential applicant for restoration of voting rights under s. 4, Article VI of the State Constitution.

116400

(4) REPORT.—The work group shall submit a report of its findings, conclusions, and recommendations for the Legislature to the President of the Senate and the Speaker of the House of Representatives by November 1, 2019. Upon submission of the report, the work group is dissolved and discharged of further duties.

(5) STAFFING.—The Department of State shall provide support for the work group in performing its duties.

(6) PER DIEM AND TRAVEL EXPENSES.—Work group members shall serve without compensation but are entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061, Florida Statutes.

(7) EXPIRATION.—This section expires January 31, 2020.

Section 14. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 15. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to voting rights restoration; amending ss. 97.052, 97.053, and 98.045, F.S.; revising terminology regarding voting rights restoration to conform to the State Constitution; amending s. 98.075, F.S.; revising terminology regarding voting rights restoration to conform to the State Constitution; requiring the supervisor of elections of the county in

116400

which an ineligible voter is registered to notify the voter of instructions for seeking restoration of voting rights pursuant to s. 4, Art. VI of the State Constitution, in addition to restoration of civil rights pursuant to s. 8, Art. IV of the State Constitution; requiring a notice of a registered voter's potential ineligibility to include specified information; creating s. 98.0751, F.S.; requiring the voting disqualification of certain felons to be removed and voting rights restored pursuant to s. 4, Art. VI of the State Constitution; providing that the voting disqualification arising from specified factors is not removed unless a person’s civil rights are restored through the clemency process pursuant to s. 8, Art. IV of the State Constitution; providing definitions; authorizing the supervisor of elections to verify whether a person who has been convicted of a felony offense is eligible to register to vote, including if he or she has completed all the terms of his or her sentence; authorizing the Department of State to assist the supervisor of elections with such verification; requiring specified provisions to be construed in favor of a voter registration applicant; amending s. 104.011, F.S.; prohibiting a person from being charged or convicted for certain violations; amending s. 940.061, F.S.; requiring the Department of Corrections to inform inmates and offenders of voting rights restoration pursuant to s. 4, Art. VI of the State Constitution, in addition to executive clemency

116400

and civil rights restoration; amending s. 944.292, F.S.; conforming a provision regarding the suspension of civil rights; amending s. 944.705, F.S.; requiring the Department of Corrections to include notification of all outstanding terms of sentence in an inmate's release documents; providing an exception to the notification requirement for inmates who are released to any type of supervision monitored by the department; amending s. 947.24, F.S.; requiring the Florida Commission on Offender Review, upon the termination of an offender's term of parole, control release, or conditional release, to provide written notification to the offender of all outstanding terms of sentence; creating s. 948.041, F.S.; requiring the department, upon the termination of an offender's term of probation or community control, to provide written notification to the offender of all outstanding terms of sentence; amending s. 951.29, F.S.; requiring each county detention facility to provide information on the restoration of voting rights pursuant to s. 4, Art. VI of the State Constitution to certain prisoners; requiring each county detention facility to provide written notification to certain prisoners of all outstanding terms of sentence upon release; creating the Restoration of Voting Rights Work Group within the Department of State; specifying membership of the work group; establishing the manner of appointments and the terms of membership; prescribing the duties of the work group; requiring the work group

116400

to submit a report to the Legislature by a specified date; providing for staffing; authorizing reimbursement for per diem and travel expenses; providing for expiration of the work group; providing a directive to the Division of Law Revision; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/23/2019	.	
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The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment to Amendment (116400) (with title amendment)

Before line 5
insert:

Section 1. Subsection (1) of section 40.013, Florida Statutes, is amended to read:

40.013 Persons disqualified or excused from jury service.—

(1) No person who is under prosecution for any crime, or who has been convicted in this state, any federal court, or any other state, territory, or country of bribery, forgery, perjury,

786538

larceny, or any other offense that is a felony in this state or which if it had been committed in this state would be a felony, unless restored to civil rights, shall be qualified to serve as a juror. However, the disqualification provided under this subsection no longer applies upon the restoration of voting rights pursuant to s. 4., Art. VI of the State Constitution and s. 98.0751 for a person who has completed all terms of sentence for a felony conviction for an offense other than murder or a felony sexual offense.

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

And the title is amended as follows:

Between lines 498 and 499

insert:

s. 40.013, F.S.; providing that disqualification from jury service does not apply to persons convicted of certain felonies who have had their voting rights restored pursuant to s. 4, Art. VI of the State Constitution; amending

620860

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/23/2019	.	
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The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment to Amendment (116400)

Delete lines 266 - 285
and insert:
of the sentence; and

4. Termination from any term of any supervision, which is monitored by the Florida Commission on Offender Review, including, but not limited to, parole.

A term required to be completed in accordance with this paragraph is deemed completed if the court modifies the original

620860

sentencing order to no longer require completion of such term. The failure to meet any financial obligation may not be considered in determining whether all terms of a sentence have been completed for purposes of denying an individual's right to register to vote, irrespective of the source of the obligation; however, this paragraph may not be construed to affect the validity of, or the requirements to fulfill, financial obligations arising from a felony conviction, including, but not limited to, payment of restitution to a victim when ordered at sentencing by the court.

136384

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/23/2019	.	
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The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment to Amendment (116400) (with title amendment)

Between lines 332 and 333
insert:

Section 7. Section 111.076, Florida Statutes, is created to read:

111.076 Right to elective office.—A person who has completed all terms of sentence for a felony conviction for an offense other than murder or a felony sexual offense who has his or her voting rights restored pursuant to s. 4, Art. VI of the

136384

State Constitution and s. 98.0751 is entitled to qualify for and hold elective office in this state.

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

And the title is amended as follows:

Between lines 529 and 530

insert:

creating s. 111.076, F.S.; specifying that a person who has had voting rights restored pursuant to s. 4, Art. VI of the State Constitution is entitled to qualify for and hold elective office;

275642

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/23/2019	.	
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The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment to Amendment (116400) (with title amendment)

Between lines 332 and 333
insert:

Section 7. Subsection (8) is added to section 476.144, Florida Statutes, to read:

476.144 Licensure.—

(8) A person who has had his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon completion of all terms of sentence for a felony conviction for

an offense other than murder or a felony sexual offense is eligible for licensure so long as he or she meets all other requirements established under this section.

Section 8. Subsection (2) of section 477.019, Florida Statutes, is amended to read:

477.019 Cosmetologists; qualifications; licensure; supervised practice; license renewal; endorsement; continuing education.—

(2) An applicant is ~~shall be~~ eligible for licensure by examination to practice cosmetology if the applicant:

(a) Is at least 16 years of age or has received a high school diploma;

(b) Pays the required application fee, which is not refundable, and the required examination fee, which is refundable if the applicant is determined to not be eligible for licensure for any reason other than failure to successfully complete the licensure examination; and

(c)1. Is authorized to practice cosmetology in another state or country, has been so authorized for at least 1 year, and does not qualify for licensure by endorsement as provided for in subsection (5); or

2. Has received a minimum of 1,200 hours of training as established by the board, which shall include, but shall not be limited to, the equivalent of completion of services directly related to the practice of cosmetology at one of the following:

a. A school of cosmetology licensed pursuant to chapter 1005.

b. A cosmetology program within the public school system.

c. The Cosmetology Division of the Florida School for the

Deaf and the Blind, provided the division meets the standards of this chapter.

d. A government-operated cosmetology program in this state.

The board shall establish by rule procedures whereby the school or program may certify that a person is qualified to take the required examination after the completion of a minimum of 1,000 actual school hours. If the person then passes the examination, he or she shall have satisfied this requirement; but if the person fails the examination, he or she shall not be qualified to take the examination again until the completion of the full requirements provided by this section. A person who has had his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon completion of all terms of sentence for a felony conviction for an offense other than murder or a felony sexual offense is eligible for licensure so long as he or she meets all other requirements established under this section.

Section 9. Subsection (6) of section 489.115, Florida Statutes, is amended to read:

489.115 Certification and registration; endorsement; reciprocity; renewals; continuing education.—

(6) An applicant for initial issuance of a certificate or registration shall submit to a statewide criminal history records check through the Department of Law Enforcement. The Department of Business and Professional Regulation shall submit the requests for the criminal history records check to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall return the results to the department to determine if the applicant meets certification or

registration requirements. If the applicant has been convicted of a felony, the board may deny licensure to the applicant based upon the severity of the crime, the relationship of the crime to contracting, or the potential for public harm. The board shall also, in denying or approving licensure, consider the length of time since the commission of the crime and the rehabilitation of the applicant. The board may not deny licensure to an applicant based solely upon a felony conviction or the applicant's failure to provide proof of restoration of civil rights or voting rights. A person who has had his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon completion of all terms of sentence for a felony conviction for an offense other than murder or a felony sexual offense is eligible for licensure so long as he or she meets all other requirements established under this section.

Section 10. Subsection (1) of section 489.513, Florida Statutes, is amended to read:

489.513 Registration; application; requirements.—

(1) Any person engaged in the business of contracting in the state shall be registered in the proper classification unless he or she is certified. Any person desiring to be a registered contractor shall apply to the department for registration and must:

(a) Be at least 18 years old;

(b) Be of good moral character; and

(c) Meet eligibility requirements according to the following criteria:

1. As used in this subsection, the term "good moral character" means a personal history of honesty, fairness, and

respect for the rights of others and for state and federal law.

2. The board may determine that an individual applying for registration is ineligible due to failure to satisfy the requirement of good moral character only if:

a. There is a substantial connection between the lack of good moral character of the individual and the professional responsibilities of a registered contractor; and

b. The finding by the board of lack of good moral character is supported by clear and convincing evidence.

3. When an individual is found to be unqualified because of lack of good moral character, the board must furnish such individual a statement containing the findings of the board, a complete record of evidence upon which the determination was based, and a notice of the rights of the individual to a rehearing and an appeal.

4. A person who has had his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon completion of all terms of sentence for a felony conviction for an offense other than murder or a felony sexual offense is eligible for licensure as an electrical contractor so long as he or she meets all other requirements established under this section.

Section 11. Paragraph (a) of subsection (4) of section 489.553, Florida Statutes, is amended to read:

489.553 Administration of part; registration qualifications; examination.—

(4) To be eligible for registration by the department as a septic tank contractor, the applicant must:

(a) Be of good moral character. In considering good moral

275642

character, the department may consider any matter that has a substantial connection between the good moral character of the applicant and the professional responsibilities of a registered contractor, including, but not limited to: the applicant being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting; and previous disciplinary action involving septic tank contracting, where all judicial reviews have been completed. A person who has had his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon completion of all terms of sentence for a felony conviction for an offense other than murder or a felony sexual offense is eligible for licensure so long as he or she meets all other requirements established under this section.

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

And the title is amended as follows:

Between lines 529 and 530

insert:

amending ss. 476.144, 477.019, 489.115, 489.513, and 489.553, F.S.; specifying eligibility for licensure for barbering, cosmetology, and contracting for persons who have had voting rights restored pursuant to s. 4, Art. VI of the State Constitution;

477272

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/23/2019	.	
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The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment to Amendment (116400) (with title amendment)

Between lines 425 and 426
insert:

Section 13. Section 1009.02, Florida Statutes, is created to read:

1009.02 Eligibility for educational scholarships upon restoration of voting rights.—Notwithstanding any other provision of this chapter, a person who has had his or her voting rights restored pursuant to s. 4, Art. VI of the State

477272

Constitution upon the completion of all terms of his or her sentence for a felony conviction for an offense other than murder or a felony sexual offense is eligible to be awarded any scholarship, grant, or other aid for higher education or vocational training under this chapter so long as he or she meets all other requirements to be awarded the scholarship, grant, or other aid.

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

And the title is amended as follows:

Between lines 557 and 558

insert:

creating s. 1009.02, F.S.; specifying eligibility for educational scholarships, grants, or other aid for persons who have had voting rights restored pursuant to s. 4, Art. VI of the State Constitution;

714376

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Before line 63
insert:

Section 1. Subsection (1) of section 40.013, Florida Statutes, is amended to read:

40.013 Persons disqualified or excused from jury service.—

(1) No person who is under prosecution for any crime, or who has been convicted in this state, any federal court, or any other state, territory, or country of bribery, forgery, perjury, larceny, or any other offense that is a felony in this state or

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which if it had been committed in this state would be a felony, unless restored to civil rights, shall be qualified to serve as a juror. However, the disqualification provided under this subsection no longer applies upon the restoration of voting rights pursuant to s. 4., Art. VI of the State Constitution and s. 98.0751 for a person who has completed all terms of sentence for a felony conviction for an offense other than murder or a felony sexual offense.

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

And the title is amended as follows:

Between lines 2 and 3

insert:

s. 40.013, F.S.; providing that disqualification from jury service does not apply to persons convicted of certain felonies who have had their voting rights restored pursuant to s. 4, Art. VI of the State Constitution; amending

894776

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 352 and 353
insert:

Section 6. Subsection (8) is added to section 476.144, Florida Statutes, to read:

476.144 Licensure.—

(8) A person who has had his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon completion of all terms of sentence for a felony conviction for an offense other than murder or a felony sexual offense is

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eligible for licensure so long as he or she meets all other requirements established under this section.

Section 7. Subsection (2) of section 477.019, Florida Statutes, is amended to read:

477.019 Cosmetologists; qualifications; licensure; supervised practice; license renewal; endorsement; continuing education.—

(2) An applicant is ~~shall be~~ eligible for licensure by examination to practice cosmetology if the applicant:

(a) Is at least 16 years of age or has received a high school diploma;

(b) Pays the required application fee, which is not refundable, and the required examination fee, which is refundable if the applicant is determined to not be eligible for licensure for any reason other than failure to successfully complete the licensure examination; and

(c)1. Is authorized to practice cosmetology in another state or country, has been so authorized for at least 1 year, and does not qualify for licensure by endorsement as provided for in subsection (5); or

2. Has received a minimum of 1,200 hours of training as established by the board, which shall include, but shall not be limited to, the equivalent of completion of services directly related to the practice of cosmetology at one of the following:

a. A school of cosmetology licensed pursuant to chapter 1005.

b. A cosmetology program within the public school system.

c. The Cosmetology Division of the Florida School for the Deaf and the Blind, provided the division meets the standards of

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this chapter.

d. A government-operated cosmetology program in this state.

The board shall establish by rule procedures whereby the school or program may certify that a person is qualified to take the required examination after the completion of a minimum of 1,000 actual school hours. If the person then passes the examination, he or she shall have satisfied this requirement; but if the person fails the examination, he or she shall not be qualified to take the examination again until the completion of the full requirements provided by this section. A person who has had his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon completion of all terms of sentence for a felony conviction for an offense other than murder or a felony sexual offense is eligible for licensure so long as he or she meets all other requirements established under this section.

Section 8. Subsection (6) of section 489.115, Florida Statutes, is amended to read:

489.115 Certification and registration; endorsement; reciprocity; renewals; continuing education.—

(6) An applicant for initial issuance of a certificate or registration shall submit to a statewide criminal history records check through the Department of Law Enforcement. The Department of Business and Professional Regulation shall submit the requests for the criminal history records check to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall return the results to the department to determine if the applicant meets certification or registration requirements. If the applicant has been convicted

of a felony, the board may deny licensure to the applicant based upon the severity of the crime, the relationship of the crime to contracting, or the potential for public harm. The board shall also, in denying or approving licensure, consider the length of time since the commission of the crime and the rehabilitation of the applicant. The board may not deny licensure to an applicant based solely upon a felony conviction or the applicant's failure to provide proof of restoration of civil rights or voting rights. A person who has had his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon completion of all terms of sentence for a felony conviction for an offense other than murder or a felony sexual offense is eligible for licensure so long as he or she meets all other requirements established under this section.

Section 9. Subsection (1) of section 489.513, Florida Statutes, is amended to read:

489.513 Registration; application; requirements.—

(1) Any person engaged in the business of contracting in the state shall be registered in the proper classification unless he or she is certified. Any person desiring to be a registered contractor shall apply to the department for registration and must:

(a) Be at least 18 years old;

(b) Be of good moral character; and

(c) Meet eligibility requirements according to the following criteria:

1. As used in this subsection, the term "good moral character" means a personal history of honesty, fairness, and respect for the rights of others and for state and federal law.

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2. The board may determine that an individual applying for registration is ineligible due to failure to satisfy the requirement of good moral character only if:

a. There is a substantial connection between the lack of good moral character of the individual and the professional responsibilities of a registered contractor; and

b. The finding by the board of lack of good moral character is supported by clear and convincing evidence.

3. When an individual is found to be unqualified because of lack of good moral character, the board must furnish such individual a statement containing the findings of the board, a complete record of evidence upon which the determination was based, and a notice of the rights of the individual to a rehearing and an appeal.

4. A person who has had his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon completion of all terms of sentence for a felony conviction for an offense other than murder or a felony sexual offense is eligible for licensure as an electrical contractor so long as he or she meets all other requirements established under this section.

Section 10. Paragraph (a) of subsection (4) of section 489.553, Florida Statutes, is amended to read:

489.553 Administration of part; registration qualifications; examination.—

(4) To be eligible for registration by the department as a septic tank contractor, the applicant must:

(a) Be of good moral character. In considering good moral character, the department may consider any matter that has a

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substantial connection between the good moral character of the applicant and the professional responsibilities of a registered contractor, including, but not limited to: the applicant being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting; and previous disciplinary action involving septic tank contracting, where all judicial reviews have been completed. A person who has had his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon completion of all terms of sentence for a felony conviction for an offense other than murder or a felony sexual offense is eligible for licensure so long as he or she meets all other requirements established under 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 26

and insert:

adopt rules and prescribe forms; amending ss. 476.144, 477.019, 489.115, 489.513, and 489.553, F.S.; specifying eligibility for licensure for barbering, cosmetology, and contracting for persons who have had voting rights restored pursuant to s. 4, Art. VI of the State Constitution; amending s. 940.061,

228614

LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 352 and 353
insert:

Section 6. Section 111.076, Florida Statutes, is created to read:

111.076 Right to elective office.—A person who has completed all terms of sentence for a felony conviction for an offense other than murder or a felony sexual offense who has his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution and s. 98.0751 is entitled to qualify for and

228614

hold elective office in this state.

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

And the title is amended as follows:

Delete line 26

and insert:

adopt rules and prescribe forms; creating s. 111.076, F.S.; specifying that a person who has had voting rights restored pursuant to s. 4, Art. VI of the State Constitution is entitled to qualify for and hold elective office; amending s. 940.061,

424162

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Between lines 432 and 433
insert:

Section 11. Section 1009.02, Florida Statutes, is created to read:

1009.02 Eligibility for educational scholarships upon restoration of voting rights.—Notwithstanding any other provision of this chapter, a person who has had his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon the completion of all terms of his or her

424162

sentence for a felony conviction for an offense other than murder or a felony sexual offense is eligible to be awarded any scholarship, grant, or other aid for higher education or vocational training under this chapter so long as he or she meets all other requirements to be awarded the scholarship, grant, or other aid.

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

And the title is amended as follows:

Between lines 49 and 50

insert:

creating s. 1009.02, F.S.; specifying eligibility for educational scholarships, grants, or other aid for persons who have had voting rights restored pursuant to s. 4, Art. VI of the State Constitution;

570922

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment

Delete lines 317 - 331

and insert:

of the sentence; and

4. Termination from any term of any supervision, which is monitored by the Florida Commission on Offender Review, including, but not limited to, parole.

A term required to be completed in accordance with this paragraph is deemed completed if the court modifies the original

570922

sentencing order to no longer require completion of such term. The failure to meet any financial obligation may not be considered in determining whether all terms of a sentence have been completed for purposes of denying an individual's right to register to vote, irrespective of the source of the obligation; however, this paragraph may not be construed to affect the validity of, or the requirements to fulfill, financial obligations arising from a felony conviction, including, but not limited to, payment of restitution to a victim when ordered at sentencing by the court.

By the Committees on Judiciary; and Criminal Justice

590-04043-19 20197086c1

A bill to be entitled

An act relating to voting rights restoration; amending ss. 97.052, 97.053, and 98.045, F.S.; revising terminology regarding voting rights restoration to conform to the State Constitution; amending s. 98.075, F.S.; revising terminology regarding voting rights restoration to conform to the State Constitution; requiring the supervisor of elections of the county in which an ineligible voter is registered to notify the voter of instructions for seeking restoration of voting rights pursuant to s. 4, Art. VI of the State Constitution, in addition to restoration of civil rights pursuant to s. 8, Art. IV of the State Constitution; creating s. 98.0751, F.S.; requiring the voting disqualification of certain felons to be removed and voting rights restored pursuant to s. 4, Art. VI of the State Constitution; providing that the voting disqualification arising from specified felony offenses is not removed unless a person's civil rights are restored through the clemency process pursuant to s. 8, Art. IV of the State Constitution; providing definitions; authorizing the Department of State to verify whether a person who has been convicted of a felony offense has completed all the terms of his or her sentence; authorizing the Department of State to adopt rules and prescribe forms; amending s. 940.061, F.S.; requiring the Department of Corrections to inform inmates and offenders of voting rights restoration pursuant to s. 4, Art. VI of the State

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

590-04043-19 20197086c1

Constitution, in addition to executive clemency and civil rights restoration; amending s. 944.292, F.S.; conforming a provision regarding the suspension of civil rights; amending s. 944.705, F.S.; requiring the Department of Corrections to include notification of all outstanding terms of sentence in an inmate's release documents; providing an exception to the notification requirement for inmates who are released to any type of supervision monitored by the department; creating s. 948.041, F.S.; requiring the department, upon the termination of an offender's term of probation or community control, to provide written notification to the offender of all outstanding terms of sentence; amending s. 951.29, F.S.; requiring each county detention facility to provide information on the restoration of voting rights pursuant to s. 4, Art. VI of the State Constitution to certain prisoners; requiring each county detention facility to provide written notification to certain prisoners of all outstanding terms of sentence upon release; creating the Restoration of Voting Rights Work Group within the Department of State; specifying membership of the work group; establishing the manner of appointments and the terms of membership; prescribing the duties of the work group; requiring the work group to submit a report to the Legislature by a specified date; providing for staffing; authorizing reimbursement for per diem and travel expenses; providing for expiration of the work group; providing

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

an effective date.

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

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

97.052 Uniform statewide voter registration application.—

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

(a) Last, first, and middle name, including any suffix.

(b) Date of birth.

(c) Address of legal residence.

(d) Mailing address, if different.

(e) E-mail address and whether the applicant wishes to receive sample ballots by e-mail.

(f) County of legal residence.

(g) Race or ethnicity that best describes the applicant:

1. American Indian or Alaskan Native.

2. Asian or Pacific Islander.

3. Black, not Hispanic.

4. White, not Hispanic.

5. Hispanic.

(h) State or country of birth.

(i) Sex.

(j) Party affiliation.

(k) Whether the applicant needs assistance in voting.

(l) Name and address where last registered.

(m) Last four digits of the applicant's social security

number.

(n) Florida driver license number or the identification number from a Florida identification card issued under s. 322.051.

(o) An indication, if applicable, that the applicant has not been issued a Florida driver license, a Florida identification card, or a social security number.

(p) Telephone number (optional).

(q) Signature of applicant under penalty for false swearing pursuant to s. 104.011, by which the person subscribes to the oath required by s. 3, Art. VI of the State Constitution and s. 97.051, and swears or affirms that the information contained in the registration application is true.

(r) Whether the application is being used for initial registration, to update a voter registration record, or to request a replacement voter information card.

(s) Whether the applicant is a citizen of the United States by asking the question "Are you a citizen of the United States of America?" and providing boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(t) Whether the applicant has been convicted of a felony, and, if convicted, has had his or her voting ~~civil~~ rights restored by including the statement "I affirm I am not a convicted felon, or, if I am, my rights relating to voting have been restored." and providing a box for the applicant to check to affirm the statement.

(u) Whether the applicant has been adjudicated mentally incapacitated with respect to voting or, if so adjudicated, has

had his or her right to vote restored by including the statement "I affirm I have not been adjudicated mentally incapacitated with respect to voting, or, if I have, my competency has been restored." and providing a box for the applicant to check to affirm the statement.

The registration application must be in plain language and designed so that convicted felons whose voting ~~civil~~ rights have been restored and persons who have been adjudicated mentally incapacitated and have had their voting rights restored are not required to reveal their prior conviction or adjudication.

Section 2. Paragraph (a) of subsection (5) of section 97.053, Florida Statutes, is amended to read:

97.053 Acceptance of voter registration applications.—

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

1. The applicant's name.

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

3. The applicant's date of birth.

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

citizen of the United States.

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

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

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

6. A mark in the checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, has had his or her voting ~~civil~~ rights restored.

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

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

Section 3. Paragraph (c) of subsection (1) of section 98.045, Florida Statutes, is amended to read:

98.045 Administration of voter registration.—

(1) ELIGIBILITY OF APPLICANT.—The supervisor must ensure that any eligible applicant for voter registration is registered to vote and that each application for voter registration is processed in accordance with law. The supervisor shall determine whether a voter registration applicant is ineligible based on any of the following:

(c) The applicant has been convicted of a felony for which his or her voting ~~civil~~ rights have not been restored.

Section 4. Subsections (5) and (6) and paragraph (a) of subsection (7) of section 98.075, Florida Statutes, are amended to read:

98.075 Registration records maintenance activities; ineligibility determinations.—

(5) FELONY CONVICTION.—The department shall identify those registered voters who have been convicted of a felony and whose voting rights have not been restored by comparing information received from, but not limited to, a clerk of the circuit court, the Board of Executive Clemency, the Department of Corrections, the Department of Law Enforcement, or a United States Attorney's Office, as provided in s. 98.093. The department shall review such information and make an initial determination as to whether the information is credible and reliable. If the department determines that the information is credible and reliable, the department shall notify the supervisor and provide a copy of the supporting documentation indicating the potential ineligibility of the voter to be registered. Upon receipt of the notice that the department has made a determination of initial credibility and reliability, the supervisor shall adhere to the procedures

set forth in subsection (7) prior to the removal of a registered voter's name from the statewide voter registration system.

(6) OTHER BASES FOR INELIGIBILITY.—If the department or supervisor receives information from sources other than those identified in subsections (2)-(5) that a registered voter is ineligible because he or she is deceased, adjudicated a convicted felon without having had his or her voting ~~civil~~ rights restored, adjudicated mentally incapacitated without having had his or her voting rights restored, does not meet the age requirement pursuant to s. 97.041, is not a United States citizen, is a fictitious person, or has listed a residence that is not his or her legal residence, the supervisor must adhere to the procedures set forth in subsection (7) prior to the removal of a registered voter's name from the statewide voter registration system.

(7) PROCEDURES FOR REMOVAL.—

(a) If the supervisor receives notice or information pursuant to subsections (4)-(6), the supervisor of the county in which the voter is registered shall:

1. Notify the registered voter of his or her potential ineligibility by mail within 7 days after receipt of notice or information. The notice shall include:

a. A statement of the basis for the registered voter's potential ineligibility and a copy of any documentation upon which the potential ineligibility is based.

b. A statement that failure to respond within 30 days after receipt of the notice may result in a determination of ineligibility and in removal of the registered voter's name from the statewide voter registration system.

c. A return form that requires the registered voter to admit or deny the accuracy of the information underlying the potential ineligibility for purposes of a final determination by the supervisor.

d. A statement that, if the voter is denying the accuracy of the information underlying the potential ineligibility, the voter has a right to request a hearing for the purpose of determining eligibility.

e. Instructions for the registered voter to contact the supervisor of elections of the county in which the voter is registered if assistance is needed in resolving the matter.

f. Instructions for seeking restoration of civil rights pursuant to s. 8, Art. IV of the State Constitution and information explaining voting rights restoration pursuant to s. 4., Art. VI of the State Constitution following a felony conviction, if applicable.

2. If the mailed notice is returned as undeliverable, the supervisor shall publish notice once in a newspaper of general circulation in the county in which the voter was last registered. The notice shall contain the following:

a. The voter's name and address.

b. A statement that the voter is potentially ineligible to be registered to vote.

c. A statement that failure to respond within 30 days after the notice is published may result in a determination of ineligibility by the supervisor and removal of the registered voter's name from the statewide voter registration system.

d. An instruction for the voter to contact the supervisor no later than 30 days after the date of the published notice to

receive information regarding the basis for the potential ineligibility and the procedure to resolve the matter.

e. An instruction to the voter that, if further assistance is needed, the voter should contact the supervisor of elections of the county in which the voter is registered.

3. If a registered voter fails to respond to a notice pursuant to subparagraph 1. or subparagraph 2., the supervisor shall make a final determination of the voter's eligibility. If the supervisor determines that the voter is ineligible, the supervisor shall remove the name of the registered voter from the statewide voter registration system. The supervisor shall notify the registered voter of the supervisor's determination and action.

4. If a registered voter responds to the notice pursuant to subparagraph 1. or subparagraph 2. and admits the accuracy of the information underlying the potential ineligibility, the supervisor shall make a final determination of ineligibility and shall remove the voter's name from the statewide voter registration system. The supervisor shall notify the registered voter of the supervisor's determination and action.

5. If a registered voter responds to the notice issued pursuant to subparagraph 1. or subparagraph 2. and denies the accuracy of the information underlying the potential ineligibility but does not request a hearing, the supervisor shall review the evidence and make a final determination of eligibility. If such registered voter requests a hearing, the supervisor shall send notice to the registered voter to attend a hearing at a time and place specified in the notice. Upon hearing all evidence presented at the hearing, the supervisor

shall make a determination of eligibility. If the supervisor determines that the registered voter is ineligible, the supervisor shall remove the voter's name from the statewide voter registration system and notify the registered voter of the supervisor's determination and action.

Section 5. Section 98.0751, Florida Statutes, is created to read:

98.0751 Restoration of voting rights; removal of ineligibility subsequent to a felony conviction.—

(1) A person who has been disqualified from voting based on a felony conviction for an offense other than murder or a felony sexual offense must have such disqualification removed and his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon the completion of all terms of his or her sentence, including parole or probation. The voting disqualification that arises from a felony conviction of murder or a felony sexual offense as specified under subsection (2) does not terminate unless a person's civil rights are restored pursuant to s. 8, Art. IV of the State Constitution.

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

(a) "Completion of all terms of sentence" means:

1. Release from any term of imprisonment ordered by the court as a condition of the sentence;

2. Termination from any term of probation or community control ordered by the court as a condition of the sentence;

3. Fulfillment of any term ordered by the court as a condition of the sentence;

4. Termination from any term of parole supervision which is monitored by the Florida Commission on Offender Review; and

5. Payment of all:

a. Restitution ordered by the court as a part of the sentence, regardless of whether such restitution is converted to a civil lien; and

b. Fees or fines ordered by the court as part of the sentence or that are ordered as a condition of probation, community control, or parole.

Except as provided in subparagraph 5., a financial obligation of a person who has been convicted of a felony offense is deemed to have been completed to the extent that the financial obligation has been converted to a civil lien.

(b) "Felony sexual offense" means either of the following:

1. Any felony offense that serves as a predicate to registration as a sexual offender in accordance with s. 943.0435; or

2. Any similar offense committed in another jurisdiction which would be an offense under subparagraph 1. if it had been committed in this state.

(c) "Murder" means any of the following:

1. A violation of any of the following sections which results in the actual killing of a human being:

a. Section 782.04(1) or (2).

b. Section 782.09.

2. Any similar offense committed in another jurisdiction which would be an offense listed in subparagraph 1. if it had been committed in this state.

(3) The department may verify whether a person who has been convicted of a felony offense and subsequently registers or

applies register to vote has completed all the terms of his or her sentence as required by this section.

(4) The department is authorized to adopt rules and prescribe forms to carry out the purposes of this section.

Section 6. Section 940.061, Florida Statutes, is amended to read:

940.061 Informing persons about executive clemency, ~~and~~ restoration of civil rights, and restoration of voting rights.—The Department of Corrections shall inform and educate inmates and offenders on community supervision about the restoration of civil rights and the restoration of voting rights resulting from the removal of the disqualification to vote pursuant to s. 4, Art. VI of the State Constitution. Each month, the Department of Corrections shall send to the Florida Commission on Offender Review by electronic means a list of the names of inmates who have been released from incarceration and offenders who have been terminated from supervision who may be eligible for restoration of civil rights.

Section 7. Subsection (1) of section 944.292, Florida Statutes, is amended to read:

944.292 Suspension of civil rights.—

(1) Upon conviction of a felony as defined in s. 10, Art. X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution. Notwithstanding the suspension of civil rights, such a convicted person may obtain restoration of his or her voting rights pursuant to s. 4, Art. VI of the State

Constitution and s. 98.0751.

Section 8. Subsection (6) of section 944.705, Florida Statutes, is amended to read:

944.705 Release orientation program.—

(6)(a) The department shall notify every inmate~~, in no less than 18-point type~~ in the inmate's release documents:~~,~~

1. Of all outstanding terms of the inmate's sentence at the time of release to assist the inmate in determining his or her status with regard to the completion of all terms of sentence, as that term is defined in s. 98.0751. This subparagraph does not apply to inmates who are being released from the custody of the department to any type of supervision monitored by the department; and

2. In not less than 18-point type, that the inmate may be sentenced pursuant to s. 775.082(9) if the inmate commits any felony offense described in s. 775.082(9) within 3 years after the inmate's release. This notice must be prefaced by the word "WARNING" in boldfaced type.

(b) ~~Nothing in~~ This section does not preclude ~~precludes~~ the sentencing of a person pursuant to s. 775.082(9), and ~~nor shall~~ evidence that the department failed to provide this notice does not prohibit a person from being sentenced pursuant to s. 775.082(9). The state is ~~shall~~ not ~~be~~ required to demonstrate that a person received any notice from the department in order for the court to impose a sentence pursuant to s. 775.082(9).

Section 9. Section 948.041, Florida Statutes, is created to read:

948.041 Notification of outstanding terms of sentence upon termination of probation or community control.—Upon the

termination of an offender's term of probation or community control, the department must notify the offender in writing of all outstanding terms at the time of termination to assist the offender in determining his or her status with regard to the completion of all terms of sentence, as that term is defined in s. 98.0751.

Section 10. Subsection (1) of section 951.29, Florida Statutes, is amended to read:

951.29 Procedure for requesting restoration of civil rights of county prisoners convicted of felonies.—

(1) With respect to a person who has been convicted of a felony and is serving a sentence in a county detention facility, the administrator of the county detention facility shall provide the following to the prisoner, at least 2 weeks before discharge, if possible:~~,~~

(a) An application form obtained from the Florida Commission on Offender Review which the prisoner must complete in order to begin the process of having his or her civil rights restored;~~.~~

(b) Information explaining voting rights restoration pursuant to s. 4, Art. VI of the State Constitution; and

(c) Written notification of all outstanding terms of the prisoner's sentence at the time of release to assist the prisoner in determining his or her status with regard to the completion of all terms of sentence, as that term is defined in s. 98.0751.

Section 11. Restoration of Voting Rights Work Group.—The Restoration of Voting Rights Work Group is created within the Department of State for the purpose of conducting a

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

comprehensive review of the department's process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony, but who may be eligible for restoration of voting rights under s. 4, Article VI of the State Constitution.

(1) MEMBERSHIP.—The work group is comprised of the following members:

(a) The Secretary of State or his or her designee, who shall serve as chair for the work group.

(b) The Secretary of Corrections or his or her designee.

(c) The executive director of the Department of Law Enforcement or his or her designee.

(d) The Chairman of the Florida Commission on Offender Review or his or her designee.

(e) Two clerks of the circuit court appointed by the Governor.

(f) Two supervisors of elections appointed by the Governor.

(2) TERMS OF MEMBERSHIP.—Appointments to the work group shall be made within 30 days of the effective date of this act. All members shall serve for the duration of the work group. Any vacancy shall be filled by the original appointing authority for the remainder of the work group's existence.

(3) DUTIES.—The work group is authorized and directed to study, evaluate, analyze, and undertake a comprehensive review of the Department of State's process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony, but who may be eligible for restoration of voting rights under s. 4, Article VI of the State Constitution, to develop recommendations for the Legislature,

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

related to:

(a) The consolidation of all relevant data necessary to verify the eligibility of a registered voter, applicant, or potential applicant for restoration of voting rights under s. 4, Article VI of the State Constitution. If any entity is recommended to manage the consolidated relevant data, the recommendations must provide the feasibility of such entity to manage the consolidated relevant data and a timeline for implementation of such consolidation.

(b) The process of informing a registered voter, applicant, or potential applicant of the entity or entities that are custodians of the relevant data necessary for verifying his or her eligibility for restoration of voting rights under s. 4, Article VI of the State Constitution.

(c) Any other relevant policies or procedures for verifying the eligibility of a registered voter, applicant, or potential applicant for restoration of voting rights under s. 4, Article VI of the State Constitution.

(4) REPORT.—The work group shall submit a report of its findings, conclusions, and recommendations for the Legislature to the President of the Senate and the Speaker of the House of Representatives by November 1, 2019. Upon submission of the report, the work group is dissolved and discharged of further duties.

(5) STAFFING.—The Department of State shall provide support for the work group in performing its duties.

(6) PER DIEM AND TRAVEL EXPENSES.—Work group members shall serve without compensation but are entitled to receive reimbursement for per diem and travel expenses as provided in s.

112.061, Florida Statutes.

(7) EXPIRATION.—This section expires January 31, 2020.

Section 12. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

APR 23, 2019
Meeting Date

(7086)
Bill Number (if applicable)

786538
Amendment Barcode (if applicable)

Topic Voting Rights Restoration

Name Mark Schlakman

Job Title senior program director

Address 426 W. Jefferson St.
Street
Tallahassee, FL 32301-1602
City *State* *Zip*

Phone (850) 644-4614

Email mschlakman@fsu.edu

Speaking: ☐ For ☐ Against ☑ Information

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

Representing FSU Center for the Advancement of Human Rights

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

APR 23, 2019
Meeting Date

(7086)
Bill Number (if applicable)

620860
Amendment Barcode (if applicable)

Topic Voting Rights Restoration

Name Mark Schlakman

Job Title senior program director

Address 426 W. Jefferson St.
Street
Tallahassee, FL 32301-1602
City *State* *Zip*

Phone (850) 644-4614

Email mschlakman@fsu.edu

Speaking: ☐ For ☐ Against ☑ Information

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

Representing FSU Center for the Advancement of Human Rights

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

SB 7086
Bill Number (if applicable)

116400
Amendment Barcode (if applicable)

Topic Amendment 4 implantation

Name Neil Volz

Job Title Political Director

Address 4081 LB McLeod
Street
Orlando FL
City *State* *Zip*

Phone 239-848-5502

Email neil@floridarrc.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Rights Restoration Coalition

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

APR 23, 2019
Meeting Date

(7086)
Bill Number (if applicable)

116400
Amendment Barcode (if applicable)

Topic Voting Rights Restoration

Name Mark Schlakman

Job Title senior program director

Address 426 W. Jefferson St.
Street
Tallahassee, FL 32301-1602
City *State* *Zip*

Phone (850) 644-4614

Email mschlakman@fsu.edu

Speaking: ☐ For ☐ Against ☑ Information

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

Representing FSU Center for the Advancement of Human Rights

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

23 Apr 19 — *Meeting Date*

SB 7086 — *Bill Number (if applicable)*

Topic Voting

116400 — *Amendment Barcode (if applicable)*

Name Cecile Scoon

Job Title 1st VP League of Women Voters FL

Address 25 E 8th St — *Street*

Phone 850-319-1975

Panama City FL 32401 — *City* *State* *Zip*

Email cwscoon@knology.net

Speaking: ☐ For ☐ Against ☒ Information

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

Representing League of Women Voters, Fla

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

23 Apr 19
Meeting Date

SB 7086
Bill Number (if applicable)

Topic Voting

Amendment Barcode (if applicable)

Name Cecil Scoon

Job Title 1st VP League of Women Voters FL

Address 25 E 8th St
Street

Panama City FL 32401
City *State* *Zip*

Phone 850-319-1975

Email cmscoon1@knology.net

Speaking: ☐ For ☐ Against ☒ Information

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

Representing League of Women Voters FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1086 10:30
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Michael Anderson

Job Title FL United Methodist Fdn Leader

Address 3035 South Sherbrook Blvd. Phone _____
Street

Lady Lake FL 32159 Email _____
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL UMC

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/2018
Meeting Date

SB 7086
Bill Number (if applicable)

Topic Voting Rights Restoration

Amendment Barcode (if applicable)

Name Bob Rackleff

Job Title member

Address 502-D Hillcrest St. Phone 850-212-5663
Street

Tallahassee FL 32308 Email bob.rackleff@gmail.com
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Big Bend Voting Rights Project

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-19
Meeting Date

7086
Bill Number (if applicable)

Topic Voter Restoration

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title Ms

Address 625 E. Brevard St
Street

Phone 251-4280

Tallahassee FL 32308
City *State* *Zip*

Email barbaradevane1@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/23/19
Meeting Date

7086
Bill Number (if applicable)

Topic Voting Rights Restoration

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe Street
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-425-1344

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida State Conference of NAACP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

7086
Bill Number (if applicable)

Topic Voting Rights Restoration

Amendment Barcode (if applicable)

Name Michael Dobson

Job Title

Address 4005 Brandon Hill Dr
Street

Phone (850)241-5896

Tallahassee FL 32309
City State Zip

Email Michael@Dobsonandcraig.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing The Dream Foundation & Florida Voters Campaign

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/23/19
Meeting Date

7086
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Wilene Dennis Dozier

Job Title Assistant Sec. Jacksonville Branch NAACP

Address 3720 W. 5th St.
Street

Jacksonville, FL, 32209
City *State* *Zip*

Phone _____

Email _____

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Jacksonville Branch NAACP

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-19
Meeting Date

HB 7086
Bill Number (if applicable)

Topic Amendment 4

Amendment Barcode (if applicable)

Name Venice McNair

Job Title Great Wife

Address 116-12th Ave East
Street

Phone 941-448-0255

Bradenton FL
City *State* *Zip*

Email venicejmcnair@gmail.com

Speaking: ☑ For ☒ Against ☐ Information

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

Representing FRRC

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.23.19
Meeting Date

7086
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name David Cullen

Job Title _____

Address 1674 Univ. Pkwy #296
Street

Phone 941-323-2404

Sarasota FL 34243
City *State* *Zip*

Email cullenasea@aol.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Sierra Club Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

7086
Bill Number (if applicable)

Topic Voting Rights Restoration

Amendment Barcode (if applicable)

Name Kara Gross

Job Title

Address 4343 W. Flagler
Street

Phone 850-294-6071

Miami FL 786363
City *State* *Zip*

Email Kgross@ACLUFL.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing ACLU FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 620
INTRODUCER:	Committee on Rules; Committee on Military and Veterans Affairs and Space; and Senator Broxson
SUBJECT:	Military Affairs
DATE:	April 23, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Caldwell	MS	**Fav/CS**
2.	Wiehle	Imhof	IT	**Favorable**
3.	Brown	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 620 provides a number of benefits to servicemembers and their families and additional protections and benefits for military organizations, land interests and uses. The bill:

- Prohibits a landlord from requiring a servicemember to pay a security deposit or advance rent that exceeds, in the aggregate, the total sum of rent that would be due in a two-month period;
- Provides an additional basis for a servicemember to terminate a rental agreement with a one month written notice when a servicemember becomes eligible to live in and opts to move into privatized military housing;
- Adds two military installations to the list of those that designated local governments are required to coordinate with regarding compatibility of land development;
- Provides that a conservation easement created to prevent encroachment to a military installation survives a sale of property for nonpayment of taxes;
- Authorizes the Department of Economic Opportunity to award grants to support activities including marketing, advocacy, sponsorships, outreach, and military-related community support events;
- Establishes the Blue Angels license plate to be developed by the Department of Highway Safety and Motor Vehicles and used to fund the Naval Aviation Museum Foundation;
- Adds to the list of prohibited activities on rural-lands protection easements and agricultural protection agreements the construction of structures or other activities that are incompatible with the mission of a military installation, if the land lies within specified types of areas;

- Requires school districts to accept a permanent change of station order as proof of residency for all public school programs including special academic programs; and
- Specifies the time at which active duty members, spouses, and their dependents are classified as residents for tuition purposes.

II. Present Situation:

Rental Housing Agreements

Florida law allows a residential landlord to require as a term of the lease that a tenant pay a deposit or advance rent. The statute does not cap how much may be collected from a tenant.[1]

An active servicemember may terminate a residential rental agreement by providing the landlord a thirty-day written notice of termination if:

- The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;
- The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty;
- The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record before entering active duty or state active duty;
- After entering into a rental agreement, the servicemember receives military orders requiring a move into government quarters, or the servicemember becomes eligible to live in and opts to move into government quarters;
- The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders for a period of more than 60 days to an area 35 miles or more from the rental property; or
- The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area 35 miles or more from the rental property.[2]

Military Installations

Exchange of Information Between Local Governments and Military Installations

Section 163.3175, F.S., provides the following legislative findings relating to land use around military installations:

- Incompatible development of land close to military installations can adversely affect the ability of such an installation to carry out its mission;
- Such development also threatens the public safety because of the possibility of accidents occurring within the areas surrounding a military installation;
- The economic vitality of a community is affected when military operations and missions must relocate because of incompatible urban encroachment; and

[1] Section 83.49, F.S.
[2] Section 83.682(1), F.S.

- Therefore, it is desirable for the local governments in the state to cooperate with military installations to encourage compatible land use, help prevent incompatible encroachment, and facilitate the continued presence of major military installations in this state.

The section identifies fourteen major military installations that, due to their mission and activities, have a greater potential for experiencing compatibility and coordination issues than others.[3] It also identifies proximate local governments and requires those local governments to transmit to the commanding officer of the relevant associated installation or installations the following:

- Information relating to proposed changes to the local government's comprehensive plan or land development regulations which, if approved, would affect the intensity, density, or use of the land adjacent to or in close proximity to the military installation; and
- At the request of the commanding officer, copies of applications for development orders requesting a variance or waiver from height or lighting restrictions or noise attenuation reduction requirements within areas defined in the local government's comprehensive plan as being in a zone of influence of the military installation.[4]

Each affected local government must provide the military installation an opportunity to review and comment on the proposed changes.[5] The commanding officer or his or her designee may provide to the affected local government advisory comments, data, and analyses on the effect the proposed changes may have on the mission of the military installation.[6] In making a determination on the proposed changes, the affected local government must consider and weigh the strategic mission of the base, public safety, and economic vitality associated with the base's operations, while also respecting private property rights and avoiding undue restrictions on those rights.[7] All comments on comprehensive plan amendments must be forwarded to the state land planning agency.[8] To facilitate the exchange of information, a representative of a military installation acting on behalf of all military installations within that jurisdiction serves as a nonvoting member of the county's or affected local government's land planning or zoning board.[9]

Continuation of Easement after Tax Sale or Deed Execution

Specified types of easements, and the rights of the owners of those easements, survive and are enforceable after lands subject to an easement are sold for nonpayment of taxes to the same extent as though the land had been conveyed by voluntary deed. To preserve the easement, it must be evidenced by written instrument recorded in the office of the clerk of the circuit court in the county where the land is located before the recording of the tax deed or master's deed, or otherwise physically evidenced, as provided.[10]

[3] Section 163.3175(2)(a)-(n), F.S.
[4] Section 163.3175(4), F.S.
[5] *Id*.
[6] Section 163.3175(5), F.S.
[7] Section 163.3175(6), F.S.
[8] *Id*.
[9] Section 163.3175(7), F.S.
[10] Section 197.572, F.S.

Military Base Retention Grants Program

The Legislature established the Florida Defense Infrastructure Grant Program (FDIGP) to support local infrastructure projects considered to positively impact the military value of installations in the state. Fundable infrastructure projects include those related to encroachment, transportation and access, utilities, communications, housing, environment, and security. A grant award may not be used to fund on-base military construction.[11]

The Legislature established the Military Base Protection Program within the Department of Economic Opportunity (DEO)[12] to:

- Secure nonconservation lands to serve as a buffer to protect military installations against encroachment; and
- Support local community efforts to engage in service partnerships with military installations.[13]

The Legislature established the Florida Defense Reinvestment Grant Program (FDRGP) to work with defense-dependent communities in developing and implementing strategies to support the missions of military installations, and develop and implement alternative strategies to transition from a defense-based to a nondefense economy.[14] A local governmental entity may apply to the FDRGP for a grant to support a community-based activity that:

- Protects existing military installations;
- Diversifies the economy of a defense-dependent community; or
- Develops a plan for the reuse of closed or realigned military installations.[15]

The DEO awards grants on a competitive basis from available funds to support activities related to the FDRGP and the FDIGP.[16] The term "activities" means studies, presentations, analyses, plans, and modeling. Additionally, for the FDIGP, a qualifying activity also includes construction, land purchases, and easements. Travel costs and costs incidental to a grant qualify, while staff salaries do not.[17]

Rural-Lands-Protection Easements

On behalf of the Board of Trustees of the Internal Improvement Trust Fund, the Department of Agriculture and Consumer Services may allocate moneys: to acquire perpetual, less-than-fee interest in land; to enter into agricultural protection agreements; and to enter into resource conservation agreements for the following purposes:

- Promotion and improvement of wildlife habitat;
- Protection and enhancement of water bodies, aquifer recharge areas, wetlands, and watersheds;
- Perpetuation of open space on lands with significant natural areas; or

[11] Chapter 2004-230, Laws of Fla.; s. 288.980(5), F.S.
[12] Chapter 2012-159, Laws of Fla.; s. 288.980(2)(a), F.S., established the Military Base Protection program.
[13] Chapter 2013-222, Laws of Fla., provided the functions of the Military Base Protection Program.
[14] Chapter 2012-159, Laws of Fla.; s. 288.980(4), F.S.
[15] Section 288.980(4)(a)-(c), F.S.
[16] Chapter 2012-159, Laws of Fla.; Section 288.980(3)(a), F.S.
[17] Section 288.980(3)(b), F.S.

- Protection agricultural lands threatened by conversion to other uses.[18]

A rural-lands-protection easement is a perpetual, right or interest in agricultural land appropriate to retain the land in predominantly its current state and to prevent the subdivision and conversion of the land into other uses. The easement prohibits:

- Construction or placing of buildings, roads, billboards or other advertising, utilities, or structures, except those structures and unpaved roads necessary for the agricultural operations on the land or structures necessary for other activities allowed under the easement, and certain linear facilities;
- Subdivision of the property;
- Dumping or placing of trash, waste, or offensive materials; and
- Activities that affect the natural hydrology of the land or that detrimentally affect water conservation, erosion control, soil conservation, or fish or wildlife habitat, except those required for environmental restoration; federal, state, or local government regulatory programs; or best management practices.[19]

An agricultural protection agreement must have a term of thirty years and provide payments to landowners having significant natural areas on their land. Public access and public recreational opportunities may be negotiated at the request of the landowner.[20] For the length of the agreement, the landowner agrees to prohibit:

- Construction or placing of buildings, roads, billboards or other advertising, utilities, or structures, except those structures and unpaved roads necessary for the agricultural operations on the land or structures necessary for other activities allowed under the easement, and certain linear facilities;
- Subdivision of the property;
- Dumping or placing of trash, waste, or offensive materials; and
- Activities that affect the natural hydrology of the land, or that detrimentally affect water conservation, erosion control, soil conservation, or fish or wildlife habitat.[21]

A resource conservation agreement is a contract for services providing annual payments to landowners for services that actively improve habitat and water restoration or conservation on their lands over and above that which is already required by law or that provide recreational opportunities. Property owners are eligible to enter into a resource conservation agreement only after entering into a conservation easement or rural lands protection easement.[22]

Specialty License Plates

Presently, there are over 120 specialty license plates available for purchase in Florida.[23] Specialty license plates are available to an owner or lessee of a motor vehicle who is willing to

[18] Section 570.71(1), F.S.
[19] Section 570.71(3), F.S.
[20] Section 570.71(5), F.S.
[21] Section 570.71(5)(a), F.S.
[22] Section 570.71(4), F.S.
[23] A list of Florida's specialty license plates is available on the DHSMV website at http://www.flhsmv.gov/dmv/specialtytags/ (last visited April 5, 2019).

pay an annual use fee, ranging from $15 to $25, paid in addition to required license taxes and service fees.[24] The annual use fees are distributed to an organization or organizations in support of a particular cause or charity signified on the plate's design and designated in statute.[25]

In order to establish a specialty license plate and after the plate is approved by law, s. 320.08053, F.S., requires the following actions within certain timelines:

- Within 60 days, the organization must submit an art design for the plate, in a medium prescribed by the DHSMV;
- Within 120 days, the DHSMV must establish a method to issue pre-sale vouchers for the specialty license plate; and
- Within 24 months after the pre-sale vouchers are established, the organization must obtain a minimum of 1,000 voucher sales before initiating manufacturing of the plate.

If the minimum sales requirement has not been met by the end of the 24-month pre-sale period, then the DHSMV will discontinue the plate and issuance of pre-sale vouchers. Upon discontinuation, a purchaser of a presale voucher may use the annual use fee as a credit towards any other specialty license plate or apply for a refund with the DHSMV.[26]

The annual use fees collected by an organization and any interest earned from the fees may be expended only for use in this state unless the annual use fee is derived from the sale of specified United States Armed Forces and veterans-related specialty plates.[27] Additionally, organizations must adhere to certain accountability requirements, including an annual audit or attestation document affirming that funds received have been spent in accordance with applicable statutes.[28]

Blue Angels

At the end of World War II, Chief of Naval Operations Admiral Chester W. Nimitz ordered the formation of a flight demonstration team to keep the public interested in naval aviation. In a short three months, the Navy Flight Exhibition Team performed its first flight demonstration on June 15, 1946, at their home base, Naval Air Station (NAS) Jacksonville, Florida. Lt. Commander Roy "Butch" Voris led the team and flew the Grumman F6F-5 Hellcat.[29]

The new Navy Flight Exhibition team was only the second formal flying demonstration team to have been created in the world, since the Patrouille de France formed in 1931. The team was introduced as the "Blue Angels" at a show in Omaha, Nebraska, in July 1946. Right Wing Pilot Lt. Maurice "Wick" Wickendoll came across the name in the New Yorker Magazine in a column called Goings On About Town. Voris said, "That sounds great! The Blue Angels. Navy, Blue, and Flying!"[30]

[24] Section 320.08056, F.S.
[25] Section 320.08058, F.S.
[26] Section 320.08053(2)(b), F.S.
[27] Section 320.08056(10)(a), F.S.
[28] Section 320.08062, F.S.
[29] U.S. Navy Blue Angels, *History of the Blue Angels*, https://www.blueangels.navy.mil/history/ (last visited April 23, 2019).
[30] *Id.*

Today, a total of 16 officers voluntarily serve with the Blue Angels. Each year the team typically selects three tactical (fighter or fighter/attack) jet pilots, two support officers and one Marine Corps C-130 pilot to relieve departing members.[31]

Since 1946, the Blue Angels have performed for more than 450 million fans.[32]

Students of Military Families

Transfers of K-12 students

The Legislature recognizes the challenges faced by military students and requires the Florida Department of Education (department) to assist in the transition of these students in military families by:

- Improving the timely transfer of records;
- Developing systems to ease student transition during the first two weeks of enrollment;
- Promoting practices which foster access to extracurricular programs;
- Establishing procedures to lessen the adverse impact of moves;
- Encouraging or continuing partnerships between the military base and the school system;
- Providing services for transitioning students when applying to and finding funding for postsecondary study; and
- Providing other assistance as identified by the department, school, and military personnel. [33]

The department is further required to facilitate the development and implementation of memoranda of agreement between school districts and military installations which address strategies for assisting students who are the children of active duty military personnel in the transition to Florida schools.[34]

Finally, dependent children of active duty military personnel who otherwise meet the eligibility criteria for special academic programs[35] offered through public schools must be given first preference for admission to these programs even if the program is offered through a public school other than the school to which the student would generally be assigned.[36]

According to the Department of the Navy, in some school districts in Florida, military families miss special program application deadlines because their Permanent Change of Station orders are not considered proof of residency. Consequently, the child has been relegated to a lower performing "D" or "F" school based on exceeded capacity at the actual time of arrival.[37]

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[31] U.S. Navy Blue Angels, *The 2019 Blue Angels Team*, https://www.blueangels.navy.mil/team/ (last visited April 23, 2019).
[32] U.S. Navy Blue Angels, *Home*, https://www.blueangels.navy.mil/ (last visited April 23, 2019).
[33] Section 1003.05(1), F.S.
[34] Section 1003.05(2), F.S.
[35] Special academic programs include magnet schools, advanced studies programs, advanced placement, dual enrollment, Advanced International Certificate of Education, and International Baccalaureate. *See* s. 1003.05(3), F.S.
[36] Section 1003.05(3), F.S.
[37] Letter from Navy Region Southeast Commander, B. Bolivar, to Governor Rick Scott (Aug. 9, 2018) (on file with the Committee on Military and Veterans Affairs and Space).

Residency Status for Tuition purposes

Florida law defines "tuition" as "the basic fee charged to a student for instruction provided by a public postsecondary educational institution in the state."[38] Students who are not classified as "residents for tuition purposes"[39] are required to pay the full cost of instruction at a public postsecondary institution. This additional charge is known as the "out-of-state fee."[40] Institutions are authorized, and sometimes required to provide exemptions and/or waivers[41] of the out-of-state fee to students who meet specified criteria.

Current law provides eleven categories in which individuals who meet certain criteria are automatically considered residents of Florida for tuition purposes, including the following criteria for servicemembers:

- Active duty members of the U.S. Armed Services residing or stationed in Florida and their spouses and dependent children, and active drilling members of the Florida National Guard; and
- Active duty members of the U.S. Armed Services and their spouses and dependents attending a public college or state university within 50 miles of the military establishment where they are stationed, if the military establishment is within a county contiguous to Florida.[42]

III. Effect of Proposed Changes:

The bill provides benefits to servicemembers and their families and additional protections and benefits for military organizations, land interests and uses.

Rental Housing

The bill creates two benefits for servicemembers who are residential tenants.

First, the bill prohibits a residential landlord from requiring a servicemember to pay a security deposit or advance rent that exceeds, in the aggregate, the total sum of rent that would be due in a two-month period under the rental agreement.

Second, the bill identifies a new basis for a servicemember to terminate a residential rental agreement with a one-month written notice when a servicemember becomes eligible to live in and opts to move into privatized military housing.

Military Installations

Exchange of Information Between Local Governments and Military Installations

The bill adds the following military installations as being among those having a greater potential for experiencing compatibility and coordination issues, and the following local governments as

[38] Section 1009.01(1), F.S.
[39] Section 1009.21(1)(g), F.S.
[40] Section 1009.01(2), F.S.
[41] Sections 1009.25 and 1009.26, F.S.
[42] Section 1009.21(10), F.S.

among those required to include the military installations in their comprehensive and land development planning:

- Naval Support Activity Orlando, including Bugg Spring and the Naval Ordnance Test Unit, associated with Orange County and the city of Orlando; and
- United States Southern Command, associated with Miami-Dade County and the city of Doral.

Continuation of Easement after Tax Sale or Deed Execution

The bill adds to the list of easements that remain valid after a tax sale or the issuance of a tax certificate in foreclosure proceedings an easement to prevent an encroachment of military installations.

Military Base Retention Grants Program

The Department of Economic Opportunity may award grants on a competitive basis from the Florida Defense Reinvestment Grant Program and the Florida Defense Infrastructure Grant Program for certain activities. The bill adds to the list of these activities marketing, advocacy, sponsorships, outreach, and military-related community support events.

Rural-Lands-Protection Easements and Agriculture Protection Agreements

The bill adds to the list of activities that are prohibited under a rural-lands-protection easement or an agricultural protection agreement the construction of structures or other activities that are incompatible with the mission of a military installation when the land lies within an area identified as a clear zone or an accident potential zone or within Military Influence Planning Area 1 or 2 as established in the Joint Land Use Study of the installation.

Blue Angels License Plate

This bill requires the Department of Highway Safety and Motor Vehicles (department) to establish a Blue Angels license plate. The department will determine the colors and design, and must include the word "Florida" at the top of the plate, and "Home of the Blue Angels" at the bottom.

Annual use fees collected from the sale of the plate are to be allocated to the Naval Aviation Museum Foundation (foundation), a nonprofit Florida corporation, for the following distribution as follows:

- The foundation may use up to 15 percent of funds received for the maintenance, programs, marketing, and projects of the foundation;
- The National Flight Academy will receive 50 percent of the funds;
- The National Naval Aviation Museum will receive the remainder of the funds.

The development of the plate is contingent on passage of separate legislation creating an annual use fee under s. 320.08056, F.S., for the plate.

Students of Military Families

Transfers of K-12 students

The bill requires school districts to accept a permanent change of station order as proof of residency of each dependent school child listed in the order for the child's admission to all public school programs including special academic programs.

Residency Status for Tuition purposes

Current law classifies active duty members and their families as residents for tuition purposes in certain instances.

The bill specifies that active duty members of the U.S. Armed Services and their spouses and dependent children are classified as residents for tuition purposes if they reside or are stationed in Florida at the time of acceptance to a public college or state university.

Additionally, active duty members of the U.S. Armed Services and their spouses and dependents attending a public college or state university within 50 miles of the military establishment where they are stationed are classified as residents for tuition purposes at the time of acceptance to a public college or state university if the military establishment is within a county contiguous to Florida.

Therefore, a student who qualifies for in-state tuition at a Florida university or college at the time of acceptance into the university or college will continue to qualify even if the servicemember receives orders to move before the dependent enrolls in the university or college.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill prohibits a landlord from requiring more than the total sum of rent that would be due in a two-month period only if the tenant is a servicemember. This provision could possibly be challenged as constitutionally suspect under the equal protection clause of the state constitution.[43] A classification that impedes a fundamental right or restricts a suspect class triggers the highest level of judicial scrutiny, followed by intermediate-level scrutiny for certain protected classes. As renting property is not considered a fundamental right, and a non-military member is not part of a suspect or otherwise protected class, a court would apply the lowest level of judicial review, that of rational basis. The rational basis test requires that a statute bear a rational and reasonable relationship to a legitimate state objective, and cannot be arbitrarily or capriciously imposed.[44] Still, a legislature may establish a classification without presumably violating equal protection,[45] and courts have upheld some level of disparate treatment as constitutional.[46] In its review, a court will consider whether similarly situated persons are treated similarly.[47]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill establishes a Blue Angels license plate. Individuals who elect to purchase this specialty license plate will pay an additional use fee and applicable vehicle license taxes and fees. Separate legislation establishing an annual fee for the plate is required before the department can develop the plate.

B. Private Sector Impact:

Military members and their families may benefit from the bill in the areas of private property rentals and education.

First, servicemembers will not have to come up with as much cash up front when signing a lease. A servicemember also will not be penalized for breaking a lease if he or she becomes eligible to live in and opts to move into privatized military housing.

Second, active duty members of the Armed Services and their spouses and dependents will receive the benefit of in-state tuition if the active duty member receives a relocation order after accepting admission but before enrolling at a public postsecondary institution.

If the user fee on the sales of a Blue Angel license plate passes in separate legislation, organizations that receive funds collected from these sales will also benefit from this bill.

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[43] Art. 1, s. 2, of the state constitution provides: "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability."
[44] *Estate of McCall v. U.S.*, 134 So.3d 894, 901 (Fla. 2014).
[45] *Progressive American Insurance Co. v. Eduardo J. Garrido D.C. P.A.*, 211 So.3d 1086, 1090-1091 (Fla. 3rd DCA 2017).
[46] *Duncan v. Moore*, 754 So.2d 708, 712 (Fla. 2000).
[47] *Id*. at 712.

C. Government Sector Impact:

Orange County, Miami-Dade County, and the city of Doral will have to engage in an information exchange with proximate military installations and address in their comprehensive plans land development compatibility, so the bill may result in an unknown fiscal impact on those local governments.[48]

According to the Department of Agriculture and Consumer Services, the bill's provisions on conservation easements and agricultural protection agreements will likely cause an increase in contracting costs.[49]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Easements on Land

According to the Department of Agriculture and Consumer Services (department): [50]

> Rural-Lands-Protection Easement(s) (RLPE) and Agricultural Protection Agreement(s) (APA) make it financially feasible for landowners to keep the land from becoming developed thereby preserving Florida's natural environment and agricultural activities. Easements are attached to the deed and follow the property regardless of ownership. The utilization restrictions are uniform between RLPE and APA, except RLPEs enable a landowner to affect the hydrology of the land, if it is required for environmental restoration. The current requirements already prohibit and/or limit construction, subdivision of property, storage of waste or other offensive materials, and activities that affect hydrology. The department, which remains cognizant of the importance of the relationship amongst the state, the military and the landowner, currently negotiates reasonable use requirements that reconcile the landowner's and the military department's interests for properties situated near military installations. The FDACS has formed a strategic partnership with the Department of Defense, which has allowed the state to receive federal funds to enact easements in areas where encroachment on military installations is possible.
>
> In addition to the restrictions discussed above, the statutory revisions will prohibit RLPE or APA landowners from constructing structures that are incompatible with the mission of the military, if the land lies within a clear zone, an accident potential zone, or a Military Influence Planning Area 1 or 2. The bill does not define "incompatible with the mission of a military installation," meaning that numerous interpretations are possible;

[48] Although the city of Orlando is referenced as being associated with the military installation of Naval Support Activity Orlando, the military installation is located in unincorporated Orange County. Therefore, a fiscal impact on the city of Orlando is not anticipated.
[49] Department of Agriculture and Consumer Services, *Agency Bill Analysis for SB 620* (Feb. 11, 2019) (on file with the Senate Committee on Military and Veteran Affairs and Space).
[50] *Id*.

therefore, further clarification may be required to limit applicability, to identify who makes such determinations and to provide the details required for accurately interpreting the effects of the legislation. The effect that these unknowns will have on easements is discussed below.

The proposed provision will create ambiguity related to each party's rights, unless each individual agreement explicitly specifies what activities are incompatible with the mission of the military beyond a statutory prescription. A statutory prohibition may prohibit the department from exercising reasonable judgment when easement agreements involve military considerations if the definition of "incompatible with the mission of a military installation" is disputed. Historically, the department has utilized this reasonable judgment to create universally beneficial outcomes; therefore, limiting the department's ability to serve as an intermediary may lead to fewer landowners entering into easement agreements, more developed lands and more encroachment challenges for the military.

Residency for Tuition Purposes

Section 9 of the bill specifies that the time at which active duty members or their spouses or dependents are classified as residents for tuition purposes is at the time of acceptance of an admissions offer to a public postsecondary institution. Current law does not specify a time, so this provision may have the unintended consequence of narrowing a servicemember's access to in-state tuition.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 83.49, 83.682, 163.3175, 197.572, 288.980, 320.08058, 570.71, 1003.05, and 1009.21.

IX. Additional Information:

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

CS/CS by Rules on April 23, 2019:

- Requires the Department of Highway Safety and Motor Vehicles to develop a Blue Angels license plate;
- Specifies language to be included on the plate;
- Provides for distribution of annual use fees to the Naval Aviation Museum Foundation (foundation), to be allocated as follows:
  - The foundation may keep and use up to 15 percent for maintenance and projects of the foundation and marketing of the plate;
  - The National Flight Academy will receive 50 percent; and
  - The National Naval Aviation Museum will receive the remainder.
- The department may not develop the license plate without separate legislation establishing an annual use fee for the plate.

CS by Military and Veterans Affairs and Space on April 3, 2019:

- Revises from a 60-day to a 2-month period, excluding prorated rent, the cap on the sum of rent that would be due during that time for payment of an advance security deposit or rent required from a servicemember;
- Revises from a 30 day to a 1 month period the minimum period of notice a qualifying servicemember must provide to a landlord through receipt of a written termination of a rental agreement;
- Revises from 60 days to 2 months the minimum period of time a military relocation order must specify that a servicemember has been relocated to an area at least 35 miles from the rental property for the servicemember to terminate the rental agreement.

B. Amendments:

None.

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

824062

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2019	.	
	.	
	.	
	.	

The Committee on Rules (Broxson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 30 - 70.

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

And the title is amended as follows:

Delete lines 3 - 8

and insert:

163.3175, F.S.;

252012

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2019	.	
	.	
	.	
	.	

The Committee on Rules (Broxson) recommended the following:

Senate Amendment (with title amendment)

Between lines 140 and 141
insert:

Section 6. Subsection (84) is added to section 320.08058, Florida Statutes, to read:

320.08058 Specialty license plates.—

(84) BLUE ANGELS LICENSE PLATES.—

(a) The department shall develop a Blue Angels license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The

252012

word "Florida" must appear at the top of the plate, and the words "Home of the Blue Angels" must appear at the bottom of the plate; however, the development of the plate is contingent upon the enactment of legislation creating an annual use fee under s. 320.08056 for the Blue Angels license plate.

(b) The annual use fees from the sale of the plate shall be distributed to the Naval Aviation Museum Foundation, a nonprofit Florida corporation under s. 501(c)(3) of the Internal Revenue Code, to fund the maintenance, programs, marketing, and projects of the foundation, including the National Naval Aviation Museum and the National Flight Academy in Pensacola. Up to 15 percent of the funds received by the Naval Aviation Museum Foundation may be used for marketing of the plate and costs directly associated with the administration of the foundation. The Naval Aviation Museum Foundation shall distribute 50 percent of the funds to eligible programs and projects associated with the National Flight Academy and the remainder of the funds to eligible programs and projects associated with the National Naval Aviation Museum.

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

And the title is amended as follows:

Between lines 16 and 17

insert:

320.08058, F.S.; directing the Department of Highway Safety and Motor Vehicles to develop a Blue Angels license plate; providing for the distribution and use of fees collected from the sale of such plate; amending s.

By the Committee on Military and Veterans Affairs and Space; and Senator Broxson

583-03836-19 2019620c1

A bill to be entitled

An act relating to military affairs; amending s. 83.49, F.S.; prohibiting a landlord from requiring a prospective tenant who is a servicemember to deposit or advance more than a certain amount of funds; amending s. 83.682, F.S.; providing an additional circumstance under which a servicemember may terminate a rental agreement; amending s. 163.3175, F.S.; revising applicability with respect to certain military installations; amending s. 197.572, F.S.; providing that the title to certain lands remains subject to an easement to prevent encroachment of military installations after a tax sale or the issuance of a tax certificate in foreclosure proceedings; amending s. 288.980, F.S.; revising the definition of the term "activities"; amending s. 570.71, F.S.; prohibiting certain construction or activities that are incompatible with the mission of a military installation on certain land under a rural-lands-protection easement; amending s. 1003.05, F.S.; requiring public schools to accept a permanent change of station order as proof of residency for certain programs; amending s. 1009.21, F.S.; revising when active duty members of the Armed Services of the United States are classified as residents for tuition purposes; providing an effective date.

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

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

583-03836-19 2019620c1

Section 1. Subsection (10) is added to section 83.49, Florida Statutes, to read:

83.49 Deposit money or advance rent; duty of landlord and tenant.—

(10) If the tenant is a servicemember, a landlord may not require payment of a security deposit or advance rent that exceeds, in the aggregate, the total sum of rent that would be due in a 2-month period under the rental agreement, excluding prorated rent.

Section 2. Subsection (1) of section 83.682, Florida Statutes, is amended to read:

83.682 Termination of rental agreement by a servicemember.—

(1) Any servicemember may terminate his or her rental agreement by providing the landlord with a written notice of termination to be effective on the date stated in the notice that is at least 1 month ~~30 days~~ after the landlord's receipt of the notice if any of the following criteria are met:

(a) The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises.~~,~~

(b) The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty.~~,~~

(c) The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record prior to entering active duty or state active duty.~~,~~

(d) After entering into a rental agreement, the servicemember receives military orders requiring him or her to

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

move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters or privatized military housing.~~;~~

(e) The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 2 months. ~~60 days; or~~

(f) The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises.

Section 3. Present paragraphs (m) and (n) of subsection (2) of section 163.3175, Florida Statutes, are redesignated as paragraphs (n) and (o), respectively, and a new paragraph (m) and paragraph (p) are added to that subsection, to read:

163.3175 Legislative findings on compatibility of development with military installations; exchange of information between local governments and military installations.—

(2) Certain major military installations, due to their mission and activities, have a greater potential for experiencing compatibility and coordination issues than others. Consequently, this section and the provisions in s. 163.3177(6)(a), relating to compatibility of land development with military installations, apply to specific affected local governments in proximity to and in association with specific military installations, as follows:

(m) Naval Support Activity Orlando, including Bugg Spring and Naval Ordnance Test Unit, associated with Orange County and

Orlando.

(p) United States Southern Command, associated with Miami-Dade County and Doral.

Section 4. Section 197.572, Florida Statutes, is amended to read:

197.572 Easements for conservation purposes, prevention of encroachment of military installations, public service purposes, support of certain improvements, or drainage or ingress and egress survive tax sales and deeds.—When any lands are sold for the nonpayment of taxes, or any tax certificate is issued thereon by a governmental unit or agency or pursuant to any tax lien foreclosure proceeding, the title to the lands shall continue to be subject to any easement for conservation purposes as provided in s. 704.06, for the purpose of preventing the encroachment of military installations as provided in s. 288.980(2), or for telephone, telegraph, pipeline, power transmission, or other public service purpose; and shall continue to be subject to any easement that supports improvements that may be constructed above the lands; and any easement for the purposes of drainage or of ingress and egress to and from other land. The easement and the rights of the owner of it shall survive and be enforceable after the execution, delivery, and recording of a tax deed, a master's deed, or a clerk's certificate of title pursuant to foreclosure of a tax deed, tax certificate, or tax lien, to the same extent as though the land had been conveyed by voluntary deed. The easement must be evidenced by written instrument recorded in the office of the clerk of the circuit court in the county where such land is located before the recording of such tax deed or master's deed,

or, if not recorded, an easement for a public service purpose must be evidenced by wires, poles, or other visible occupation, an easement for drainage must be evidenced by a waterway, water bed, or other visible occupation, and an easement for the purpose of ingress and egress must be evidenced by a road or other visible occupation to be entitled to the benefit of this section; however, this shall apply only to tax deeds issued after the effective date of this act.

Section 5. Paragraph (b) of subsection (3) of section 288.980, Florida Statutes, is amended to read:

288.980 Military base retention; legislative intent; grants program.—

(3)

(b) The term "activities" as used in this section means studies, presentations, analyses, plans, ~~and~~ modeling, marketing, advocacy, sponsorships, outreach, and military-related community support events. For the purposes of the Florida Defense Infrastructure Grant Program, the term "activities" also includes, but is not limited to, construction, land purchases, and easements. Staff salaries are not considered an "activity" for which grant funds may be awarded. Travel costs and costs incidental thereto incurred by a grant recipient shall be considered an "activity" for which grant funds may be awarded.

Section 6. Subsection (3) and paragraph (a) of subsection (5) of section 570.71, Florida Statutes, are amended to read:

570.71 Conservation easements and agreements.—

(3) Rural-lands-protection easements shall be a perpetual right or interest in agricultural land which is appropriate to

retain such land in predominantly its current state and to prevent the subdivision and conversion of such land into other uses. This right or interest in property shall prohibit only the following:

(a) Construction or placing of buildings, roads, billboards or other advertising, utilities, or structures, except those structures and unpaved roads necessary for the agricultural operations on the land or structures necessary for other activities allowed under the easement, and except for linear facilities described in s. 704.06(11).~~;~~

(b) Subdivision of the property.~~;~~

(c) Dumping or placing of trash, waste, or offensive materials.~~; and~~

(d) Activities that affect the natural hydrology of the land or that detrimentally affect water conservation, erosion control, soil conservation, or fish or wildlife habitat, except those required for environmental restoration; federal, state, or local government regulatory programs; or best management practices.

(e) Construction of structures or other activities that are incompatible with the mission of a military installation, when the land lies within an area identified as a clear zone or an accident potential zone or within Military Influence Planning Area 1 or 2 as established in the Joint Land Use Study of the installation.

(5) Agricultural protection agreements shall be for terms of 30 years and will provide payments to landowners having significant natural areas on their land. Public access and public recreational opportunities may be negotiated at the

request of the landowner.

(a) For the length of the agreement, the landowner shall agree to prohibit all of the following:

1. Construction or placing of buildings, roads, billboards or other advertising, utilities, or structures, except those structures and unpaved roads necessary for the agricultural operations on the land or structures necessary for other activities allowed under the easement, and except for linear facilities described in s. 704.06(11). ~~,~~

2. Subdivision of the property. ~~,~~

3. Dumping or placing of trash, waste, or offensive materials. ~~; and~~

4. Activities that affect the natural hydrology of the land, or that detrimentally affect water conservation, erosion control, soil conservation, or fish or wildlife habitat.

5. Construction of structures or other activities that are incompatible with the mission of a military installation, when the land lies within an area identified as a clear zone or an accident potential zone or within Military Influence Planning Area 1 or 2 as established in the Joint Land Use Study of the installation.

Section 7. Subsection (4) is added to section 1003.05, Florida Statutes, and subsection (3) of that section is republished, to read:

1003.05 Assistance to transitioning students from military families.—

(3) Dependent children of active duty military personnel who otherwise meet the eligibility criteria for special academic programs offered through public schools shall be given first

preference for admission to such programs even if the program is being offered through a public school other than the school to which the student would generally be assigned. If such a program is offered through a public school other than the school to which the student would generally be assigned, the parent or guardian of the student must assume responsibility for transporting the student to that school. For purposes of this subsection, special academic programs include magnet schools, advanced studies programs, advanced placement, dual enrollment, Advanced International Certificate of Education, and International Baccalaureate.

(4) Public schools must accept a permanent change of station order that relocates a military family to a local military installation as proof of residency for all public school authorized programs including, but not limited to, the programs listed in subsection (3).

Section 8. Paragraphs (a) and (b) of subsection (10) of section 1009.21, Florida Statutes, are amended to read:

1009.21 Determination of resident status for tuition purposes.—Students shall be classified as residents or nonresidents for the purpose of assessing tuition in postsecondary educational programs offered by charter technical career centers or career centers operated by school districts, in Florida College System institutions, and in state universities.

(10) The following persons shall be classified as residents for tuition purposes:

(a) Active duty members of the Armed Services of the United States residing or stationed in this state at the time of

acceptance, their spouses, and dependent children, and active drilling members of the Florida National Guard.

(b) Active duty members of the Armed Services of the United States and their spouses and dependents attending a Florida College System institution or state university within 50 miles of the military establishment where they are stationed at the time of acceptance to a Florida College System institution or state university, if such military establishment is within a county contiguous to Florida.

Section 9. This act shall take effect July 1, 2019.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 10, 2019

I respectfully request that **CS/SB 620**, relating to Military Affairs, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Doug Broxson
Florida Senate, District 1

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1690
INTRODUCER:	Banking and Insurance Committee and Senator Broxson
SUBJECT:	Warranty Associations
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Harmsen	McKay	CM	**Favorable**
3.	Matiyow	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1690 makes several changes to the regulation of home and service warranty associations. Specifically, the bill:

- Amends current law to require home warranty associations to maintain separate, auditable unearned premium reserve accounts funded at a level equal to at least 25 percent of their gross written premiums received from policies *in effect in Florida*, rather than all issued policies.
- Clarifies that service warranty associations must maintain separate, auditable unearned premium reserve accounts funded at a level equal to at least 25 percent of their gross written premiums received from all policies *in force which are written in Florida*;
- Makes conforming changes to reserve accounts held by home and service warranty associations;
- Requires home warranty and service warranty associations that operate in Florida and that write policies that will have effect in other states to comply with the financial requirement laws of those states;
- Prohibits the exclusion of coverage due to the presence of rust or corrosion if it was not a contributing cause of the mechanical breakdown or failure of the covered appliance, unit, or system; and
- Requires home warranty companies that cover HVAC parts replacements, but that do not cover manufacturer-recommended compatibility or efficiency requirements to:
  - State in conspicuous boldface type that the contract does not provide replacement coverage for components necessary to maintain the compatibility and efficiency

requirements recommended by the manufacturer unless the consumer purchases additional coverage. The contract must also state the website or phone number where a consumer may purchase additional coverage; and

- Provide the consumer with the option, at an additional cost, to purchase replacement coverage for components necessary to maintain the compatibility and efficiency requirements.

II. Present Situation:

Warranty Associations

Florida warranty associations, including those that sell home and service warranties, are regulated by the Office of Insurance Regulation (OIR).[1] A service warranty is a contract that generally covers the repair, replacement, or maintenance of a consumer product.[2] A home warranty is a contract that either indemnifies the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement of a structural component of, or an appliance in, a home.[3]

While warranties are not considered traditional insurance products, the OIR regulates warranty associations and companies in a manner similar to its regulation of insurers.[4] Home and service warranty associations must be licensed by the OIR[5] and must maintain certain minimum financial standards in order to do business in Florida.[6]

The following chart reflects the number of licensed home and service warranty associations in Florida as of April 19, 2019:[7]

Type of Association/Company	Number of Licensees
Home Warranty Association	30
Service Warranty Association	88
Total	**118**

Licensing and Financial Requirements for Warranty Associations

Home Warranty Associations

Florida law requires any person in Florida who provides or offers home warranties for sale, whether or not the warranties will have effect in Florida, to be licensed by the OIR.[8] Thus, even if a home warranty association is located in Florida but only sells home warranties to consumers

[1] *See* ch. 634, F.S.
[2] Section 634.402, F.S.
[3] Section 634.302, F.S. *See also*, Florida Department of Financial Services, *Home Warranty Overview*, https://www.myfloridacfo.com/Division/Consumers/understandingCoverage/HomeWarrantyOverview.htm (last visited April 19, 2019).
[4] *See* ch. 634, F.S.
[5] Sections 634.303 and 634.403, F.S.
[6] Sections 634.3077 and 634.406, F.S.
[7] Data retrieved from OIR Active Company Search application, https://floir.com/CompanySearch/index.aspx (last visited April 19, 2019).
[8] Section 634.303, F.S.

outside of Florida, it must still obtain a home warranty association license from the OIR.[9] Home warranties are often purchased over the internet and may be purchased by a seller and transferred at the closing on the sale of a home to the buyer.

Florida law requires that all home warranty associations maintain a funded, unearned premium[10] account, consisting of unencumbered assets[11] equal to a minimum of 25 percent of the gross written premiums[12] received by it from all warranty contracts it has in force, regardless of whether those contracts are written to consumers in Florida or in another state.[13]

Service Warranty Associations

Florida law prohibits any person from providing or offering to provide service warranties to residents of this state unless authorized therefor under a subsisting license issued by the OIR.[14] Florida law requires that all service warranty associations maintain a funded, unearned premium account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received by it from all warranty contracts it has in force, regardless of whether those contracts are written to consumers in Florida or in another state.[15]

Coverage and Form Requirements for Home Warranty Associations

The OIR specifies the contents of the home warranty contract and certain procedures that home warranty associations must follow when issuing warranties.[16] Currently, home warranties issued in Florida vary with regard to coverage exclusions due to rust or corrosion to otherwise covered appliances, units, or systems. Some warranties exclude coverage due to the presence of rust or corrosion, regardless of whether the rust or corrosion causes a mechanical breakdown of the appliance, unit, or system.[17] Other home warranties provide coverage even if a system has malfunctioned due to rust or corrosion.[18] The lack of consistency in the wording of the home warranty contracts may lead consumers to be confused about the coverage that is actually provided for their appliances, units, or systems.

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[9] *See Id.*
[10] An unearned premium is a premium that a customer pays in advance, but that the warranty association has not yet earned. If a contract is canceled, the customer is generally entitled to a full refund of the unearned amount. Business Dictionary, *Unearned Premium*, http://www.businessdictionary.com/definition/unearned-premium.html (last visited April 19, 2019).
[11] An unencumbered asset is one that is free from debt and can be easily sold or mortgaged. Business Dictionary, *Unencumbered*, http://www.businessdictionary.com/definition/unencumbered.html (last visited April 19, 2019).
[12] Gross written premium is the amount of premium written by a warranty association before deductions for commissions and other expenses. *See* International Risk Management Institute, *Gross Written Premium*, https://www.irmi.com/term/insurance-definitions/gross-written-premium (last visited April 19, 2019).
[13] Section 634.3077(1), F.S.
[14] Section 634.403(1), F.S.
[15] Section 634.406, F.S.
[16] Section 634.312, F.S.
[17] *See, e.g.*, Select Home Warranty, *Terms and Conditions/Service Contract Agreement*, https://selecthomewarranty.com/termsconditions (last visited April 19, 2019).
[18] *See, e.g.*, First American Home Warranty, *Sample Contract & Coverage* Overview, https://homewarranty.firstam.com/media/contracts/8J.B.pdf (last visited April 19, 2019).

The Florida Building Code

The Florida Building Code specifies rules and standards for constructed structures, including the HVAC systems in those structures.[19] Under the Florida Building Code, certain energy efficiency requirements must be met when an HVAC system is installed, repaired, or replaced.[20] Meeting the energy efficiency requirements when an HVAC system is repaired may require the replacement of various components to maintain a "matched system."[21] In keeping with these requirements, manufacturers of air conditioning units have certain compatibility and efficiency requirements that must be met.

Home warranties that provide coverage for the repair or replacement of HVAC systems do not always cover the replacement and update of otherwise functioning HVAC system components that may be required to meet a manufacturer's compatibility and efficiency requirements or the Florida Building Code's standards. However, home warranty associations are not currently required to bring a consumer's attention to coverage limitations in the home warranty contract. A consumer may opt to pay extra for a home warranty rider, often called "compatibility coverage," which covers repairs or replacement of parts required to meet building code requirements and to maintain manufacturers' compatibility and efficiency requirements.

III. Effect of Proposed Changes:

Section 1 amends s. 634.3077, F.S., to require that home warranty associations maintain an account that contains a minimum of 25 percent of the gross written premiums received from warranty contracts in force *in Florida*.

This section changes the calculation of net assets that a home warranty association must maintain. The bill allows a home warranty association to maintain less than one-sixth of its total premiums if it, in addition to other requirements, reserves at least 40 percent of its total premiums received from all of its warranty contracts in force *in Florida* in its unearned premium reserve account.

All assets held to satisfy these reserve account requirements must be maintained in a separate, auditable account for contracts in force in Florida.

Additionally, this section requires a Florida-based home warranty association that issues home warranty contracts in other states to comply with the laws of those states.

Section 2 creates s. 634.346, F.S., to provide that home warranties sold in Florida may not exclude coverage because of rust or corrosion to an otherwise covered appliance, unit, or system, unless the rust or corrosion was a contributing cause of the mechanical breakdown or failure of that appliance, unit, or system.

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[19] *See, e.g.*, International Code Council, *Florida Building Code–Energy Conservation, (6th ed. 2017)*, https://codes.iccsafe.org/content/FBC2017 (last visited April 19, 2019).
[20] International Code Council, *Florida Building Code–Energy Conservation, (6th ed. 2017)*, S. R 501.7, https://codes.iccsafe.org/content/FEC2017/chapter-5-re-existing-buildings (last visited April 19, 2019).
[21] *Id.*

This section further establishes that, if a home warranty covers the replacement of components of an HVAC system due to wear and tear, but does not cover functional components of the systems necessary to maintain the compatibility or efficiency requirements of the manufacturer, the contract must:

- State in conspicuous boldface type that the contract does not provide replacement coverage for functional components of an HVAC system necessary to maintain the compatibility or efficiency requirements of the manufacturer unless the warranty holder purchases the additional coverage. The contract must also state the website or phone number for the purchase of the additional coverage; and
- Provide the consumer with the option, at an additional cost, to purchase replacement coverage for the functional components of an HVAC system necessary to maintain the compatibility and efficiency requirements of the manufacturer.

The provisions included in section 2 take effect on January 1, 2020.

Section 3 amends s. 634.406, F.S., to require that service warranty associations maintain an account that contains a minimum of 25 percent of the gross written premiums received from warranty contracts in force which are written *in Florida*.

Similarly, this section changes the calculation of the reserve deposit that a service warranty association must maintain to reflect 10 percent of the gross written premium received on only those warranty contracts *in force in this state*.

This section also clarifies that a service warranty association must maintain its gross written premiums in force *for contracts written in Florida* at no more than a 7-to-1 ratio to net assets.

All assets held to satisfy these reserve account requirements must be maintained in a separate, auditable account for contracts in force in Florida.

Additionally, this section requires a Florida-based service warranty association that issues service warranty contracts in other states to comply with the laws of those states.

Section 4 provides an effective date of July 1, 2019, except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Depending on the number of home or service warranty association contracts in force outside of Florida, and depending on the financial requirements of the various states where such contracts are written, a home or service warranty association's reserve requirements could be lower than currently required.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 634.3077, 634.346, and 634.406 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on March 25, 2019:
The CS requires home and service warranty associations operating in Florida and writing in other states to comply with the financial requirements of the other states.

B. Amendments:

None.

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

By the Committee on Banking and Insurance; and Senator Broxson

597-03483-19 20191690c1

A bill to be entitled

An act relating to warranty associations; amending s. 634.3077, F.S.; revising the basis for calculating the required assets in a home warranty association's premium reserve account; requiring that such reserve account be a separate auditable account for contracts in force in this state; requiring certain home warranty associations to comply with other states' laws; creating s. 634.346, F.S.; prohibiting home warranties from excluding coverage because of the presence of rust or corrosion, except under certain circumstances; specifying requirements for certain home warranties providing coverage for HVAC system components; amending s. 634.406, F.S.; revising the basis for calculating the required assets in a service warranty association's premium reserve account; requiring that such reserve account be a separate auditable account for contracts in force in this state; revising the basis for calculating a certain reserve deposit with the Department of Financial Services; revising the requirements regarding the ratio of gross written premiums to net assets for service warranties; requiring certain service warranty associations to comply with other states' laws; providing effective dates.

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

Section 1. Subsections (1) and (2) of section 634.3077,

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

597-03483-19 20191690c1

Florida Statutes, are amended, and subsection (5) is added to that section, to read:

634.3077 Financial requirements.—

(1) An association licensed under this part shall maintain a funded, unearned premium reserve account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received by it from all warranty contracts in force in this state. Such assets must ~~shall~~ be held in the form of cash or invested in securities for investments as provided in part II of chapter 625. Such reserve account must be a separate auditable account for contracts in force in this state.

(2) An association shall maintain, at a minimum, net assets equal to one-sixth of the written premiums it receives for the issuance and delivery of any binder or warranty in force. Net assets may be less than one-sixth of the premiums written, provided the association has net assets of not less than $500,000 and maintains a funded, unearned premium reserve account consisting of unencumbered assets equal to a minimum of 40 percent of the gross written premiums received by it from all warranty contracts in force in this state, which must ~~shall~~ be held in the form of cash or invested in securities for investments as provided in part II of chapter 625. Such reserve account must be a separate auditable account for contracts in force in this state.

(5) An association operating in this state that issues home warranty or home service contracts in other states must comply with all financial requirement laws of such other states.

Section 2. Effective January 1, 2020, section 634.346,

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

Florida Statutes, is created to read:

634.346 Home warranty coverage requirements.-

(1) A home warranty sold in this state may not exclude coverage because of the presence of rust or corrosion unless the rust or corrosion was a contributing cause of the mechanical breakdown or failure of a covered appliance, unit, or system.

(2) A home warranty contract providing coverage for wear and tear failures of components of an HVAC system, which contains an exclusion of replacement coverage for any other functional components of the HVAC system on the basis of operational compatibility or operational efficiency requirements as set by the manufacturer, must:

(a) Set forth a disclosure in conspicuous boldfaced type that the home warranty contract does not cover replacement of functional components of HVAC systems for reasons of compatibility or efficiency requirements of the manufacturer unless additional coverage for such circumstance is purchased, and provide the website or telephone number for the consumer to contact to add such additional coverage to the home warranty contract; and

(b) Provide consumers the option to purchase additional coverage, for an additional charge, for the replacement of otherwise functional components of an HVAC system necessary to maintain the compatibility and operating efficiency requirements of the manufacturer.

Section 3. Subsections (1), (2), and (5) of section 634.406, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

634.406 Financial requirements.—

(1) An association licensed under this part shall maintain a funded, unearned premium reserve account, consisting of unencumbered assets, equal to a minimum of 25 percent of the gross written premiums received on all warranty contracts in force which are~~, wherever~~ written in this state. Such reserve account must be a separate auditable account for contracts in force in this state. Such assets must ~~shall~~ be held as prescribed under ss. 625.301-625.340. For contracts in excess of 2 years which are offered by associations having net assets of less than $500,000 and for which premiums are collected in advance for coverage in a subsequent year, 100 percent of the premiums for such subsequent years must ~~shall~~ be placed in the funded, unearned premium reserve account.

(2) An association utilizing an unearned premium reserve shall deposit with the department a reserve deposit for contracts in force in this state equal to 10 percent of the gross written premium received on all warranty contracts in force in this state. Such reserve deposit must ~~shall~~ be of a type eligible for deposit by insurers under s. 625.52. Request for release of all or part of the reserve deposit may be made quarterly and only after the office has received and approved the association's current financial statements, as well as a statement sworn to by two officers of the association verifying such release will not reduce the reserve deposit to less than 10 percent of the gross written premium. The reserve deposit required under this part must ~~shall~~ be included in calculating the reserve required by subsection (1). The deposit required in s. 634.405(1)(b) must ~~shall~~ be included in calculating the reserve requirements of this section.

(5) No warranty seller may allow its gross written premiums in force for contracts written in this state to exceed a 7-to-1 ratio to net assets.

(8) An association operating in this state that issues service warranty or service contracts in other states must comply with all financial requirement laws of such other states.

Section 4. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2019.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 9, 2019

I respectfully request that **CS/SB 1690**, relating to Warranty Associations, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Doug Broxson
Florida Senate, District 1

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1690
Bill Number (if applicable)

Topic WARRANTY ASSOCIATIONS

Amendment Barcode (if applicable)

Name DAVID J. ROBERTS

Job Title Q

Address 210 S. MONROE ST.
Street

Phone

TALLAHASSEE FL 32301
City *State* *Zip*

Email david@norrob.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NATIONAL HOME SERVICE CONTRACT ASSOCIATION

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

Apr 23 2019 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1690

Meeting Date *Bill Number (if applicable)*

Topic For *Amendment Barcode (if applicable)*

Name Tim Meenan

Job Title

Address 300 S. Duval St. Phone (850) 425-4000

Street

Tallahassee FL 32317 Email Tim@meenanlawfirm.com

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information Waive Speaking: ☐ In Support ☐ Against

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

Representing Service Contract Ind

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 670
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Rader
SUBJECT:	Assisted and Independent Living Task Force
DATE:	April 22, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	**Favorable**
2.	Ponder	McVaney	GO	**Fav/CS**
3.	Delia	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 670 creates a 20 member Assisted and Independent Living Task Force (the task force) adjunct to the Agency for Persons with Disabilities. The objective of the task force is to develop and evaluate policy proposals that incentivize building contractors and developers to create space for assisted living facilities and independent living communities within mixed-use developments which may be used as low-cost, supportive, and affordable housing for individuals who are in need of such housing and who have an intellectual disability, autism, or a mental illness.

The task force is required to review the funding methodology for assisted living facilities and make recommendations for policy changes to the funding methodology for assisted living facilities that accept residents with mental illness or intellectual disabilities, including autism for consideration by the state agencies and submit a written stage one report to the Governor, the President of the Senate and the Speaker of the House of Representatives, no later than November 1, 2019. The task force must submit a final report, which must include its findings, conclusions, and recommendations, by February 1, 2020, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill requires the Agency for Persons with Disabilities to use existing resources to administer and support the task force.

The bill provides for termination of the task force upon the submission of its final report.

The bill takes effect upon becoming a law.

II. Present Situation:

Task Force Requirements under section 20.03, Florida Statutes

Section 20.03(8), F.S., defines "task force" to mean an "advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative related to that problem." This provision specifies that the existence of a task force terminates upon the completion of its assignment.

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities in the state. A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.[1] APD's overarching goal is to prevent or reduce the severity of the developmental disability and implement community-based services that will help individuals with developmental disabilities achieve their greatest potential for independent and productive living in the least restrictive means.[2]

Persons with developmental disabilities reside in various types of residential settings. Some individuals with developmental disabilities live with family, some live in their own homes, while others may live in community-based residential facilities.[3] Pursuant to s. 393.067, F.S., APD licenses and regulates community-based residential facilities that serve and assist individuals with developmental disabilities; these include foster care facilities, group home facilities, and residential habilitation centers.[4]

Individuals who meet Medicaid eligibility requirements may choose to receive services in the community through the state's Medicaid Home and Community-Based Services (HCBS) waiver for individuals with developmental disabilities administered by APD or in an intermediate care facility for the developmentally disabled (ICF/DD).[5] While the majority of APD clients live in the community, a small number live in ICF/DDs. ICF/DDs are considered institutional placements and are licensed and certified by the Agency for Health Care Administration pursuant to part VIII of ch. 400, F.S.[6]

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[1] Section 393.063(9), F.S.
[2] Section 393.062, F.S.
[3] A "residential facility" is a facility providing room and board and personal care for persons who have developmental disabilities, s. 393.063(28), F.S.
[4] Agency for Persons with Disabilities, *Planning Resources*, http://apd.myflorida.com/planning-resources/ (last visited Feb. 25, 2019).
[5] Section 393.0662, F.S.
[6] Section 393.063(25), F.S.

Section 393.063, F.S., identifies the various types of congregate living facilities available to APD clients based on individual needs and choices.[7] Pursuant to s. 393.067, F.S., APD licenses foster care facilities, group home facilities, residential habilitation center facilities, and comprehensive transitional education programs.[8]

Assisted Living Facilities

An Assisted Living Facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.[9] A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.[10] Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.[11]

An ALF must have a standard license issued by the AHCA under part I of ch. 429, F.S., and part II of ch. 408, F.S.[12] In addition to a standard license, an ALF may have one or more specialty licenses that allow the ALF to provide additional care. These specialty licenses include limited nursing services,[13] limited mental health services,[14] and extended congregate care services.[15]

Currently, there are 3,083 licensed ALF's in Florida.[16]

Independent Living

The term "independent living" is not defined in Florida Statutes. "Independent living" can refer to when an elderly person still has the physical and mental capacity to live independently but wants companionship or otherwise needs supportive services.[17] It can also encompass a living arrangement for people with disabilities who need supportive services.

In 1988, the Legislature created the Florida Independent Living Council.[18] The council is responsible for, among other things, jointly developing and submitting the state plan for independent living.[19] The council works to ensure that persons with disabilities have an

[7] Agency for Persons with Disabilities, *Senate Bill 670 Agency Analysis* (February 7, 2019) (on file with the Senate Committee on Children, Families and Elder Affairs).
[8] *Id*.
[9] Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.
[10] Section 429.02(17), F.S.
[11] Section 429.02(1), F.S.
[12] Section 429.07(2), F.S.
[13] Section 429.07(3)(c), F.S.
[14] Section 429.075, F.S.
[15] Section 429.07(3)(b), F.S.
[16] Agency for Health Care Administration, Florida Health Finder Search, *facility/provider type*: Assisted Living Facility, (search conducted Feb. 26, 2019), *available at* http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx (last visited Feb. 26, 2019).
[17] According to the senior living search website, aPlaceforMom, *Independent Living in Florida*, *available at* http://www.aplaceformom.com/independent-living/florida (last visited March 13, 2019).
[18] Chapter 88-214, Laws of Fla.
[19] Section 413.395, F.S.

opportunity for input into the development of the State Plan for Independent living and works for systematic change in the areas that are the biggest barriers to people with disabilities participating fully in their communities.[20] The council describes the independent living philosophy as "promot[ing] consumer control of services, self-determination and equal access and participation in every aspect of community life, to the level that individual wishes."[21]

Independent living communities are communities in which healthy individuals can live on their own but that do not offer assisted living or nursing services. Independent living communities can offer amenities such as transportation, security, yard maintenance, laundry service, group meals, and social and cultural activities.[22] Currently, there are over 200 independent living communities in Florida.[23]

III. Effect of Proposed Changes:

Section 1 establishes the Assisted and Independent Living Task Force adjunct to APD for administrative purposes only. APD is to use existing and available resources to support the activities of the task force.

The bill directs the task force to evaluate policy proposals that incentivize building contractors and developers to create space for ALFs or independent living facilities within mixed-use developments for individuals who have an intellectual disability, autism, or a mental illness.

The task force is to be chaired by the director of APD, or his or her designee, and composed of 20 members, to include:

- The Secretary of Children Families, or his or her designee;
- The executive director of the Department of Economic Opportunity, or his or her designee;
- The Secretary of Business and Professional Regulation, or his or her designee;
- The executive director of the Commission for the Transportation Disadvantaged, or his or her designee;
- A representative from the Florida Supportive Housing Coalition;
- A representative from the Florida Housing Finance Corporation;
- A representative from the Florida Housing Coalition;
- A representative from the Florida Independent Living Council;
- A representative from the National Alliance on mental Illness of Florida;
- A representative from the Florida Council for Community Health;
- A representative from the Florida League of Cities;
- A representative from the Florida Association of Counties;
- A representative from the Florida Coalition for the Homeless;
- A representative from the Association of Florida Community Developers;

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[20] Floridasilc.org, *About Independent Living*, *available at* https://www.floridasilc.org/independent-living/ (last visited March 13, 2019).
[21] *Id.*
[22] Senior Living.org, *Selecting an Independent Living Community* (Feb. 14, 2011), *available at* http://www.seniorliving.org/lifestyles/independent-living-communities/ (last visited Feb. 26, 2019).
[23] According to the senior living search website, aPlaceforMom, *Independent Living in Florida*, *available at* http://www.aplaceformom.com/independent-living/florida (last visited Feb. 26, 2019).

- A representative from the Associated Builders and Contractors, Inc., of Florida;
- A representative from the Florida Alliance for Assistive Services and Technology;
- A representative from the Florida Assisted Living Association;
- A representative from the Florida Association of Managing Entities; and
- An attorney who is a member in good standing of the Elder Law Section of the Florida Bar.

Members of the task force shall serve without compensation or reimbursement for per diem or travel expenses. The task force is directed to convene its first meeting by August 1, 2019. The task force must meet as often as necessary to fulfill its responsibilities under the bill, and meetings may be conducted in person, by teleconference, or by other electronic means.

The bill directs the task force to review the funding methodology for assisted living facilities that provide care to adults with mental illness and those with intellectual disabilities or autism. The task force must develop recommendations for policy changes to the funding methodology for assisted living facilities that accept residents with mental illness or intellectual disabilities, including autism for consideration by the state agencies, and submit a written stage one report to the Governor, the President of the Senate, and the Speaker of the House, no later than November 1, 2019.

The task force must work in consultation with local and state government to identify potential barriers and opportunities in current law, recommend modifications to existing laws, rules, or policies, recommend financial and regulatory incentives, and propose funding mechanisms to incentivize building contractors and developers to create space for ALFs and independent living facilities within mixed-use developments. The task force must also propose an overall governing structure for managing spaces for ALFs and independent living facilities within mixed-use developments.

The task force must submit a final report containing its findings, conclusions, and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2020. The task force will terminate upon the submission of its final report.

Section 2 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides that the task force members are to serve without compensation and are not entitled to reimbursement for per diem or travel expense. Thus, to the extent travel is required, the members will incur associated costs.

C. Government Sector Impact:

APD will incur an indeterminate amount of administrative expenses as the agency directed to use existing resources to administer and support the activities of the task force. The APD advises that it does not anticipate a fiscal impact to the state or the private sector.[24]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill does not amend the Florida Statutes.

[24] *Supra* note 7.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 19, 2019:
The committee substitute:

- Provides that the creation of the task force is under the laws of Florida.
- Adds four members to the task force to make it a 20 member task force.
- Changes all mentions of "Independent Living Facilities" to "Independent Living Communities."
- Adds the requirement that the task force submit a stage one report regarding the funding methodology of Assisted Living Facilities no later than November 1, 2019, to the Governor and the legislature.
- Provides that the task force is terminated upon the submission of its final report.

B. Amendments:

None.

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

626102

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Rader) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 420.5075, Florida Statutes, is created to read:

420.5075 Independent Living Task Force.—

(1) The Independent Living Task Force, a task force as defined in s. 20.03(e), is established within the Florida Housing Finance Corporation for administrative purposes only. The corporation shall use existing and available resources to

626102

administer and support the activities of the task force under this section.

(2) The task force shall develop and evaluate policy proposals that incentivize building contractors and developers to create units within mixed-use developments which may be used as low-cost, supportive, and affordable housing for individuals who are in need of such housing and who have a developmental disability, as defined in s. 393.063, or a mental illness, as defined in s. 394.455.

(3) The task force consists of the following members:

(a) The director of the Florida Housing Finance Corporation or his or her designee, who shall serve as chair of the task force.

(b) The director of the Agency for Persons with Disabilities or his or her designee.

(c) The Secretary of Children and Families or his or her designee.

(d) The executive director of the Department of Economic Opportunity or his or her designee.

(e) The Secretary of Business and Professional Regulation or his or her designee.

(f) The executive director of the Commission for the Transportation Disadvantaged or his or her designee.

(g) An individual appointed by the Governor.

(h) The following members appointed by the director of the Florida Housing Finance Corporation:

1. A representative from the Florida Supportive Housing Coalition.

2. A representative from the Florida Housing Coalition.

626102

3. A representative from the Florida Independent Living Council.

4. A representative from the ARC of Florida.

5. A representative from the National Alliance on Mental Illness-Florida.

6. A representative from the Florida League of Cities.

7. A representative from the Florida Association of Counties.

8. A representative from the Association of Florida Community Developers.

9. A representative from the Associated Builders and Contractors of Florida.

10. A representative from the Florida Association of Rehabilitation Facilities.

11. A representative from the Florida Developmental Disabilities Council.

12. A representative from the banking industry who finances mixed-used developments.

13. A representative from the Coalition of Affordable Housing Providers.

14. A representative from the Commercial Real Estate Development Association.

15. An attorney who is a member in good standing of the Elder Law Section of the Florida Bar.

(4) Members of the task force shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses. The task force shall convene its first meeting by August 1, 2019, and shall meet as often as necessary to fulfill its responsibilities under this section. Meetings may

626102

be conducted in person, by teleconference, or by other electronic means.

(5) In consultation with the applicable local and state governmental entities, the task force shall:

(a) Identify potential barriers and opportunities in existing policies, rules, or laws to incentivize building contractors and developers to create low-cost, supportive, and affordable housing units for individuals with developmental disabilities or mental illness within mixed-use developments.

(b) Recommend modifications to existing policies, rules, or laws or propose new policies, rules, or laws, such as allowing greater density, which would allow for the creation of low-cost, supportive, and affordable housing units for individuals with developmental disabilities or mental illness within mixed-use developments.

(c) Recommend financial and regulatory incentives to encourage building contractors and developers to create low-cost, supportive, and affordable housing units for individuals with developmental disabilities or mental illness within mixed-use developments.

(d) Propose funding mechanisms for the development and maintenance of spaces for low-cost, supportive, and affordable housing units for individuals with developmental disabilities or mental illness within mixed-use developments.

(6) The task force shall submit a report by December 1, 2020, to the Governor, the President of the Senate, and the Speaker of the House of Representatives which includes its findings, conclusions, and recommendations.

(7) This section expires February 2, 2021.

626102

Section 2. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Independent Living Task Force; creating s. 420.5075, F.S.; establishing the Independent Living Task Force within the Florida Housing Finance Corporation; providing for duties, membership, and meetings of the task force; requiring the task force to submit a report to the Governor and Legislature by a specified date; providing for expiration of the task force; providing an effective date.

446132

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Rader) recommended the following:

Senate Amendment to Amendment (626102)

Delete line 9
and insert:
defined in s. 20.03(8), is established within the Florida

By the Committee on Governmental Oversight and Accountability; and Senator Rader

585-03244-19 2019670c1

A bill to be entitled

An act relating to the Assisted and Independent Living Task Force; creating the task force to evaluate proposals that incentivize building contractors and developers to create space for assisted living facilities and independent living communities within mixed-use developments; establishing the task force adjunct to the Agency for Persons with Disabilities; providing for duties, membership, and meetings of the task force; requiring the task force to submit a written stage one report and a final report to the Governor and the Legislature by a specified date; providing for termination of the task force; providing an effective date.

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

Section 1. There is created the Assisted and Independent Living Task Force, a task force as defined in s. 20.03(8), Florida Statutes, which shall develop and evaluate policy proposals that incentivize building contractors and developers to create space for assisted living facilities and independent living communities within mixed-use developments which may be used as low-cost, supportive, and affordable housing for individuals who are in need of such housing and who have an intellectual disability or autism, as those terms are defined in s. 393.063, Florida Statutes, or a mental illness, as defined in s. 394.455, Florida Statutes.

(1) The task force is established adjunct to the Agency for

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

Florida Senate - 2019 **CS for SB 670**

585-03244-19 2019670c1

Persons with Disabilities for administrative purposes only. The agency shall use existing and available resources to administer and support the activities of the task force under this section.

(2) The task force shall be composed of the following 20 members:

(a) The director of the Agency for Persons with Disabilities or his or her designee, who shall serve as the chair of the task force.

(b) The Secretary of Children and Families or his or her designee.

(c) The executive director of the Department of Economic Opportunity or his or her designee.

(d) The Secretary of Business and Professional Regulation or his or her designee.

(e) The executive director of the Commission for the Transportation Disadvantaged or his or her designee.

(f) A representative from the Florida Supportive Housing Coalition.

(g) A representative from the Florida Housing Finance Corporation.

(h) A representative from the Florida Housing Coalition.

(i) A representative from the Florida Independent Living Council.

(j) A representative from the National Alliance on Mental Illness of Florida.

(k) A representative from the Florida Council for Community Mental Health.

(l) A representative from the Florida League of Cities.

(m) A representative from the Florida Association of

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

Counties.

(n) A representative from the Florida Coalition for the Homeless.

(o) A representative from the Association of Florida Community Developers.

(p) A representative from the Associated Builders and Contractors, Inc., of Florida.

(q) A representative from the Florida Alliance for Assistive Services and Technology.

(r) A representative from the Florida Assisted Living Association.

(s) A representative from the Florida Association of Managing Entities.

(t) An attorney who is a member in good standing of the Elder Law Section of the Florida Bar.

(3) Members of the task force shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

(4) The task force shall convene its first meeting by August 1, 2019, and shall meet as often as necessary to fulfill its responsibilities under this section. Meetings may be conducted in person, by teleconference, or by other electronic means.

(5) The task force shall review the funding methodology for assisted living facilities that provide care to adults with mental illness and those with intellectual disabilities or autism. The task force shall develop recommendations for policy changes to the funding methodology for assisted living facilities that accept residents with mental illness or

intellectual disabilities, including autism for consideration by the state agencies and shall provide a written stage one report to the Governor, the President of the Senate, and the Speaker of the House no later than November 1, 2019.

(6) In consultation with the applicable local and state governmental entities, the task force shall:

(a) Identify potential barriers and opportunities in existing policies, rules, or laws to incentivize building contractors and developers to create space for assisted living facilities and independent living communities within mixed-use developments.

(b) Recommend modifications to existing policies, rules, or laws or propose new policies, rules, or laws that would allow for the creation of space for assisted living facilities and independent living communities within mixed-use developments.

(c) Recommend financial and regulatory incentives to encourage building contractors and developers to create space for assisted living facilities and independent living communities within mixed-use developments.

(d) Propose funding mechanisms for the development and maintenance of spaces for assisted living facilities and independent living communities within mixed-use developments.

(e) Propose an overall governing structure for managing spaces for assisted living facilities and independent living communities within mixed-use developments.

(7) The task force shall submit a final report by February 1, 2020, to the Governor, the President of the Senate, and the Speaker of the House of Representatives which includes its findings, conclusions, and recommendations.

(8) The task force is terminated upon the submission of its final report.

Section 2. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Vice Chair*
Agriculture
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR KEVIN J. RADER
29th District

March 20, 2019

Chair Lizbeth Benacquisto
Committee on Rules
402 Senate Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Benacquisto,

I respectfully request that you place CS/SB 670, relating to Assisted and Independent Living Facility Task Force, on the agenda of the Committee on Rules at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

Kevin Rader

Senator Kevin J. Rader
Florida Senate, District 29

cc: John B Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 5301 North Federal Hwy, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
☐ 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Vice Chair*
Agriculture
Appropriations Subcommittee on Health and Human Services
Children, Families, and Elder Affairs

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR KEVIN J. RADER
29th District

April 22, 2019

Chair Lizbeth Benacquisto
Committee on Rules
402 Senate Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Benacquisto,

Thank you for placing CS/SB 670, relating to Assisted and Independent Living Facility Task Force, on the agenda of the Committee on Rules, Tuesday at 2pm.

Unfortunately, due to urgent business matters that need my immediate attention, I will not be able to present the bill at the committee meeting. Senator Rouson has graciously accepted my request to present my legislation. He is the first-named co-introducer.

I sincerely apologize for any inconvenience this may cause and thank you for your consideration.

Please feel free to contact me at 561-866-4020 if you have any questions.

Kindest Regards,

Kevin Rader

Senator Kevin J. Rader
Florida Senate, District 29

cc: John B Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
☐ 5301 North Federal Hwy, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
☐ 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 722
INTRODUCER:	Rules Committee; Judiciary Committee and Senator Hooper
SUBJECT:	Carrying of Firearms by Tactical Medical Professionals
DATE:	April 23, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	**Fav/CS**
2.	Proctor	Miller	IS	**Favorable**
3.	Stallard	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 722 expressly authorizes a "tactical medical professional" (TMP) who has a concealed weapons and firearms license to carry firearms, weapons, and ammunition when he or she is actively operating in direct support of a tactical law enforcement operation. For the authorization to apply, the bill also requires the law enforcement agency head to have appointed the TMP, the agency to have an established policy for these appointments, and the TMP to have completed two types of firearm training, one of which must be provided by the agency. Moreover, the TMP's firearm and ammunition must have been issued by his or her appointing agency. The bill specifies that it does not authorize a TMP to carry a firearm on a "fire apparatus" or EMS vehicle.

In addition to this express authorization to carry firearms, weapons, and ammunition, the bill also grants a TMP who is authorized to carry a firearm or other weapon during an operation the same "immunities and privileges" as a law enforcement officer. However, a TMP may not make an arrest. The immunities and privileges provision might authorize a TMP to carry a concealed or unconcealed firearm or weapon whenever a law enforcement officer may, which is anytime the officer is "carrying out official duties in this state."

The bill defines "tactical medical professional" as a paramedic, physician, or osteopathic physician who is appointed to provide medical services directly to a tactical law enforcement unit engaged in high-risk incidents, such as drug raids and hostage situations.

II. Present Situation:

Overview

A paramedic or physician who has a concealed weapons and firearms license and who is engaged in a tactical law enforcement operation may carry a weapon or firearm depending on the location of the operation, the type of weapon or firearm, and the manner of carry. For example, if the operation takes place at a park, the person may carry a concealed firearm, or an openly carried or concealed weapon. If the operation takes place at a courthouse, the person may carry only an unconcealed weapon, but no firearm. If the operation takes place at a school, the person may not carry a firearm or weapon.

If the paramedic or physician qualifies as an "assistant" of a "law enforcement officer," he or she may be able to carry a weapon or firearm in any manner and in any place that is not a school. The law, however, is not clear as to who qualifies as an assistant of a law enforcement officer.[1]

Licensed Concealed Carry of Firearms and Weapons

Although the law generally prohibits a person from carrying a firearm on his or her person, this prohibition is subject to several exceptions. Of these exceptions, perhaps the most well-known and broadly applicable is the concealed weapons and firearms license.[2]

The license authorizes a person to carry a concealed handgun "throughout the state." However, the license does not authorize a person to carry a firearm into any of a list of places, including police stations, legislative meetings, prisons, local government meetings, "school facilities and administration buildings" or "college or university facilities."

To obtain a concealed firearm license, a person must submit an application to the Department of Agriculture and Consumer Services, and the Department must grant the license to each applicant who:[3]

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;

[1] The only authority that Staff were able to uncover interpreting the meaning of "assistant" of a "law enforcement officer" was a 1994 advisory opinion of the attorney general. Op. Att'y Gen. Fla. 94-65 (1994). In the opinion, the attorney general determined that a police department's fingerprint technician was not an "assistant" under the relevant statute, s. 790.25(3)d., F.S. For several reasons, this opinion offers little if any guidance in determining whether a paramedic or physician would qualify as an assistant because the opinion addressed someone in a substantially different role.

[2] As of December 31, 2018, 1,941,180 Floridians held a standard concealed firearm license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf.

[3] Section 790.06(2), F.S. However, the Department must *deny* a license to an applicant who meets any criterion set forth in s. 790.06(3), F.S., which also sets forth criteria for the mandatory revocation of a license.

- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance;
- Has not been found guilty of a crime relating to controlled substances within a three-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competency in the use of a firearm;[4]
- Has not been, or is deemed not to have been, adjudicated an incapacitated person in a guardianship proceeding;
- Has not been, or is deemed not to have been, committed to a mental institution;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect which restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

Lawful Unlicensed Carry of Firearms and Weapons

Section 790.25(3), F.S., provides a long list of persons who may lawfully carry concealed or unconcealed firearms or weapons regardless of whether they have a concealed weapons and firearms license.[5] Many of the persons on the list are specified military and law enforcement personnel, including:

> Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers . . . and other peace and **law enforcement officers and their deputies and assistants** and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state.[6]

Who qualifies as an "assistant" to a law enforcement officer is not further described. As a result, it is unclear as to whether a paramedic or physician who is part of a tactical law enforcement team would qualify as an "assistant" to a law enforcement officer.

[4] See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to this provision.
[5] Although s. 790.25(3), F.S., is not perfectly clear that it authorizes the unlicensed concealed or unconcealed carry of a firearm, especially when read in light of s. 790.25(2), F.S., the courts have nonetheless stated that it does. *See, e.g., State v. Little*, 104 So. 3d 1263, (Fla. 4th DCA 2013) (holding that a union secretary carrying a concealed firearm at the union hall parking lot was exempt from the general ban on concealed carry in s. 790.01, F.S., by virtue of section 790.25(3)(n), F.S.); *Norman v. State*, 215 So. 3d 18, 22 (Fla. 2017) (stating that "pursuant to chapter 790, Florida law provides sixteen exceptions to Florida's Open Carry Law . . ." and that s. 790.25(3), F.S., provides "a list of sixteen statutory exceptions to the [law prohibiting the open carry of a firearm]."
[6] Section 790.25(3)d., F.S. (emphasis added).

Prohibited Possession of a Firearm on School Property

Schools are perhaps the only places in this state that are subject to a broad, stand-alone weapons and firearms ban in this state's statutes.[7] Regardless of whether a person has a concealed weapons and firearms license, s. 790.115, F.S., broadly prohibits a person, other than a law enforcement officer, from possessing a firearm on the property of any "school," meaning any preschool through postsecondary school, whether public or private.[8] And the law is unclear as to how the prohibition in this statute interacts with the authority for unlicensed carry of weapons and firearms granted in s. 790.25(3), F.S.

Federal Law

The federal Gun-Free School Zones Act prohibits the possession of a firearm that has moved in or otherwise affects interstate or foreign commerce at a place an individual knows, or has reasonable cause to believe, is a school or is within 1,000 feet of a school.[9] However, this prohibition does not apply to a person who is licensed by his or her state to carry a concealed handgun.[10]

Federal law also prohibits a person from carrying a firearm in the "sterile area" of an airport terminal, which is the part of the airport that a passenger can only reach after going through security screening.[11] None of the exceptions to this prohibition clearly apply to a paramedic or physician assisting a tactical law enforcement team.[12]

Additionally, a person may not possess a firearm in a post office, except for official purposes.[13]

Privileges and Immunities of Law Enforcement Officers

The law affords law enforcement officers several types of special treatment, some of which are described as a "privilege" or "immunity" in the Florida Statutes, which state that a law enforcement officer:

- Is exempt from the ban on carrying a firearm on school property.[14]
- May carry a concealed or unconcealed firearm, without a concealed weapons and firearms license, if he or she is "carrying out official duties."[15]
- May carry a concealed firearm or weapon without a license while off duty.[16]

[7] At several other places, the statutes *effectively* ban *most* people from carrying firearms and concealed weapons. The statutes do this by stating that the concealed weapons and firearms license does not authorize a person to carry at those places. Without that authority, even license holders are subject to the general ban on carrying firearms and concealed weapons at those places.
[8] It also means any career center. Section 790.115(2)(a), F.S.
[9] 18 U.S.C. § 922(q)(2)(A).
[10] *See* 18 U.S.C. § 922(q)(2)(B)(ii).
[11] 49 CFR § 1540.111. For a precise definition of "sterile area," see 49 CFR § 1540.5.
[12] *See* 49 CFR § 1540.111(b).
[13] 39 C.F.R. § 232.1.
[14] Section 790.115(3), F.S.
[15] Section 790.025(3)(d), F.S.
[16] See s. 790.06(5)(b), F.S., which appears to authorize a law enforcement officer to carry a concealed weapon or firearm without a license. Also, s. 790.052, F.S., authorizes a law enforcement officer to carry a concealed firearm while off duty, at the discretion of his or her superior officers.

- May disobey traffic signals and exceed posted speed limits.[17]
- May use deadly force in more circumstances than an ordinary citizen, such as to stop a felon from fleeing.[18]
- "Shall be held guiltless and fully justified in law" for injuring or killing a rioter who has disobeyed an order to leave a riot.[19]
- Is entitled to have supplemental death benefits paid out for the benefit of his or her survivors when killed in the line of duty.[20]
- Is entitled to special rights and privileges while under investigation.[21]
- Is immune from liability while acting in good faith to take into protective custody a person who meets the criteria for involuntary admission for drug treatment.[22]
- Is exempt from the background-check fee for obtaining a concealed weapons and firearms license.[23]
- May purchase a firearm from a licensed dealer without undergoing a background check.[24]
- Is immune from liability for false arrest, false imprisonment, or unlawful detention for reasonably detaining a disorderly restaurant or hotel guest.[25]
- Is immune from liability for criminal or civil prosecution for trespass to recover lost or abandoned property.[26]
- Is exempt from having personal identifying and location information from public records provided to the public.[27]

III. Effect of Proposed Changes:

The bill expressly authorizes a "tactical medical professional" (TMP) who has a concealed weapons and firearms license to possess firearms, weapons, and ammunition when he or she is "actively operating in direct support of a tactical law enforcement operation." For this authorization to apply, the agency head must have appointed the TMP, the agency must have an established policy for these appointments, and the TMP must complete two types of firearm training, one of which must be provided annually by the agency. Moreover, the TMP's firearm must have been issued by his or her appointing agency. The bill specifies that it does not authorize a TMP to carry a firearm or ammunition on a "fire apparatus" or EMS vehicle.[28]

In addition to the *express* authority granted under the bill to possess firearms and weapons while "actively supporting a tactical law enforcement operation," another provision of the bill may *effectively* grant TMPs the authority to carry concealed or unconcealed firearms and weapons any time they are "carrying out official duties". The bill grants a TMP the same "immunities and

[17] Section 316.072(5), F.S.
[18] Section 776.05, F.S.
[19] *See* ss. 870.01 and 870.05, F.S. This immunity only applies to the types of officers listed in s. 870.01, F.S.
[20] Section 112.19, F.S.
[21] *See* s. 112.532, F.S.
[22] *See* ss. 397.675 and 397.6775, F.S.
[23] Section 790.06(5)(b), F.S.
[24] Section 790.065(1)(b), F.S.
[25] *See* s. 509.143(1)-(3), F.S.
[26] *See* s. 705.103(1)-(6), F.S.
[27] Section 119.071(4), F.S.
[28] "Fire apparatus" is not defined in the Florida Statutes. However, its use in s. 316.2025, F.S., appears to indicate that a fire apparatus is what is commonly referred to as a "fire truck" or "fire engine."

privileges" as a law enforcement officer if the TMP meets the conditions set forth in the bill for the carrying of a firearm or other weapon by a TMP who is assisting on a tactical operation. And law enforcement officers are authorized under current law to carry a concealed or unconcealed firearm or weapon whenever "carrying out official duties in this state".

Although the intent of the bill is to authorize TMPs to carry weapons and firearms at any place that a tactical law enforcement operation may occur, the specific grant of authority in the bill might be insufficient to allow a TMP to possess a weapon or firearm on school property. Section 790.115, F.S., broadly bans the possession of firearms and other weapons on school property, but states that the ban does not apply to "any law enforcement officer." Accordingly, a TMP's authority to carry a weapon or firearm on school property might depend on whether the exemption in s. 790.115(3), F.S. constitutes a "privilege" or "immunity" of a law enforcement officer. The Legislature may wish to amend s. 790.115, F.S., to make it inapplicable to TMPs if it intends to allow TMPs to possess a firearm or weapon on school property in support of their duties.

Moreover, the authority granted by the bill may be insufficient to authorize a TMP to carry a firearm or weapon in places where firearms and weapons may be possessed only by law enforcement officers under federal law.

The bill defines a tactical medical professional as a paramedic, physician, or osteopathic physician who is appointed to provide medical services directly to a tactical law enforcement unit engaged in high-risk incidents, such as drug raids and hostage situations.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None 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:

The bill grants a TMP who meets the requirements for carrying a firearm while assisting on a tactical operation the "privileges and immunities" of law enforcement officers, except the power to make an arrest. However, the word "privilege" or "immunity" is used in only some of many instances of special treatment for law enforcement officers in the Florida Statutes. The Legislature may wish to consider whether the bill's general grant of "privileges and immunities" should be replaced by a list of the specific privileges or immunities that the Legislature wishes to grant.

VIII. Statutes Affected:

This bill substantially amends section 790.25 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on April 23, 2019:
The committee substitute specifies that it:

- Does not authorize a TMP to carry a firearm in a "fire apparatus" or EMS vehicle; and
- Authorizes a TMP to carry a firearm and ammunition in only if these items were issued by his or her appointing agency.

CS by Judiciary on March 11, 2019:
The underlying bill granted a TMP the privileges and immunities of a law enforcement officer, except as to the powers of arrest. The committee substitute provides these privileges and immunities to a TMP only if he or she meets the conditions for carrying a

firearm or other weapon. Also, the committee substitute includes osteopathic physicians among those who may qualify as TMPs.

B. Amendments:

None.

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

696908

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2019	.	
	.	
	.	
	.	

The Committee on Rules (Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete line 45
and insert:
3. This paragraph may not be construed to authorize a tactical medical professional to carry, transport, or store any firearm or ammunition on any fire apparatus or EMS vehicle.
4. The appointing law enforcement agency shall issue any firearm or ammunition that the tactical medical professional carries in accordance with this paragraph.
5. For the purposes of this paragraph, the term "tactical

696908

12
13 ================ T I T L E A M E N D M E N T ================
14 And the title is amended as follows:
15 Delete line 8
16 and insert:
17 privileges for such professionals; requiring the
18 appointing law enforcement agency to issue any firearm
19 or ammunition to tactical medical professionals;
20 providing construction; providing a

By the Committee on Judiciary; and Senator Hooper

590-02893-19 2019722c1

A bill to be entitled

An act relating to carrying of firearms by tactical medical professionals; amending s. 790.25, F.S.; exempting certain licensed medical professionals from specified provisions concerning the carrying of firearms; requiring certain policies and procedures for law enforcement agencies; providing immunities and privileges for such professionals; providing a definition; providing an effective date.

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

Section 1. Paragraph (q) is added to subsection (3) of section 790.25, Florida Statutes, to read:

790.25 Lawful ownership, possession, and use of firearms and other weapons.—

(3) LAWFUL USES.—The provisions of ss. 790.053 and 790.06 do not apply in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

(q)1. A tactical medical professional who is actively operating in direct support of a tactical operation by a law enforcement agency provided that all of the following conditions are met:

a. The tactical medical professional is lawfully able to possess firearms and has an active concealed weapons permit issued pursuant to s. 790.06.

b. The tactical medical professional is appointed to a law

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

590-02893-19 2019722c1

enforcement tactical team of a law enforcement agency by the head of the law enforcement agency.

c. The law enforcement agency has an established policy providing for the appointment, training, and deployment of the tactical medical professional.

d. The tactical medical professional successfully completes a firearms safety training and tactical training as established or designated by the appointing law enforcement agency.

e. The law enforcement agency provides and the tactical medical professional participates in annual firearm training and tactical training.

2. Except as to the powers of arrest, a tactical medical professional who meets all of the conditions in subparagraph 1. has the same immunities and privileges as a law enforcement officer, as defined in s. 943.10.

3. For the purposes of this paragraph, the term "tactical medical professional" means a paramedic, as defined in s. 401.23, a physician, as defined in s. 458.305, or an osteopathic physician, as defined in s. 459.003, who is appointed to provide direct support to a tactical law enforcement unit by providing medical services at high-risk incidents, including, but not limited to, hostages incidents, narcotics raids, hazardous surveillance, sniper incidents, armed suicidal persons, barricaded suspects, high risk felony warrant service, fugitives refusing to surrender, and active shooter incidents.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ED HOOPER
16th District

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

April 3rd, 2019

The Honorable Lizbeth Benacquisto, Chair
Rules Committee
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto:

I am writing to request that Senate Bill 722, Carrying of Firearms by Tactical Medical Professionals, be placed on the agenda of the next Rules Committee meeting.

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

Warm regards,

Ed Hooper

Cc: John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant

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

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

722
Bill Number (if applicable)

696908
Amendment Barcode (if applicable)

Topic Carrying weapons by Tactical Medical Professionals

Name Jim Tolley

Job Title President

Address 343 West Madison Street
Street

Phone 850-224-7333

Tallahassee FL 32301
City *State* *Zip*

Email jimt@fpfp.org

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 23, 2019
Meeting Date

SB 722
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Carrying of Firearms by Tactical Medical Professionals

Name Gary Hester

Job Title Chief - Government Affairs

Address P.O. Box 14038
Street

Tallahassee FL 32317
City *State* *Zip*

Phone 850-219-3631

Email ghester@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

722
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Tactical Medical Professional

Name Steve Greenlaw

Job Title Capt. / SWAT Commander

Address Ft. Lauderdale Police Dept.
Street

Ft. Lauderdale, FL 33312
City *State* *Zip*

Phone 954-828-5540

Email Stevenc@fortlauderdale.gov.

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

722
Bill Number (if applicable)

Topic Tactical Medicine Prof

Amendment Barcode (if applicable)

Name Greg Lees

Job Title Captain / Swat commander Browards Sheriffs Office

Address 2601 W. Broward Blvd
Street

Ft. Lauderdale FL
City *State* *Zip*

Phone 954-410-8161

Email gregory_lees@sheriff.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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/19 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 722

Meeting Date *Bill Number (if applicable)*

Topic Carrying of Firearms *Amendment Barcode (if applicable)*

Name Jim Millican

Job Title Chief

Address 4360 - 55 AV N Phone 727 526-5650

Street

St Pete FL 33709 Email jmillican@tealmanfire.com

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information Waive Speaking: ☒ In Support ☐ Against

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

Representing Florida Fire Chiefs Assoc.

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

722
Bill Number (if applicable)

Topic Carrying weapons by Tactical Medical Professionals

Amendment Barcode (if applicable)

Name Jim Tolley

Job Title President

Address 343 West Madison Street
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-224-7333

Email jimt@fpfp.org

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

722
Bill Number (if applicable)

Topic Carrying Firearms by Tactical Med. Pros.

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Governmental Affairs - Major

Address 339 E Jefferson St
Street

Phone 878-3056

Quincy FL 32351
City *State* *Zip*

Email winnsr2@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Gadsden County Sheriff's Office

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 908
INTRODUCER:	Rules Committee; Community Affairs Committee; Banking and Insurance Committee; and Senator Hooper
SUBJECT:	Firesafety Systems
DATE:	April 23, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Toman	Yeatman	CA	**Fav/CS**
3.	Matiyow	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 908 makes various changes as it relates to fire safety and residential condominiums.

The bill extends the deadline for high-rise condominiums to comply with the Florida Fire Prevention Code requirements for fire sprinkler and engineered life safety systems from January 1, 2020, to January 1, 2024. The bill repeals language that allows unit owners to vote to opt out of the required retrofitting for fire sprinkler systems. Under this repeal all applicable residential condominium buildings must comply with the new retrofitting deadline for fire sprinkler systems.

The bill requires fire protection system reports be submitted pursuant to a statewide set of uniform procedures and gives the Division of State Fire Marshal rulemaking authority to establish those procedures.

The bill creates a uniform permit application for the installation of fire alarm systems beginning October 1, 2019, and allows a contractor to begin repair work after submitting an application if the system being repaired had been previously permitted.

The bill requires the State Fire Marshal to issue a data call to all local fire officials to collect data regarding high-rise condominiums greater than 75 feet in height that have not retrofitted with a

fire sprinkler system or an engineered life safety system. The data collected shall include the building address, number of units and number of stories. By July 1, 2020, all data must be received and compiled into a report by city and county. By September 1, 2020, the report must be sent to the Governor and Legislature.

II. Present Situation:

The Department of Business and Professional Regulation

The Division of Condominiums, Timeshares and Mobile Homes (the Division), a division within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common facilities. A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located. A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws, which govern the administration of the association, including quorum, voting rights, and election and removal of board members.[1]

State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.[2]

[1] Sections 718.103(11) and 718.104(2), F.S.
[2] Section 633.104, F.S.

Adoption and Interpretation of the Florida Fire Prevention Code

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C.

The State Fire Marshal adopts a new edition of the Fire Code every 3 years. The most recent Fire Code is the 6th edition, which is referred to as the 2017 Florida Fire Prevention Code. When adopting the Fire Code, the State Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA) including the:

- NFPA's Fire Code 1;
- Life Safety Code 101; and
- Guide on Alternative Approaches to Life Safety 101A.[3]

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state. The State Fire Marshal has authority to interpret the Code, and is the only authority that may issue a declaratory statement relating to the Fire Code.[4]

Fire Safety Enforcement by Local Governments

Current law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code. These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.[5]

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal. Each county, municipality, and special district with fire safety enforcement responsibilities is also required to employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.[6]

Section 633.208(5), F.S., states, "With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Fire Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety." Pursuant to s. 633.208(5), F.S., local fire officials shall apply the Fire Code for

[3] Section 633.202, F.S.; Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA, available at:* http://www.nfpa.org/about-nfpa (last visited on March 28, 2019).
[4] Sections 633.104(6) and 633.202, F.S.
[5] Sections 633.108, 633.208, and 633.214(4), F.S.
[6] Sections 633.118 and 633.216(1), F.S.

existing buildings to the extent practical to ensure a reasonable degree of life safety and safety of property. The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of life safety and safety of property.

Fire Sprinklers and Engineered Life Safety Systems

The Fire Code requires existing multi-family buildings 75 feet or taller (approximately seven stories), including condominiums and cooperatives, to be retrofitted with fire sprinkler systems.[7] All condominiums and cooperatives built since 1994 that are three stories or more have sprinkler systems and thus are in compliance.[8]

The Fire Code allows a building to have an Engineered Lifesafety System (ELSS) as an alternative to a sprinkler system. The Fire Code defines an ELSS as a system that consists of a combination of:

- Partial automatic sprinkler protection;
- Smoke detection alarms;
- Smoke control; and
- Compartmentation or other approved systems.[9]

The Fire Code also does not require existing multi-family buildings 75 feet or taller to retrofit if every dwelling unit in the building has an exterior exit access.[10]

For condominium and cooperative associations that complete retrofitting a certificate of compliance from a licensed electrical contractor or electrician may be accepted as evidence of compliance of the units with the Fire Code.

Licensed Fire Protection System Contractor Reports

Currently, licensed fire protection system contractors are mandated to conduct inspections of fire protection systems pursuant to the Fire Code. Section 633.312, F.S., mandates that the inspecting contractor provide the building owner and the local authority having jurisdiction a copy of the inspection report. There are no limitations on inspection report format or uniform submission requirements. Some local jurisdictions have contracted with third-party software vendors and require the submission of inspection reports to their jurisdiction to be done via these systems.

Building Permits for Fire Alarm Installation

Currently, in most jurisdictions a contractor licensed to install fire alarm systems must submit a permit application before beginning work or repairs. There is no uniform application form or process used by the various jurisdictions. As a result different information may be required by local permitting authorities having jurisdiction.

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[7] Section 13.3.2.26 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[8] Section 553.895(2), F.S.
[9] 101:31.3.5.12.3 & 101: 31.3.5.12.4 of the 6th edition of the Florida Fire Prevention Code 6th edition (NFPA 101, Life Safety Code).
[10] 101:31.3.5.12.2 of the 6th edition of the Florida Fire Prevention Code 6th edition (NFPA 101, Life Safety Code).

Section 553.792, F.S., contains the statutory process for submitting a building permit application for an alarm permit that is not a low-voltage system.[11] Under the statute, the local government must advise the applicant what information, if any, is needed to deem the application properly completed; if the local government does not provide written notice that the applicant has not submitted the properly completed application, the application is deemed complete and accepted. Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required to determine the sufficiency of the application. The applicant must submit the additional information or request the local government act without such information. The local government must approve, with conditions, or deny the application within 120 days of receiving a completed application.

An alternative process is provided under s. 553.793, F.S., for low-voltage alarm system permitting. A contractor is not required to notify the local enforcement agency before commencing work on a low-voltage alarm system that meets statutory requirements. Instead, the contractor must submit to the local enforcement agency a Uniform Notice of a Low-Voltage Alarm System Project within 14 days after completing the project. The statute provides a standardized uniform notice.

History and Current Law of Retrofitting

In 2000, the State Fire Marshal adopted the national fire and life safety standards set forth by the NFPA into the Fire Code. This required existing multi-family buildings 75 feet or taller including condominiums and cooperatives, to be retrofitted with fire sprinkler systems.

In 2003, the Legislature amended the requirement to retrofit a residential condominium or cooperative building by providing that:

- Unit owners in residential condominium and cooperative associations may vote to forego retrofitting a building with a fire sprinkler system or an ELSS. A vote to forego retrofitting required a two-thirds vote of all voting interests in the affected association.
- Local governments may not require an association to retrofit before the end of 2014.
- Associations could not vote to forego retrofitting a sprinkler system in any "common area" of a "high rise" building.
    - The common area of a high-rise building includes any enclosed hallway, corridor, lobby, stairwell, or entryway.
    - A high-rise building is defined as a building greater than 75 feet in height. The building height is measured from the lowest level of fire department access to the floor of the highest occupiable story.[12]

In 2006, Governor Bush vetoed House Bill 391 of the 2006 legislative session, which included a provision that extended the start date that local governments could require associations to retrofit from 2014 to 2025.

[11] Section 553.793(1)(b), F.S., defines a "low-voltage alarm system project" as a project related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system, as defined in s. 489.505, F.S., that is hardwired and operating at low voltage.
[12] Sections 718.112(2)(l) and 719.1055(5) (2003), F.S.

In 2009, Governor Crist vetoed Senate Bill 714 of the 2009 legislative session, which included a provision that extended the start date that local governments could require associations to retrofit from 2014 to 2025. Governor Crist also directed DBPR to initiate a review of the costs to retrofit and the impacts retrofitting may have on insurance premiums.[13]

In October 2009, DBPR completed their report. DBPR's report estimated that retrofitting a condominium with sprinklers would cost from $595 to $8,633 per unit. The costs vary depending on a number of factors such as the extent of sprinkler coverage in the building, the age of the building, the size and number of the units, and type of construction.[14] However, the cost to retrofit a building can range from $5,000 per unit to in excess of $20,000 per unit.[15] According to DBPR, they received 19 certificates from associations stating they completed retrofitting since 2004. Five of those certificates included the cost to complete retrofitting, which ranged from $908 per unit to $3,291 per unit with an average of $2,196 per unit.

DBPR's report also stated an association could expect to receive a 5 percent discount on the "all other perils" portion of their property and casualty insurance policy. DBPR stated that "many associations have foregone retrofits because they are cash strapped in the current economy. With many units sitting empty or in foreclosure and not paying assessments, some condominiums are scraping by just paying their normal expenses."[16]

In 2010, the Legislature amended the law regarding retrofitting by:
- Providing that unit owners may vote to forego retrofitting a sprinkler system in common areas of a high-rise building.
- Reducing the voting requirement to forego retrofitting a sprinkler system from a two-thirds vote to a majority vote.
- Removing the ability of residential condominium or cooperative associations to vote to forego retrofitting an ELSS.
- Prohibiting local governments from requiring retrofitting before January 1, 2020.[17]

In 2017, the Governor vetoed House Bill 653 of the 2017 legislative session, which included similar language to this bill, including the following:
- Provided that in addition to being able to forego retrofitting a building with a fire sprinkler system, associations may also vote to forego retrofitting a building with an ELSS.
- Provided that a vote to forego retrofitting required a two-thirds vote of all voting interests.
- Provided that all condominium or cooperative associations that operate buildings that are greater than 75 feet in height may vote to waive retrofitting requirements.
- Extended the time that local governments may not require associations to retrofit.
- Extended the time an association has to apply for a building permit, if it has not completed retrofitting or voted to forego retrofitting.

[13] Letter from Charlie Crist, Governor of the State of Fla., to Kurt S. Browning, Sec'y of State (June 1, 2009), *available at:* http://www.butler.legal/files/2009_sb714.pdf (last visited March 28, 2019).
[14] Department of Business and Professional Regulation, Condominium Sprinkler Retrofit Report, October 2009.
[15] Testimony from Representative Michael Grieco, *3/6/2019 Meeting of the House Business and Professions Subcommittee*, *available at:* https://thefloridachannel.org/videos/3-6-19-house-business-and-professions-subcommittee/ (last visited March 28, 2019).
[16] Department of Business and Professional Regulation, *supra* note 14.
[17] Sections 718.112(2)(l), and 719.1055(5), F.S.

- Required a board that operates a building that has not installed a sprinkler system in the common areas to post a sign on the outside of the building to warn persons conducting fire control and other emergency operations that there is not a sprinkler system in the building.
- Required the State Fire Marshal to promulgate rules regarding the size and color of the sign, the time period within which a sign must be posted, and the location of the sign. However, the rules may not require an association to post a sign that diminishes the aesthetic value of a building.

Governor Scott stated his reasons for vetoing were:

> "Fire sprinklers and enhanced life safety systems are particularly effective in improving the safety of occupants in high-rise buildings and ensure the greatest protection to the emergency responders who bravely conduct firefighting and rescue operations. While I am particularly sensitive to regulations that increase the cost of living, the recent London high-rise fire, which tragically took at least 79 lives, illustrates the importance of life safety protections."[18]

Current law provides that:

- An association or unit owner is not required to retrofit common elements, association property, or units of a residential condominium with a sprinkler system in a building if:
  - The building has been certified for occupancy by the applicable government entity; and
  - The unit owners vote to forego retrofitting by a majority vote of all voting interests.
- Current law only applies to fire sprinkler systems. An association may not vote to forego retrofitting a building with an ELSS.
- Local governments may not require an association to retrofit a fire sprinkler system before January 1, 2020.
- An association that has not retrofitted with a sprinkler system or an ELSS, and has not voted to waive retrofitting must initiate an application for a building permit with the local government to begin retrofitting.
- Current law only applies to residential condominiums. Nonresidential condominiums may not vote to forego any retrofitting requirements.
  - Residential condominiums consist of two or more units, any of which are intended for use as a private temporary or permanent residence. A condominium that contains commercial and residential units is a mixed-use condominium. Residential cooperatives consist of units, which are intended for use as a private residence. If a cooperative has commercial and residential units then the cooperative is a residential cooperative with respect to those units intended for use as a private residence.[19]

Current law does not specify whether an association has to retrofit or vote to forego retrofitting for a building that is 75 feet or less in height.

[18] Letter from Rick Scott, Governor of the State of Fla., to Ken Detzner, Sec'y of State (June 26, 2017), *available at:* https://www.flgov.com/wp-content/uploads/2017/06/HB-653-Veto-Letter.pdf (last visited March 28, 2019).
[19] Sections 718.112(23), 719.103(22)-(23), and 719.1055(5), F.S.

Vote to Forego Retrofitting

A vote to forego retrofitting may be obtained by limited proxy, a personally cast ballot at a membership meeting, or by execution of a written consent by the member. An association's vote to forego retrofitting is effective upon recording a certificate attesting to such vote in the public records for the county of the association.[20]

An association must mail or hand deliver each unit owner written notice of the vote. After the vote to forego, notice of the results must be mailed or hand delivered to all unit owners. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing, and by a unit owner to a renter before signing a lease.[21]

If there has been a previous vote to forego retrofitting then a vote to require retrofitting may be held at a special meeting of the unit owners called by a petition of least 10 percent of the voting interests. Such vote may be called once every 3 years. Electronic transmission may not be used to provide notice of the special meeting.[22]

As part of the annual information collected from associations, the Division requires associations to report a membership vote to forego retrofitting, record a certificate if an association voted to forego, and, if retrofitting has been undertaken, the per-unit cost of such work. The Division must annually report to the State Fire Marshal the number of associations that have elected to forego retrofitting.[23] According to the Division, they received 4,329 certificates to forego retrofitting since 2004. The Division also received 19 certificates stating retrofitting had been completed. Five of those certificates included the cost to complete retrofitting, which ranged from $908 per unit to $3,291 per unit with an average of $2,196 per unit.

III. Effect of Proposed Changes:

Building Permits for Fire Alarm Installation

The bill amends s. 553.792, F.S., to create a uniform application for building permits to install fire alarm systems beginning October 1, 2019. It allows a local enforcement agency to require any drawings, plans and supporting documentation be included with the submission of the uniform permitting application. The bill states the submission of such an application may be done electronically or by facsimile. The bill clarifies fire alarm systems that do not need a plan review are not required to submit an application under s. 553.792(1), F.S., which contains the process for submitting to a local government a building permit application for an alarm system that is not a low-voltage alarm system. The bill also allows a contractor to begin repair work immediately after submitting an application if the fire alarm system being repaired had been previously permitted by the local enforcement agency.

[20] Sections 718.112(2)(l), and 719.1055(5), F.S.
[21] *Id.*
[22] *Id.*
[23] *Id.*

Fire Protection System Inspection Reports

The bill amends s. 633.312, F.S., to require fire protection system inspection reports completed by fire protection system contractors to be submitted pursuant to a statewide uniform set of procedures. The procedures are to apply to a local authority having jurisdiction or a third-party vendor contracted for the collection of such reports. The State Fire Marshal is to adopt a rule requiring all third-party vendors or local authorities having jurisdiction to follow a standardized procedure, including:

- A uniform reporting format that must be used by all local authorities having jurisdiction and that is designed to reduce the amount of information a contractor must manually input into the system.
- A set of uniform submission procedures to be used by local authorities having jurisdiction or by vendors.

The rule must allow a contractor to attach additional documents, including the contractor's detailed inspection report, to the submission. A contractor's inspection report is not required to follow a standardized format, and a vendor or local authority having jurisdiction may not require a contractor to enter the details of the inspection report or of the deficiency repair status into an electronic system.

Firesafety Requirements for Condominium Associations

The bill amends s. 718.112, F.S., to require an association to ensure reasonable compliance with the Florida Fire Prevention Code. Under this section "reasonable compliance" means the ability to select alternative solutions to ensure that the property meets the level of firesafety required by the Florida Fire Prevention Code. As to a residential condominium building that is a high-rise building as defined under the Florida Fire Prevention Code, the association may either retrofit a fire sprinkler system or install an engineered life safety system as specified in the Florida Fire Prevention Code.

Additionally, the local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or completion of installation of an engineered life safety system before January 1, 2024.

The bill repeals language that allows unit owners to vote to opt out of the required retrofitting for fire sprinkler systems. Under this repeal all applicable residential condominium buildings must comply with the new retrofitting deadline for fire sprinkler systems. The bill also repeals current law that allows electrical contractors licensed under ch. 633, F.S., to certify a building's fire sprinkler compliance.

The bill requires by July 1, 2019, the State Fire Marshal to issue a data call to all local fire officials to collect data regarding high-rise condominiums greater than 75 feet in height that have not retrofitted with a fire sprinkler system or an engineered life safety system. The data collected shall include the building address, number of units and number of stories. By July 1, 2020, all data must be received and compiled into a report by city and county. By September 1, 2020, the report must be sent to the Governor, the President of the Senate and the Speaker of the House of Representatives.

Effective Date

The effective date of the bill is upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

All applicable condominium buildings must comply with the new deadline for retrofitting fire sprinkler or life safety systems, including associations that voted in the past to exempt their building from current requirements.

C. Government Sector Impact:

The Department of Business and Professional Regulation states they would incur non-recurring cost of $46,352 the first year and a recurring cost of $40,503 for staffing and software updates relating to tracking association compliance and the collection of fines and penalties.[24]

[24] Department of Business and Professional Regulation, Agency Analysis SB 908, (February 28, 2019) (on file with Senate Committee on Banking and Insurance).

VI. Technical Deficiencies:

On line 134 "subsection (1)" should be replaced with "section" as fire alarm systems that do not require plans review are already covered by low-voltage alarm system installation permitting in s. 553.793(4), F.S.

VII. Related Issues:

The uniform permit application for the installation of fire alarm systems appears to only create uniformity for part of the application. The bill allows the local enforcement agency to require any drawings, plans, and supporting documentation with the submission of the Uniform Fire Alarm Permit Application. Allowing such additional documentation to be determined by the local enforcement agencies may defeat the stated purpose of creating a uniform permitting application.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 553.792, 633.216, 633.312, and 718.112.

IX. Additional Information:

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

CS/CS/CS by Rules on April 23, 2019
The CS:

- Moves the retrofitting deadline for fire sprinkler system or an engineered life safety system in high-rise condominiums to January 1, 2024
- Removes the deadlines for when permit applications and permits had to be filed.
- Removes the $500 per day penalty for noncompliance that was in the bill.
- Begins the use of the uniform application for fire alarm systems on October 1, 2019.
- Requires the State Fire Marshal to issue a data call regarding high-rise condos that have not retrofitted with a fire sprinkler system or an engineered life safety system. Such data is to be submitted to the Governor and Legislature by September 1, 2020.

CS/CS by Community Affairs on April 2, 2019
The CS clarifies requirements of fire alarm permits for repairs to fire alarm systems.

CS by Banking and Insurance on March 18, 2019:
The CS:

- Removes PACE funding for fire sprinklers and removes the alternatives to taxation on such improvements from the bill.
- Clarifies what the DFS rules should include as it relates to the creation on a uniform inspection form and submission process.
- Creates a uniform permit application for the installation of fire alarm systems and allows a contractor to begin repair work after submitting an application if the system being repaired had been previously permitted.

B. Amendments:

None.

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

427046

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2019	.	
	.	
	.	
	.	

The Committee on Rules (Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 553.792, Florida Statutes, is amended to read:

553.792 Building permit application to local government; fire alarm permit applications.—

(1) Within 10 days of an applicant submitting an application to the local government, the local government shall advise the applicant what information, if any, is needed to deem

the application properly completed in compliance with the filing requirements published by the local government. If the local government does not provide written notice that the applicant has not submitted the properly completed application, the application shall be automatically deemed properly completed and accepted. Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required for the local government to determine the sufficiency of the application, and shall specify the additional information that is required. The applicant must submit the additional information to the local government or request that the local government act without the additional information. While the applicant responds to the request for additional information, the 120-day period described in this subsection is tolled. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force major or other extraordinary circumstance. The local government must approve, approve with conditions, or deny the application within 120 days following receipt of a completed application.

(2) The procedures set forth in subsection (1) apply to the following building permit applications: accessory structure; alarm permit; nonresidential buildings less than 25,000 square feet; electric; irrigation permit; landscaping; mechanical; plumbing; residential units other than a single family unit; multifamily residential not exceeding 50 units; roofing; signs; site-plan approvals and subdivision plats not requiring public hearings or public notice; and lot grading and site alteration associated with the permit application set forth in this

427046

subsection. The procedures set forth in subsection (1) do not apply to permits for any wireless communications facilities or when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications.

(3) For any project requiring a fire alarm permit, a uniform fire alarm permit application must be used and submitted to the local enforcement agency along with any required drawings, plans, and supporting documentation. The uniform fire alarm permit application may be submitted electronically or by facsimile and must be signed by the owner, contractor, or authorized representative of either such person. The uniform fire alarm permit application must contain the following information in substantially the following form:

UNIFORM FIRE ALARM PERMIT APPLICATION

Tax Folio No.: ....
Application No.: ....
Owner or Representative Name: ....
Property Address: ....
City: .... State: .... Zip: ....
Phone: ....
Fee Simple Titleholder’s Name (if other than owner): ....
Fee Simple Titleholder’s Address (if other than owner): ....
Description of Work: .... New Install .... Replacement .... Addition .... Other ....
Construction Type: ....
Proposed Use: ....

427046

Alarm Contractor's Name: ....
Alarm Contractor's Address: ....
City: .... State: .... Zip: ....
Phone: ....
Alarm Contractor's License No: ....

Application is hereby made to obtain a permit to do the work and installation as indicated. I certify that no work or installation has commenced before the filing of this permit application. I certify that all of the foregoing information is true and accurate.

...(Signature of Owner, Contractor, or Agent)...
Printed Name: ....

(4) The procedures set forth in subsection (1) do not apply to the installation or replacement of a fire alarm system if a plans review is not required by the local enforcement agency.

(5) For repairs to an existing fire alarm system that was previously permitted by the local enforcement agency, the contractor may begin the repair upon filing the uniform fire alarm permit application with the local enforcement agency if the local enforcement agency requires fire alarm permits for repairs.

Section 2. Subsection (1) of section 633.216, Florida Statutes, is amended to read:

633.216 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.—The State Fire Marshal and her or his

427046

agents or persons authorized to enforce laws and rules of the State Fire Marshal shall, at any reasonable hour, when the State Fire Marshal has reasonable cause to believe that a violation of this chapter or s. 509.215, or a rule adopted thereunder, or a minimum firesafety code adopted by the State Fire Marshal or a local authority, may exist, inspect any and all buildings and structures which are subject to the requirements of this chapter or s. 509.215 and rules adopted thereunder. The authority to inspect shall extend to all equipment, vehicles, and chemicals which are located on or within the premises of any such building or structure.

(1) Each county, municipality, and special district that has firesafety enforcement responsibilities shall employ or contract with a firesafety inspector. Except as provided in s. 633.312(2), ~~and~~ (3), and (4), the firesafety inspector must conduct all firesafety inspections that are required by law. The governing body of a county, municipality, or special district that has firesafety enforcement responsibilities may provide a schedule of fees to pay only the costs of inspections conducted pursuant to this subsection and related administrative expenses. Two or more counties, municipalities, or special districts that have firesafety enforcement responsibilities may jointly employ or contract with a firesafety inspector.

Section 3. Present subsections (4) and (5) of section 633.312, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and subsection (3) of that section is amended, to read:

633.312 Inspection of fire control systems, fire hydrants, and fire protection systems.—

427046

(3)(a) The inspecting contractor shall provide to the building owner or hydrant owner and the local authority having jurisdiction a copy of the applicable uniform summary inspection report established under this chapter. The local authority having jurisdiction may accept uniform summary inspection reports by United States mail, by hand delivery, by electronic submission, or through a third-party vendor that collects the reports on behalf of the local authority having jurisdiction.

(b) The State Fire Marshal shall adopt rules to implement a uniform summary inspection report and submission procedures to be used by all third-party vendors and local authorities having jurisdiction. For purposes of this section, a uniform summary inspection report must record the address where the fire protection system or hydrant is located, the company and person conducting the inspection and their license number, the date of the inspection, and the fire protection system or hydrant inspection status, including a brief summary of each deficiency, critical deficiency, noncritical deficiency, or impairment found. A contractor's detailed inspection report is not required to follow the uniform summary inspection report format. The State Fire Marshal shall establish by rule a submission procedure for each means provided under paragraph (a) by which a local authority having jurisdiction may accept uniform summary inspection reports. Each of the submission procedures must allow a contractor to attach additional documents with the submission of a uniform summary inspection report, including a physical copy of the contractor's detailed inspection report. A submission procedure may not require a contractor to submit information contained within the detailed inspection report

427046

unless the information is required to be included in the uniform summary inspection report.

(4) The maintenance of fire hydrant and fire protection systems as well as corrective actions on deficient systems is the responsibility of the owner of the system or hydrant. Equipment requiring periodic testing or operation to ensure its maintenance shall be tested or operated as specified in the Fire Prevention Code, Life Safety Code, National Fire Protection Association standards, or as directed by the appropriate authority, provided that such appropriate authority may not require a sprinkler system not required by the Fire Prevention Code, Life Safety Code, or National Fire Protection Association standards to be removed regardless of its condition. This section does not prohibit governmental entities from inspecting and enforcing firesafety codes.

Section 4. Paragraph (l) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(l) *Firesafety*.—An association must ensure reasonable compliance with the Florida Fire Prevention Code. For purposes of this paragraph, the term "reasonable compliance" means the ability to select alternative solutions to ensure that the property meets the level of firesafety required by the Florida Fire Prevention Code. As to a residential condominium building that is a high-rise building as defined under the Florida Fire Prevention Code, the association may either retrofit a fire

427046

sprinkler system or install an engineered life safety system as specified in the Florida Fire Prevention Code ~~*Certificate of compliance.*— A provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety code must be included. Notwithstanding chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, residential condominium, or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system in a building that has been certified for occupancy by the applicable governmental entity if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected condominium~~.

1. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or completion of installation of an engineered life safety system before January 1, 2024 ~~2020~~. ~~By December 31, 2016, a residential condominium association that is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2019~~.

~~1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and~~

427046

~~is effective upon recording a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall mail or hand deliver to each unit owner written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote must be mailed or hand delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the association. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.~~

~~2. If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of at least 10 percent of the voting interests. Such a vote may only be called once every 3 years. Notice shall be provided as required for any regularly called meeting of the unit owners, and must state the purpose of the meeting. Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose.~~

~~3. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the~~

427046

~~Department of Financial Services the number of condominiums that have elected to forego retrofitting.~~

2.~~4.~~ Notwithstanding s. 553.509, a residential association may not be obligated to, and may forego the retrofitting of, any improvements required by s. 553.509(2) upon an affirmative vote of a majority of the voting interests in the affected condominium.

Section 5. By July 1, 2019, the State Fire Marshal shall issue a data call to all local fire officials to collect data regarding high-rise condominiums greater than 75 feet in height which have not retrofitted with a fire sprinkler system or an engineered life safety system in accordance with ss. 633.208(5) and 718.112(2)(l), Florida Statutes. Local fire officials shall submit such data to the State Fire Marshal and shall include, for each individual building, the address, the number of units, and the number of stories. By July 1, 2020, all data must be received and compiled into a report by city and county. By September 1, 2020, the report must be sent to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 6. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to firesafety systems; amending s. 553.792, F.S.; requiring that a uniform fire alarm

permit application, along with certain other information, be used and submitted to the local enforcement agency for any project requiring a fire alarm permit; providing that such application may be submitted by certain means; providing a signature requirement; specifying information required in, and a form for, such applications; providing applicability of certain building permit application procedures; authorizing contractors, under certain circumstances, to begin fire alarm system repairs upon filing the uniform fire alarm permit application; amending s. 633.216, F.S.; conforming a cross-reference; amending s. 633.312, F.S.; authorizing local authorities having jurisdiction to accept uniform summary inspection reports of certain fire hydrants and fire protection systems by certain means; requiring the State Fire Marshal to adopt rules implementing a uniform summary inspection report and certain submission procedures; providing requirements for such uniform report and procedures; providing that such procedures may not require a contractor to submit certain information; amending s. 718.112, F.S.; requiring that condominium association bylaws provide requirements for the association's reasonable compliance with the Florida Fire Prevention Code; defining the term "reasonable compliance"; specifying authorized means of compliance for certain residential condominiums; deleting a requirement for association bylaws to contain a certain certificate of compliance provision; deleting

427046

an exemption from a requirement to retrofit certain condominium property with a fire sprinkler system; deleting obsolete provisions; extending the date before which a local authority having jurisdiction may not require completion of a condominium's retrofitting with a fire sprinkler system; specifying the date before which such local authority having jurisdiction may not require completion of installation of an engineered life safety system; requiring the State Fire Marshal, by a certain date, to issue a data call to all local fire officials to collect data on certain high-rise condominiums; specifying data that local fire officials must submit; requiring that all data be received and compiled into a certain report by a certain date; requiring that the report be sent to the Governor and the Legislature by a certain date; providing an effective date.

515784

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2019	.	
	.	
	.	
	.	

The Committee on Rules (Hooper) recommended the following:

Senate Amendment to Amendment (427046) (with title amendment)

Delete line 45

and insert:

(3) Beginning October 1, 2019, for any project requiring a fire alarm permit, a

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

And the title is amended as follows:

Delete line 272

515784

and insert:

553.792, F.S.; requiring, beginning on a certain date, that a uniform fire alarm

By the Committees on Community Affairs; and Banking and Insurance; and Senator Hooper

578-03797-19 2019908c2

A bill to be entitled

An act relating to firesafety systems; amending s. 553.792, F.S.; requiring that a uniform fire alarm permit application, along with certain other information, be used and submitted to the local enforcement agency for any project requiring a fire alarm permit; providing that such application may be submitted by certain means; providing a signature requirement; specifying information required in, and a form for, such applications; providing applicability of certain building permit application procedures; authorizing contractors, under certain circumstances, to begin repairs of fire alarm system upon filing the uniform fire alarm permit application; amending s. 633.216, F.S.; conforming a cross-reference; amending s. 633.312, F.S.; authorizing local authorities having jurisdiction to accept uniform summary inspection reports of certain fire hydrants and fire protection systems by certain means; requiring the State Fire Marshal to adopt rules implementing a uniform summary inspection report and certain submission procedures; providing requirements for such uniform report and procedures; providing that such procedures may not require a contractor to submit certain information; amending s. 718.112, F.S.; requiring that condominium association bylaws provide requirements for the association's reasonable compliance with the Florida Fire Prevention Code; defining the term "reasonable compliance"; providing construction; specifying

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

578-03797-19 2019908c2

authorized means of compliance for certain residential condominiums; deleting a requirement for association bylaws to contain a certain certificate of compliance provision; deleting an exemption from a requirement to retrofit certain condominium property with a fire sprinkler system; deleting procedures for such exemption; extending the date before which a local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system; specifying the date before which a local authority having jurisdiction may not require completion of installation of an engineered life safety system; requiring a residential condominium association that is not in compliance with certain requirements to perform certain duties by specified dates; providing a penalty; requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation to collect such penalty payments and remit them to the Firefighter Assistance Grant Program within the Division of State Fire Marshal of the Department of Financial Services; deleting an obsolete provision; deleting requirements for condominium associations to report certain information to the Division of Florida Condominiums, Timeshares, and Mobile Homes and for the division to report certain information to the Division of State Fire Marshal; providing an effective date.

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

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

Section 1. Section 553.792, Florida Statutes, is amended to read:

553.792 Building permit application to local government; fire alarm permit applications.—

(1) Within 10 days of an applicant submitting an application to the local government, the local government shall advise the applicant what information, if any, is needed to deem the application properly completed in compliance with the filing requirements published by the local government. If the local government does not provide written notice that the applicant has not submitted the properly completed application, the application shall be automatically deemed properly completed and accepted. Within 45 days after receiving a completed application, a local government must notify an applicant if additional information is required for the local government to determine the sufficiency of the application, and shall specify the additional information that is required. The applicant must submit the additional information to the local government or request that the local government act without the additional information. While the applicant responds to the request for additional information, the 120-day period described in this subsection is tolled. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force major or other extraordinary circumstance. The local government must approve, approve with conditions, or deny the application within 120 days following receipt of a completed application.

(2) The procedures set forth in subsection (1) apply to the

following building permit applications: accessory structure; alarm permit; nonresidential buildings less than 25,000 square feet; electric; irrigation permit; landscaping; mechanical; plumbing; residential units other than a single family unit; multifamily residential not exceeding 50 units; roofing; signs; site-plan approvals and subdivision plats not requiring public hearings or public notice; and lot grading and site alteration associated with the permit application set forth in this subsection. The procedures set forth in subsection (1) do not apply to permits for any wireless communications facilities or when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications.

(3) For any project requiring a fire alarm permit, a uniform fire alarm permit application must be used and submitted to the local enforcement agency along with any required drawings, plans, and supporting documentation. The uniform fire alarm permit application may be submitted electronically or by facsimile and must be signed by the owner, contractor, or authorized representative of either such person. The uniform fire alarm permit application must contain the following information in substantially the following form:

UNIFORM FIRE ALARM PERMIT APPLICATION

Tax Folio No.: ....
Application No.: ....
Owner or Representative Name: ....
Property Address: ....
City: .... State: .... Zip: ....

Phone: ....
Fee Simple Titleholder's Name (if other than owner): ....
Fee Simple Titleholder's Address (if other than owner): ....
Description of Work: .... New Install .... Replacement .... Addition .... Other ....
Construction Type: ....
Proposed Use: ....
Alarm Contractor's Name: ....
Alarm Contractor's Address: ....
City: .... State: .... Zip: ....
Phone: ....
Alarm Contractor's License No: ....

Application is hereby made to obtain a permit to do the work and installation as indicated. I certify that no work or installation has commenced before the filing of this permit application. I certify that all of the foregoing information is true and accurate.

...(Signature of Owner, Contractor, or Agent)...
Printed Name: ....

(4) The procedures set forth in subsection (1) do not apply to the installation or replacement of a fire alarm system if a plans review is not required by the local enforcement agency.

(5) For repairs to an existing fire alarm system that was previously permitted by the local enforcement agency, the contractor may begin the repair upon filing the uniform fire

alarm permit application with the local enforcement agency if the local enforcement agency requires fire alarm permits for repairs.

Section 2. Subsection (1) of section 633.216, Florida Statutes, is amended to read:

633.216 Inspection of buildings and equipment; orders; firesafety inspection training requirements; certification; disciplinary action.—The State Fire Marshal and her or his agents or persons authorized to enforce laws and rules of the State Fire Marshal shall, at any reasonable hour, when the State Fire Marshal has reasonable cause to believe that a violation of this chapter or s. 509.215, or a rule adopted thereunder, or a minimum firesafety code adopted by the State Fire Marshal or a local authority, may exist, inspect any and all buildings and structures which are subject to the requirements of this chapter or s. 509.215 and rules adopted thereunder. The authority to inspect shall extend to all equipment, vehicles, and chemicals which are located on or within the premises of any such building or structure.

(1) Each county, municipality, and special district that has firesafety enforcement responsibilities shall employ or contract with a firesafety inspector. Except as provided in s. 633.312(2), ~~and~~ (3), and (4), the firesafety inspector must conduct all firesafety inspections that are required by law. The governing body of a county, municipality, or special district that has firesafety enforcement responsibilities may provide a schedule of fees to pay only the costs of inspections conducted pursuant to this subsection and related administrative expenses. Two or more counties, municipalities, or special districts that

have firesafety enforcement responsibilities may jointly employ or contract with a firesafety inspector.

Section 3. Present subsections (4) and (5) of section 633.312, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and subsection (3) of that section is amended, to read:

633.312 Inspection of fire control systems, fire hydrants, and fire protection systems.—

(3)(a) The inspecting contractor shall provide to the building owner or hydrant owner and the local authority having jurisdiction a copy of the applicable uniform summary inspection report established under this chapter. The local authority having jurisdiction may accept uniform summary inspection reports by United States mail, by hand delivery, by electronic submission, or through a third-party vendor that collects the reports on behalf of the local authority having jurisdiction.

(b) The State Fire Marshal shall adopt rules to implement a uniform summary inspection report and submission procedures to be used by all third-party vendors and local authorities having jurisdiction. For purposes of this section, a uniform summary inspection report must record the address where the fire protection system or hydrant is located, the company and person conducting the inspection and their license number, the date of the inspection, and the fire protection system or hydrant inspection status, including a brief summary of each deficiency, critical deficiency, noncritical deficiency, or impairment found. A contractor's detailed inspection report is not required to follow the uniform summary inspection report format. The State Fire Marshal shall establish by rule a submission

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

procedure for each means provided under paragraph (a) by which a local authority having jurisdiction may accept uniform summary inspection reports. Each of the submission procedures must allow a contractor to attach additional documents with the submission of a uniform summary inspection report, including a physical copy of the contractor's detailed inspection report. A submission procedure may not require a contractor to submit information contained within the detailed inspection report unless the information is required to be included in the uniform summary inspection report.

(4) The maintenance of fire hydrant and fire protection systems as well as corrective actions on deficient systems is the responsibility of the owner of the system or hydrant. Equipment requiring periodic testing or operation to ensure its maintenance shall be tested or operated as specified in the Fire Prevention Code, Life Safety Code, National Fire Protection Association standards, or as directed by the appropriate authority, provided that such appropriate authority may not require a sprinkler system not required by the Fire Prevention Code, Life Safety Code, or National Fire Protection Association standards to be removed regardless of its condition. This section does not prohibit governmental entities from inspecting and enforcing firesafety codes.

Section 4. Paragraph (l) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

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

(l) *Firesafety.*—An association must ensure reasonable compliance with the Florida Fire Prevention Code. For purposes of this paragraph, the term "reasonable compliance" means the ability to select alternative solutions to ensure that the property meets the level of firesafety required by the Florida Fire Prevention Code. As to a residential condominium building that is a high-rise building as defined under the Florida Fire Prevention Code, the association may either retrofit a fire sprinkler system or install an engineered life safety system as specified in the Florida Fire Prevention Code ~~*Certificate of compliance.*— A provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety code must be included. Notwithstanding chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, residential condominium, or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system in a building that has been certified for occupancy by the applicable governmental entity if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected condominium~~.

1. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or completion of installation of an engineered life safety system before January 1, 2023 ~~2020~~. A residential condominium association that is not in compliance with the requirements for

a fire sprinkler system or an engineered life safety system shall:

a. By July 1, 2020, submit a final fire sprinkler permit application and supporting documents to the authority having jurisdiction;

b. By July 1, 2021, obtain all necessary permits; and

c. By December 31, 2022, pass final inspection.

If a residential condominium association fails to timely comply with the requirements of this subparagraph, the authority having jurisdiction shall assess a penalty against the association in the amount of $500 per day until it attains compliance. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall collect all such payments and remit them to the Firefighter Assistance Grant Program created under s. 633.135 ~~By December 31, 2016, a residential condominium association that is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2019~~.

~~1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and is effective upon recording a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall mail or hand deliver to each unit~~

~~owner written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote must be mailed or hand delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the association. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.~~

~~2. If there has been a previous vote to forego retrofitting, a vote to require retrofitting may be obtained at a special meeting of the unit owners called by a petition of at least 10 percent of the voting interests. Such a vote may only be called once every 3 years. Notice shall be provided as required for any regularly called meeting of the unit owners, and must state the purpose of the meeting. Electronic transmission may not be used to provide notice of a meeting called in whole or in part for this purpose.~~

~~3. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.~~

2.~~4.~~ Notwithstanding s. 553.509, a residential association may not be obligated to, and may forego the retrofitting of, any improvements required by s. 553.509(2) upon an affirmative vote of a majority of the voting interests in the affected condominium.

Section 5. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ED HOOPER
16th District

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

March 20th, 2019

The Honorable Lizbeth Benacquisto, Chair
Rules Committee
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto:

I am writing to request that Senate Bill 908, Firesafety Systems, be placed on the agenda of the next Rules Committee meeting.

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

Warm regards,

Ed Hooper

Cc: John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant

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

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

amendment 42-7046DE

4/23/19
Date

908
Bill Number

Name Ellyn Bogdanoff

Address 1 E Broward Blvd
Street

Ft Lauderdale FL 33301
City *State* *Zip*

Phone

E-mail

Job Title

Speaking: ☐ For ☑ Against ☐ Information

Appearing at request of Chair ☐

Subject Fire Sprinklers

Representing FACTTS

Lobbyist registered with Legislature: ☑ Yes ☐ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from_____ ___.m. to _____ ___.m.

S-001 (08/2005)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

908
Bill Number (if applicable)

Topic Firesafety Systems

Amendment Barcode (if applicable)

Name Jim Tolley

Job Title President

Address 343 West Madison Street
Street
Tallahassee
City *State* *Zip*

Phone 850-224-7333

Email jimt@fpfp.org

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/15
Meeting Date

SB 908
Bill Number (if applicable)

Topic Fire Safety Systems

Amendment Barcode (if applicable)

Name Jim Millican

Job Title Chief

Address 4360-55 Ave N
Street

St. Pete FL 33714
City *State* *Zip*

Phone 727-526-5650

Email jmillican@clearwaterfire.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fire Chiefs Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/2019 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 908

Meeting Date — Bill Number (if applicable)

Topic Fire Systems — Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street (Street) — Phone (850) 681-0024

Tallahassee, FL 32301 (City / State / Zip) — Email jorge@flapartners.com

Speaking: ☑ For ☐ Against ☐ Information — Waive Speaking: ☑ In Support ☐ Against

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

Representing ADT

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

April 23 | 2019
Meeting Date

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

908
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Meehan

Job Title _____

Address 300 S. Duval St.
Street
Tallahassee FL 32312
City *State* *Zip*

Phone (850) 425-4000

Email Tim@meehanlawfirm.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Fire Sprinkler Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

4/23/19
Date

908
Bill Number

Name Ellyn Bogdanoff

Address 1 E Broward Blvd
Street
Ft Lauderdale FL 33301
City *State* *Zip*

Phone

E-mail

Job Title

Speaking: ☐ For ☑ Against ☐ Information

Appearing at request of Chair ☐

Subject Fire Sprinklers

Representing FACTS

Lobbyist registered with Legislature: ☑ Yes ☐ No

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from ____ ___ .m. to ____ ___ .m.

S-001 (08/2005)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 7074
INTRODUCER:	Rules Committee and Governmental Oversight and Accountability Committee
SUBJECT:	Support Organizations
DATE:	April 24, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Peacock/Ponder	McVaney		**GO Submitted as Committee Bill**
1.	Peacock/Ponder	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7074 removes the scheduled repeal of provisions governing citizen support organizations (CSOs) established under the Department of State, Department of Environmental Protection, and the Fish and Wildlife Conservation Commission, allowing the CSOs to continue operating and providing benefits to the respective departments.

The bill repeals s. 288.809, F.S., which created Florida Intergovernmental Relations Foundation, a direct support organization (DSO) under the Executive Office of the Governor.

The bill saves from repeal the Florida Endowment for Vocational Rehabilitation, a DSO for the Division of Vocational Rehabilitation in the Department of Education.

The bill removes the scheduled repeal date of the law authorizing the Florida Department of Agriculture and Consumer Services to establish DSOs to provide assistance, funding, and support to assist the department in furthering its goals. These DSOs include:

- Friends of the Florida State Forests;
- Forestry Arson Alert Association, Inc.;
- Florida Agricultural Museum;
- Florida Agriculture in the Classroom, Inc.;
- Florida Agriculture Center and Horse Park Authority; and
- Living Healthy in Florida, Inc.

The bill requires Department of Environmental Protection to submit a report to the President of the Senate and the Speaker of the House of Representatives that examines the financial transparency, accountability, and ethics of those CSOs with annual expenditures of more than $300,000 and those CSOs under the Florida Coastal Office, as of November 1, 2018. The report must identify any of the department's CSOs included in the report that are not in compliance with statutory requirements and describe whether the department has terminated its contracts with those organizations.

The bill extends the repeal date for the Friends of the Babcock Ranch Preserve, Inc., a CSO, and the Florida Beef Council, a DSO, within the Department of Agriculture and Consumer Services, from October 1, 2019, to October 1, 2024.

The bill authorizes courts to order a person convicted of a violation of Commission rules or orders to pay an assessment to Wildlife Alert Reward Association, Inc., allowing courts to continue an existing practice that provides a significant portion of Wildlife Alert Reward Association, Inc.'s funding. The bill authorizes Wildlife Alert Reward Association, Inc., to pay rewards from assessments collected by court order to persons who provide information leading to the arrest of a person for a violation of the Fish and Wildlife Conservation Commission rules or orders.

The bill has no impact on state revenues or expenditures.

The bill takes effect July 1, 2019.

II. Present Situation:

Citizen Support Organizations and Direct-Support Organizations

CSOs and DSOs are statutorily created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purposes of a CSO or DSO are prescribed by its enabling statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

CSO and DSO Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., to establish a comprehensive set of transparency and reporting requirements for CSOs and DSOs that are created or authorized pursuant to law or executive order and created, approved, or administered by a state agency.[1] Specifically, the law requires each CSO and DSO to annually submit, by August 1, the following information related to its organization, mission, and finances to the agency it supports:[2]

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;

[1] Chapter 2014-96, Laws of Fla.
[2] Section 20.058(1), F.S.

- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service (IRS) Return of Organization Exempt from Income Tax form (Form 990).[3]

Each agency receiving the above information must make the information available to the public through the agency's website. If the CSO or DSO maintains a website, the agency's website must provide a link to the website of the CSO or DSO.[4] Additionally, any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting the information.[5] If a CSO or DSO fails to submit the required information for two consecutive years, the agency must terminate the contract with the CSO or DSO.[6] The contract must also include a provision for ending operations and returning state-issued funds to the state if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved.[7]

By August 15 of each year, the agency must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information provided by the CSO or DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each CSO or DSO.[8]

Lastly, a law creating or authorizing the creation of a CSO or DSO must state that the creation or authorization for the CSO or DSO is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. CSOs and DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019.[9]

CSO and DSO Audit Requirements

Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of $100,000 to provide for an annual financial audit of its accounts and records.[10] The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports.

Additionally, the Auditor General may conduct audits or other engagements of the accounts and records of the CSO or DSO, pursuant to his or her own authority, or at the direction of the

[3] The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501.
[4] Section 20.058(2), F.S.
[5] Section 20.058(4), F.S.
[6] *Id*.
[7] *Id*.
[8] Section 20.058(3), F.S.
[9] Section 20.058(5), F.S
[10] The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is $300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

Legislative Auditing Committee.[11] The Auditor General is authorized to require and receive any records from the CSO or DSO, or its independent auditor.[12]

CSO and DSO Ethics Code Requirement

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S. A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.[13]

Department of State

The head of the Department of State is the Secretary of State.[14] 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 functions conferred by the State Constitution upon the custodian of records. The Department is composed of the following divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration.

The Division of Cultural Affairs

The Division of Cultural Affairs is Florida's designated state arts agency. The Division promotes arts and culture as essential to the quality of life for all Floridians. To promote excellence and encourage access to cultural opportunities, the Division provides funding, programs and resources, including grants for: arts in education, local arts agencies, state service organizations, museums, theater, dance, folk arts, literature, media arts, multidisciplinary, music, sponsor/presenter, and visual arts programs and projects. The Division of Cultural Affairs also administers the Museum of Florida History and has its offices in the historic Brokaw-McDougall House.[15]

Division of Historical Resources

The Division of Historical Resources is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources. The Division Director's Office oversees a Historic Preservation Grants program to help preserve and maintain Florida's historic buildings and archaeological sites, coordinates outreach programs, such as the State Historical Markers program and Florida Folklife program which identifies and promotes the state's traditional culture. The Division director serves as the State Historic Preservation Officer, acting as the liaison with the national historic preservation program conducted by the National Park Service.[16]

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[11] Section 11.45(3)(d), F.S.
[12] *Id*.
[13] Section 112.3251, F.S.
[14] Section 20.10, F.S.
[15] Florida Department of State, Division of Cultural Affairs, About Us, Mission, available at https://dos.myflorida.com/cultural/about-us/mission/ (last visited on April 23, 2019).
[16] Florida Department of State, Division of Historical Resources, About, Program Areas, available at https://dos.myflorida.com/historical/about/program-areas/ (last visited on April 23, 2019).

The Division of Historical Resources is comprised of the Bureau of Historic Preservation (BHP) and the Bureau of Archaeological Research (BAR). The BHP manages the Florida Main Street Program, and under federal and state laws, oversees the National Register of Historic Places program for Florida, maintains an inventory of the state's historical resources in the Florida Master Site File, assists applicants in federal tax benefit and local government ad valorem tax relief programs for historic buildings, and reviews the impact that development projects may have on significant historic resources. The BAR is responsible for the state's archaeological programs, including surveys and excavations throughout the state, maintenance of records on historical resources that have been recorded, and assistance to consultants and planners in protecting sites.[17]

Division of Library and Information Services

The Division of Library and Information Services manages the State Library and Archives, supports public libraries, directs record management services, and is the designated information resource provider for the state of Florida.[18]

The Division may receive gifts of money, books, or other property and may purchase books, periodicals, furniture, and equipment it deems necessary to carry out its mission. The Division may also give aid and assistance to all school, state, academic, free, and public libraries, and to all communities in the state which may establish libraries. The Division is required to maintain a library for state officials and employees and provide research and informational services for all state agencies. The Division must also provide library services to blind and physically handicapped persons within the state.[19]

CSO Authority for the Department of State

The Department of State is authorized to create CSOs for its Divisions of Cultural Affairs, Historical Resources, and Library and Information Services.

Division of Cultural Affairs

Section 265.703(1), F.S., authorizes the Department of State to create CSOs to provide assistance, funding, and promotional support for the cultural, arts, historical, and museum programs of the Division of Cultural Affairs. The CSOs must be:

- A Florida corporation, not for profit, incorporated under the provisions of Chapter 617, F.S., and approved by the Department of State;
- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real and personal; and make expenditures to or for the direct or indirect benefit of the division or individual program units of the division;
- Determined by the division to be consistent with the goals of the division and in the best interests of the state; and

[17] *Id*.
[18] Florida Department of State, Division of Library and Information Services, available at https://dos.myflorida.com/library-archives/ (last visited on April 23, 2019).
[19] Section 257.04, F.S.

- Approved in writing by the division to operate for the direct or indirect benefit of the division. This approval must be provided in a letter of agreement from the division.[20]

The statutory authority for the Department of State's Division of Cultural Affairs CSOs is scheduled to repeal on October 1, 2019, unless reviewed and saved from repeal by the Legislature.[21]

Division of Historical Resources

Section 267.17(1), F.S., authorizes the Department of State to create CSOs to provide assistance, funding, and promotional support for the archaeology, museum, folklife, and historic preservation programs of the Division of Historical Resources. The CSOs must be:

- A Florida corporation, not for profit, incorporated under the provisions of Chapter 617, F.S., and approved by the Department of State;
- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real and personal; and make expenditures to or for the direct or indirect benefit of the division or individual program units of the division;
- Determined by the division to be consistent with the goals of the division and in the best interests of the state; and
- Approved in writing by the division to operate for the direct or indirect benefit of the division. This approval must be provided in a letter of agreement from the division.[22]

The statutory authority for the Department of State's Division of Historical Resources CSOs is scheduled to repeal on October 1, 2019, unless reviewed and saved from repeal by the Legislature.[23]

Division of Library and Information Services

Section 257.43(1), F.S., authorizes the Department of State to create a CSO to provide assistance, funding, and promotional support for the library, archives, and records management programs of the Division of Library and Information Services. The CSO must be:

- A Florida corporation, not for profit, incorporated under the provisions of Chapter 617, F.S., and approved by the Department of State;
- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real and personal; and make expenditures to or for the direct or indirect benefit of the division or individual program units of the division;
- Determined by the division to be consistent with the goals of the division and in the best interests of the state; and

[20] Section 265.703(1)(a) – (d), F.S.
[21] Section 265.703(4), F.S.
[22] Section 267.17(1)(a) – (d), F.S.
[23] Section 267.17(4), F.S.

- Approved in writing by the division to operate for the direct or indirect benefit of the division. This approval must be provided in a letter of agreement from the division.[24]

The statutory authority for the Department of State's Division of Library and Information Services CSO is scheduled to repeal on October 1, 2019, unless reviewed and saved from repeal by the Legislature.[25]

CSOs for the Department of State

The Department of State has four CSOs: Citizens for Florida Arts, Inc., Friends of Florida History, Inc., Friends of the Museums of Florida History, Inc., and Friends of the State Library and Archives of Florida, Inc.

***Citizens for Florida Arts, Inc.*[26]**

Citizens for Florida Arts, Inc., is a CSO created to partner with and enhance efforts of the Florida Division of Cultural Affairs, while helping sustain and foster recognition of the arts in Florida. The organization provides critical support for the Division of Cultural Affairs' activities and programs, such as the Florida Artists Hall of Fame, Poetry Out Loud, Art in State Buildings, and Diversity and Inclusion Awards.[27]

***Friends of Florida History, Inc.*[28]**

The Friends of Florida History, Inc., is a CSO established to promote and enhance the archaeology, historic sites, museums, folklife, and historic preservation programs of the Division of Historical Resources for the people of Florida. This CSO is the result of the consolidation of the following CSOs: Friends of Florida History and Archaeology, Inc., Friends of Florida Main Street, Inc., and Friends of Mission San Luis, Inc. The Friends of Florida History, Inc. serves as support to the Division of Historical Resources in its efforts to implement and manage programs designed to create statewide impact and position Florida as a national leader in historic preservation.

***Friends of the Museums of Florida, Inc.*[29]**

The Friends of the Museums of Florida, Inc., is a CSO created to enhance and perpetuate programs of the Museum of Florida History and the Knott House Museum both located in Tallahassee, Florida. This CSO provides instrumental support attracting Florida's citizens and visitors to these museum sites and promoting museum events, programs, and services.

[24] Section 257.43(1)(a) – (d), F.S.
[25] Section 257.43(4), F.S.
[26] Section 265.703, F.S., provides statutory authority for the organization.
[27] Florida Department of State, Division of Cultural Affairs, Programs, available at https://www.dos.myflorida.com/cultural/programs/ (last visited on April 23, 2019).
[28] Section 267.17, F.S., provides statutory authority for the organization.
[29] Section 265.703, F.S., provides statutory support for the organization.

***Friends of the State Library and Archives of Florida, Inc.*[30]**

The Friends of the State Library and Archives of Florida, Inc., is a CSO established to promote and enhance the programs and services of the Division of Library and Information Services for the benefit of Florida's residents. This CSO supports expanding public access to knowledge, cultural heritage and information so that Floridians achieve their personal, educational and professional goals.

Senate Professional Staff Review of the Department of State's CSOs

Sections 257.43, 265.703, and 267.17, F.S., the statutory authority for the Department of State's CSOs, are scheduled to repeal on October 1, 2019, unless reviewed and saved from repeal by the Legislature. Professional staff of the Senate Committee on Governmental Oversight and Accountability reviewed the agency's CSOs to verify their compliance with applicable Florida Statutes.

Professional staff of the Senate Committee on Governmental Oversight and Accountability requested information from the Department of State to verify the compliance of the four CSOs (Citizens for Florida Arts, Inc., Friends of Florida History, Inc., Friends of the Museums of Florida History, Inc., and Friends of the State Library and Archives of Florida, Inc.) with applicable Florida Statutes. The Department of State provided staff with information and documentation regarding these CSOs.

Senate professional staff reviewed relevant records from these CSOs for Fiscal Years 2014-2015, 2015-2016, 2016-2017, and 2017 -2018 and found that these organizations were active CSOs that support the Department of State's Divisions of Cultural Affairs, Historical Resources, and Library and Information Services.

Additionally, professional staff of the Senate Committee on Governmental Oversight and Accountability requested information from the Department of State on the CSOs (Friends of Florida History and Archaeology, Inc., Friends of Florida Main Street, Inc., and Friends of Mission San Luis, Inc.) that were consolidated into the Friends of Florida History, Inc. CSO to verify their compliance with applicable Florida Statutes while those CSOs were active.

Transparency and Reporting Requirements

The Citizens for Florida Arts, Inc., Friends of Florida History, Inc., Friends of the Museums of Florida History, Inc., and Friends of the State Library and Archives of Florida, Inc. complied with the following CSO transparency and reporting requirements of s. 20.058, F.S.:

- Annual submission, by August 1, of required information related to the CSOs' organization, mission and finances to the Department of State;
- Posting of required information relating to the CSOs' organization, mission, and finances on the Department of State's website;[31]
- A brief description of the CSOs' plans for the next three fiscal years;

[30] Section 257.43, F.S., provides statutory authority for the organization.
[31] *See* the Florida Fiscal Portal, Department of State, Fiscal Year 2018-19 Citizen-Support and Direct-Support Organization Report, *available at* http://floridafiscalportal.state.fl.us/Document.aspx?ID=18051&DocType=PDF (last visited April 23, 2019).

- A copy of the CSOs' code of ethics;
- A copy of the CSOs' most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax Form (Form 990); and
- Annual report, by August 15, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the OPPAGA, including recommendations by the Department of State to continue its association with the Citizens for Florida Arts, Inc., Friends of Florida History, Inc., Friends of the Museums of Florida History, Inc., and Friends of the State Library and Archives of Florida, Inc..

Audit Requirement

The expenditures for three of the Department of State's CSOs (The Citizens for Florida Arts, Inc., Friends of Florida History, Inc., and Friends of the Museums of Florida History, Inc.) were in excess of $100,000 and an audit pursuant to s. 215.981, F.S., was completed for each of the reviewed fiscal years.

The annual expenditures of the Friends of the State Library and Archives of Florida, Inc., CSOs were less than $100,000, and an audit pursuant to s. 215.981, F.S., was not required for each of the reviewed fiscal years.

Ethics Code Requirement

The Citizens for Florida Arts, Inc., Friends of Florida History, Inc., and Friends of the Museums of Florida History, Inc., adopted an ethics code pursuant to s. 112.3251, F.S.

Adoption of an ethics code was listed as pending in all annual reports filed pursuant to s. 20.058, F.S., by Friends of the State Library and Archives of Florida, Inc., except for the FY 2017 – 2018 report. The CSO's board had adopted an ethics code in July 2014; however, this ethics code had not been updated since that time. The Department of State indicated that an updated ethics code would be adopted by the CSO's board.

CSO Review Findings – Friends of the State Library and Archives, Inc.

It appears that Friends of the State Library and Archives, Inc. was inactive for several years as its board did not hold any meetings in FY 2015-2016, FY 2016-2017, and FY 2017-2018. The Department of State informed the Senate Committee on Governmental Oversight and Accountability that the CSO's board would begin holding meetings in December 2018.

Also, the Friends of the State Library and Archives of Florida, Inc. did not have a letter of agreement with the Department of State for 2018 – 2019 fiscal year in accordance with s. 257.43(1)(d), F.S. Its most recent annual letter of agreement was dated July 29, 2017, for the 2017 – 2018 fiscal year. The Department of State indicated that a new letter of agreement between this CSO and the Department of State will be executed.

Recommendation

The Department of State has recommended that the agency's four CSOs (Citizens for Florida Arts, Inc., Friends of Florida History, Inc., Friends of the Museums of Florida History, Inc., and Friends of the State Library and Archives of Florida, Inc.) be continued as these CSOs promote

and enhance the programs and services of the agency's Divisions of Cultural Affairs, Historical Resources, and Library and Information Services.[32]

Executive Office of the Governor

The Executive Office of the Governor was established by Chapter 79-190, Laws of Florida.[33] The Governor is the supreme executive power in the state. Article IV, Section 1(a) of the Florida Constitution provides, in part, that he "shall take care that the laws be faithfully executed, commission all officers of the state and counties, and transact all necessary business with the officers of the government." The Governor is also the chief administrative officer of the state responsible for the planning and budgeting for the state.[34] Additionally, the Governor informs the Legislature on the conditions of the state,[35] directs executive programs, and participates with the Cabinet.[36]

Intergovernmental Relations and the State Protocol Officer

The Department of Economic Opportunity[37] is authorized to establish and operate offices in other countries for the purpose of promoting trade and economic development opportunities of the state, and promoting the gathering of trade data information and research on trade opportunities in specific countries.[38]

The Governor may designate a state protocol officer. The state protocol officer is housed within the Executive Office of the Governor. In consultation with the Governor and other governmental officials, the state protocol officer must develop, maintain, publish, and distribute the state protocol manual.[39] The state protocol officer is responsible for all consular relations between the state and all foreign governments doing business in Florida.[40] The state protocol officer also serves as contact for the state with the Florida Washington Office, the Florida Congressional Delegation, and U.S. government agencies with respect to laws or policies which may affect the interests of the state in the area of international relations.[41] From 2014 through 2018, the Executive Office of the Governor under Governor Rick Scott designated a state protocol officer.

The Florida Intergovernmental Relations Foundation

The Florida Intergovernmental Relations Foundation (FIRF) is located within the Executive Office of the Governor and created pursuant to s. 288.809, F.S. The FIRF is organized and operated exclusively to solicit, receive, hold, invest, and administer property and to make

[32] *Id*.
[33] Section 14.201, F.S. The head of the Executive Office of the Governor is the Governor.
[34] Fla. Const. art. IV, s. 1(a). *See also* s. 216.151, F.S.
[35] Fla. Const. art. IV, s. 1(e).
[36] Section 20.03(1), F.S., provides that "cabinet" means the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, as specified in s. 4, Art. IV of the State Constitution.
[37] Section 20.60, F.S.
[38] Section 288.012(1)(a), F.S.
[39] Section 288.012(7), F.S.
[40] Section 288.816(2), F.S.
[41] Section 288.816(4), F.S.

expenditures to or for the promotion of intergovernmental relations programs. The FIRF facilitates and strengthens Florida's economic relationships with international partners.

The FIRF is a DSO that must be:

- A Florida corporation, not for profit, incorporated under the provisions of Chapter 617, F.S., and approved by the Department of State;
- Organized and operated to solicit, receive, hold, invest and administer property and, subject to the approval of the state protocol officer, to make expenditures to or for the promotion of intergovernmental relations programs; and
- Certified by the state protocol officer, after review, to be operating in a manner consistent with the policies and goals of the state protocol officer.[42]

For use of property of the FIRF, the state protocol officer:

- May permit the use of property, facilities, and personal services of the Executive Office of the Governor by the FIRF, subject to this section;
- Must prescribe conditions with which the FIRF must comply in order to use property, facilities, or personal services of the Executive Office of the Governor. Such conditions shall provide for budget and audit review and for oversight by the state protocol officer; and
- Must not permit the use of property, facilities, or personal services of the FIRF if the FIRF does not provide equal employment opportunities to all persons, regardless of race, color, national origin, sex, age, or religion.[43]

The FIRF must have a board of directors. The board is composed of seven members appointed by the Governor, of whom no more than three shall be employees or elected officials of the state.[44]

Additionally, the FIRF must comply with the audit requirements for DSOs contained in s. 215.981, F.S.[45] The identity of a donor or prospective donor to the FIRF who desires to remain anonymous and all information identifying such donor or prospective donor are confidential and exempt from the provisions of s. 119.701(1), F.S., and s. 24(a), Art. I of the State Constitution. Such anonymity must be maintained in the auditor's report.[46]

The statutory authority for the FIRF is scheduled to repeal on October 1, 2019, unless reviewed and saved from repeal by the Legislature.[47]

Senate Professional Staff Review of the Florida Intergovernmental Relations Foundation

Section 288.809, F.S., the statutory authority for the FIRF, is scheduled to repeal on October 1, 2019, unless reviewed and saved from repeal by the Legislature.

[42] Section 288.809(1), F.S.
[43] Section 288.809(2), F.S.
[44] Section 288.809(3), F.S.
[45] Section 288.809(4), F.S.
[46] *Id*.
[47] Section 288.809(5), F.S.

Professional staff of the Senate Committee on Governmental Oversight and Accountability requested information from the Executive Office of the Governor to verify the FIRF's compliance with applicable Florida Statutes. The Executive Office of the Governor provided staff with information and documentation regarding the FIRF.

The FIRF has been inactive from fiscal year 2015 through fiscal year 2018. The original source of funds for this organization was from private donations and interest accrued from a money market account that was closed in December 2014. No donations have been received from 2015 through 2018. The current bank account balance for the FIRF's funds is approximately $8,709.99. The expenditures for the FIRF from July 2014 through June 2018 were approximately $558.16.

Transparency and Reporting Requirements

The FIRF complied with the following DSO transparency and reporting requirements of s. 20.058, F.S.:

- Annual submission, by August 1, of required information related to FIRF's organization, mission and finances to the Executive Office of the Governor;
- Posting of required information relating to FIRF's organization, mission, and finances on the Executive Office of the Governor's website;[48]
- Annual report, by August 15, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the OPPAGA, including recommendation by the Executive Office of the Governor to continue its association with the FIRF; and
- Annual submission of copy of FIRF most recent federal IRS Return of Organization Form 990.

The FIRF did not, however, include a brief description of the organization's plans for the next three fiscal years in its annual submission as required by s. 20.058(1)(d), F.S.

Although the FIRF had developed policies and procedures to address some of the requirements contained in s. 288.809, F.S., the organization did not have a contract with the Executive Office of the Governor in accordance with s. 20.058(4), F.S. Such contract must include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by the organization within 30 days after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved.[49] The contract must also be contingent upon the FIRF submitting and posting the required information related to its organization, mission, and finances.[50]

Audit Requirement

The FIRF expenditures were less than $100,000, and an audit pursuant to s. 215.981, F.S., was not required.

[48] *See* the Florida Fiscal Portal, Governor, Executive Office of the, Fiscal Year 2018-19 Citizen-Support and Direct-Support Organization Report, available at http://floridafiscalportal.state.fl.us/Publications.aspx?AgyID=3100.
[49] Section 20.058(4), F.S.
[50] *Id*.

Ethics Code Requirement

It is unclear whether the FIRF adopted an ethics code pursuant to s. 112.3251, F.S. A copy of the ethics code for the Executive Office of the Governor is posted with the FIRF information on the Executive Office of the Governor's website for CSO and DSO Reports for Fiscal Year 2018 - 19.[51] The policy statement of the Governor's ethics code states that this code "applies to the secretaries, deputy secretaries, and chiefs of staff of all executive agencies under the purview of the Governor."

Section 288.809, F.S. Requirements

The FIRF was in partial compliance with the following s. 288.809, F.S., requirements:

- The FIRF is incorporated as a Florida not for profit corporation; however, the articles of incorporation for the FIRF, dated June 21, 1996, state that the board of directors must be appointed by the Secretary of State. The articles of incorporation need to be updated as current law requires the Governor to appoint the board of directors for the FIRF;[52] and
- The FIRF only has four board of directors' members. Three of these members are employees of the Executive Office of the Governor office. Seven board members are required.[53]

Although the FIRF had no significant activity from the 2015 fiscal year through the 2018 fiscal year, the required certification by the state protocol officer for the FIRF's operation was not completed pursuant to s. 288.809(1)(a)3., F.S.

Because no audit was required for the FIRF and the organization had minimal expenses, it appears that the budget and audit review of the FIRF, along with oversight review of the organization by the state protocol officer, as required by s. 288.809(2)(b), F.S., was sufficient.

The FIRF is in compliance with the equal employment opportunities requirement contained in s. 288.809(2)(c), F.S., as the FIRF does not employ any personnel. The Executive Office of the Governor provided a copy of its affirmative action plan and state guidelines that all employees are required to follow.

Additional Finding

The state protocol manual had not been developed, maintained, published, and distributed as required by s. 288.012(7), F.S.

Recommendation

The Executive Office of the Governor did not make a recommendation as to whether the FIRF support organization should continue operating.

[51] *See supra* note 29.
[52] In 2004, the FIFR was transferred from the Department of State to the Office of Tourism, Trade, and Economic Development within the Executive Office of the Governor. *See* Ch. 2004-242, ss. 1 and 8, Laws of Fla.
[53] The FIFR board of directors did not meet during the 2015 through 2018 fiscal years.

Department of Environmental Protection

The Department of Environmental Protection (DEP) is the state's lead agency for environmental management and stewardship, protecting air, water, and land in the state. The DEP's Land and Recreation programs, including the Division of Recreation and Parks, acquire and protect lands for preservation and recreation. The DEP's Ecosystem Restoration programs protect and improve water quality and aquatic resources, including Florida's coastal resources, which are coordinated through its Florida Coastal Office.

Department of Environmental Protection CSOs

A DEP CSO must be a Florida corporation not for profit, incorporated under ch. 617, F.S.[54] The DEP or the Division of Recreation and Parks must determine that the CSO is consistent with the DEP or the state park system's goals and the best interests of the state and provide in a letter of agreement its written approval of the CSO to operate for the direct or indirect benefit of the DEP or the state park system or its individual units.[55]

The CSOs are organized and operated to conduct programs and activities; raise funds; collect and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer in its own name securities, funds, or real personal property; and make expenditures for the benefit of the DEP or the state park system or its individual units.[56] However, CSOs must not receive funds from the DEP by grant, gift, or contract unless specifically authorized by the Legislature.[57] Statutory requirements and Auditor General rules require an annual audit be conducted in accordance with Government Auditing Standards for the DEP's CSOs with annual expenditures above $300,000.[58]

The DEP may permit its CSOs to use the DEP property, facilities, and personnel free of charge, as long as such use is in keeping with the approved purposes of the CSO and does not unreasonably interfere with normal operations.[59] The CSO's use of state property must provide for equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.[60]

The DEP holds agreements with 96 CSOs. Eighty-three CSOs support the Division of Recreation and Parks and 13 CSOs support the Florida Coastal Office.[61] The statutes that authorize the CSOs for the DEP generally and for the DEP's Division of Recreation and Parks are repealed October 1, 2019, unless reviewed and saved from repeal beforehand by the Legislature.[62]

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[54] Sections 20.2551(1)(a) and 258.015(1)(a), F.S.
[55] Sections 20.2551(1)(c) and (d) and 258.015(1)(c) and (d), F.S.
[56] Sections 20.2551(1)(b) and 258.015(1)(b), F.S.
[57] Section 20.2551(1)(b), F.S.
[58] Sections 20.2551 and 215.981(2), F.S.
[59] Sections 20.2551(2) and 258.015(2), F.S.
[60] *Id*.
[61] Department of Environmental Protection, *Citizen Support Organization Reports*, https://floridadep.gov/comm/comm/content/citizen-support-organizations-reports (last visited April 23, 2019) [hereinafter *DEP CSO Reports*].
[62] Sections 20.2551(6) and 258.015(4), F.S.

The Division of Recreation and Parks

The Division of Recreation and Parks, or the Florida Park Service, is one of the largest park systems in the country with 175 state parks, trails, and historic sites.[63] The park system includes nearly 800,000 acres of land and 100 miles of beaches. Florida's state park system offers year-round outdoor activities to citizens and visitors of all ages and provides education about the state and its natural diversity.

CSOs provide numerous benefits to the DEP including fundraising, programs, activities, services, and volunteer time to assist in park operations. CSOs provide important financial support that is used by parks to purchase equipment, improve facilities, develop exhibits, and provide other enhancements to the parks. CSOs provide community outreach and educational activities to children and adults. CSOs also often provide staff assistance and volunteers when needed by state parks.[64]

The Florida State Parks Foundation is a CSO that benefits the park system statewide through preservation and protection of parks, children's education, community engagement, and financial support.[65] Other CSOs benefit individual state parks by generating additional resources and support for the park. Many of these CSOs sponsor and organize events and activities, such as guided walks, kayak tours, and cultural festivals that bring visitors to the parks.

Examples of the important benefits CSOs have provided to state parks are completing significant upgrades to river boats in Wakulla Springs State Park,[66] maintaining campground laundry facilities at Florida Caverns State Park,[67] and providing trail interpretive booths at Paynes Prairie State Park.[68] Other CSOs host large events, such as the Florida Springs Fest at Silver Springs State Park, which brings music, entertainment, guest speakers, scientists, artists, and activists to the park for a two-day festival that educates visitors about Florida's springs.[69]

The Florida Coastal Office

The DEP's Florida Coastal Office coordinates the protection of the state's coastal resources, including more than four million acres of submerged lands and coastal uplands, aquatic preserves and national estuarine research reserves, and coral reef resources.[70]

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[63] Florida Department of Environmental Protection, *Division of Recreation and Parks*, https://floridadep.gov/parks (last visited April 23, 2019).
[64] Florida State Parks, *Friend Groups*, https://www.floridastateparks.org/friend-groups (last visited April 23 2019).
[65] Florida Department of Environmental Protection, *Florida State Parks Foundation*, https://www.floridastateparks.org/parks-and-trails/florida-state-parks-foundation (last visited April 23, 2019).
[66] Florida State Parks, *Friends of Wakulla Springs State Park*, https://www.floridastateparks.org/parks-and-trails/edward-ball-wakulla-springs-state-park/friends-wakulla-springs-state-park (last visited April 23, 2019).
[67] Florida State Parks, *Friends of the Florida Caverns State Park*, https://www.floridastateparks.org/parks-and-trails/friends-florida-caverns-state-park (last visited April 23, 2019).
[68] Florida State Parks, *Friends of Paynes Prairie*, https://www.floridastateparks.org/parks-and-trails/paynes-prairie-preserve-state-park/friends-paynes-prairie (last visited April 23, 2019).
[69] The Friends of Silver Springs State Park, *Springs Festival*, https://www.thefriendsofsilversprings.org/springs-festival (last visited April 23, 2019).
[70] Florida Department of Environmental Protection, *Florida Coastal Office*, https://floridadep.gov/fco (last visited April 23, 2019).

The Florida Coastal Office's CSOs support and aid aquatic preserves and other managed areas through operational support provided by volunteers and financial support provided by fundraising. CSO members and volunteers work to secure grants and donations, plan and staff special events and programs, conduct research as citizen scientists, and increase outreach to benefit Florida's coastal and aquatic resources.[71]

Examples of the important benefits CSOs provide to coastal areas and their communities are Friends of the Reserve providing scholarships to high school students in the Apalachicola area[72] and Friends of Charlotte Harbor Aquatic Preserves removing nonnative species and monitoring water quality.[73]

Senate Professional Staff Review of the DEP's CSOs

The statutory authority for the DEP's Division of Recreation and Parks' CSOs is scheduled for repeal on October 1, 2019, unless reviewed and saved from repeal by the Legislature.[74] Professional staff of the Senate Committee on Environment and Natural Resources reviewed the 83 Division of Recreation and Parks CSOs to verify their compliance with applicable Florida Statutes. After reviewing the submitted documents and other requirements to which the CSOs are subject, staff found that these organizations are active CSOs that support Florida's state parks and provide valuable benefits to the state and its visitors. Staff concluded that it appears the 83 CSOs are in substantial compliance with their governing legislation[75] as well as the general CSO requirements.[76]

Staff identified a few deficiencies where individual CSOs are not in full compliance with the applicable Florida Statutes. A contract between an agency and a CSO must contain a provision "for the orderly cessation of operations and reversion to the state of state funds held in trust by the organization within 30 days after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved."[77] However, the DEP's contracts with its CSOs expressly authorize a CSO that is dissolved to transfer its funds to another CSO. Because transferring funds to another CSO that supports the same agency is consistent with the legislative intent of the provision, staff recommends adding a statutory provision to specifically authorize a CSO to transfer funds to another CSO that supports the DEP upon dissolution.

The DEP has substantially complied with the general statutory requirements and has posted its CSOs' documents, IRS forms, and annual audits, where available, on its website.[78] The DEP has posted each CSO's code of ethics on its website.[79] Each CSO with annual expenditures in excess

[71] Florida Coastal Office, *Citizen Support Organization Handbook*, on file with Senate Environment and Natural Resources Committee.
[72] Apalachicola National Estuarine Research Reserve, *Friends of the Reserve*, https://apalachicolareserve.com/for.php (last visited April 23, 2019).
[73] Friends of Charlotte Harbor Aquatic Preserves, *Projects*, https://fchap.org/projects (last visited April 23, 2019).
[74] Sections 20.2551(6) and 258.015(4), F.S.
[75] Sections 20.2551 and 258.015, F.S.
[76] Section 20.058, F.S.
[77] Section 20.058, F.S.
[78] *DEP CSO Reports, available at* https://floridadep.gov/comm/comm/content/citizen-support-organizations-reports (last visited April 23, 2019).
[79] *Id*.

of $300,000 must provide for an annual financial audit of its accounts and records.[80] Five CSOs were identified as requiring audits and one audit is still outstanding as of the date of this analysis. Additionally, several audits were not conducted in accordance with the Government Auditing Standards required by Auditor General rules.[81] These standards provide more information about whether the CSO is complying with the law than a general audit provides.

Staff finds that while many of the DEP's CSOs have substantially complied with the statutory requirements, more oversight is required for those CSOs with annual expenditures in excess of $300,000. Staff recommends requiring the CSOs that meet the audit threshold to provide audits for the last three fiscal years and ensure that audits are conducted in accordance with Government Auditing Standards, which explicitly reinforces the existing requirement that audits be conducted in accordance with rules adopted by the Auditor General.

Other deficiencies are technical and administrative in nature and can be resolved by the DEP and its CSOs. The DEP has committed to updating its CSO agreements, tracking CSO compliance, and establishing consistent and streamlined reporting.[82]

Staff recommends repealing the sunset date for future legislative review of the DEP CSOs to allow for their continued operation, while requiring the DEP to report to the Legislature by December 1, 2019, on the CSOs requiring audits. If any of the CSOs are not in compliance with statutory requirements, the DEP must identify the CSOs in its report and describe whether it has terminated its contracts with the CSOs as required by law.[83]

The statutory authority for the DEP's CSOs is scheduled to repeal on October 1, 2019, unless reviewed and saved from repeal by the Legislature.[84] Professional staff of the Senate Committee on Environment and Natural Resources reviewed the 13 Florida Coastal Office CSOs to verify their compliance with applicable Florida Statutes. After reviewing the submitted documents and other requirements to which the CSOs are subject, staff found that these organizations are active CSOs that support Florida's aquatic preserves and provide valuable benefits to the state and its visitors.

Staff concluded that several of the 13 CSOs are not in full compliance with the applicable Florida Statutes. Some contracts need to be updated and missing information should be submitted. A contract between an agency and a CSO must contain a provision "for the orderly cessation of operations and reversion to the state of state funds held in trust by the organization within 30 days after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved."[85] Contracts between the CSOs and the DEP generally do not provide for the return of state funds to the state if the statutory authorization is repealed, the contract is

[80] Section 215.981, F.S.
[81] Rule 10.651(4), Rules of the Auditor General.
[82] Department of Environmental Preservation, *Presentation on Citizen Support Organizations to the Florida Senate Committee on Environment and Natural Resources* (Jan. 22, 2019), *available at* http://www.flsenate.gov/PublishedContent/Committees/2018-2020/EN/MeetingRecords/MeetingPacket_4355.22.19.pdf (last visited April 23, 2019) [hereinafter *DEP Presentation*].
[83] Section 20.058(4), F.S.
[84] Section 20.2551, F.S.
[85] Section 20.058, F.S.

terminated, or the organization is dissolved. Because transferring funds to another CSO that supports the same agency is consistent with the legislative intent of the provision, staff recommends adding a statutory provision to specifically authorize a CSO to transfer funds to another CSO that supports the DEP upon dissolution.

The DEP has substantially complied with general statutory requirements and has posted its CSOs' documents, IRS forms, and annual audits, where available, on its website.[86] The DEP has posted each CSO's code of ethics on its website.[87] However, the Florida Coastal Office has not had the same level of organization in oversight of its CSOs that is evident for the CSOs that are overseen by the Division of Recreation and Parks.

Staff finds that while the DEP and its CSOs have substantially complied with many of the statutory requirements, more oversight is needed. Staff recommends that the DEP be required to report to the Legislature on what it is doing to facilitate full compliance for the Florida Coastal Office's CSOs, including updating agreements and authorizations if needed. Other deficiencies are technical and administrative in nature and can be resolved by the DEP and its CSOs. The DEP has committed to updating its CSO agreements, tracking CSO compliance, and establishing consistent and streamlined reporting.[88]

Staff recommends repealing the sunset date for future legislative review of the DEP CSOs to allow for their continued operation, while requiring the DEP to report to the Legislature by December 1, 2019, on the Florida Coastal Office CSOs' compliance with statutory requirements. If any of the CSOs are not in compliance, the DEP must identify the CSOs in its report and describe whether it has terminated its contracts with the CSOs.

Fish and Wildlife Conservation Commission

The Fish and Wildlife Conservation Commission (FWC) is responsible for regulating, managing, protecting, and conserving the state's fish and wildlife resources.[89] The FWC is governed by a board of seven members who are appointed by the Governor and confirmed by the Florida Senate to five-year terms.[90] Under Article IV, Section 9 of the Florida Constitution, the FWC is granted the authority to exercise the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life. The Legislature may enact laws that aid the FWC in its exercise of regulatory functions and executive powers in the areas of planning, budgeting, personnel management, and purchasing.[91]

Fish and Wildlife Conservation Commission CSOs

The FWC is authorized to establish CSOs to provide assistance, funding, and promotional support for commission programs.[92] The CSOs are organized and operated to conduct programs

[86] *DEP CSO Reports, available at* https://floridadep.gov/comm/comm/content/citizen-support-organizations-reports (last visited April 23, 2019).
[87] *Id*.
[88] *DEP Presentation*, (Jan. 22, 2019), *available at* http://www.flsenate.gov/PublishedContent/Committees/2018-2020/EN/MeetingRecords/MeetingPacket_4355.22.19.pdf (last visited April 23, 2019).
[89] FLA. CONST. art. IV, s. 9.
[90] *Id*.; *see also* section 379.102(1), F.S.
[91] FLA. CONST. art. IV, s. 9.
[92] Section 379.223, F.S.

and activities; raise funds; request and receive grants, gifts, and bequests of money; and make expenditures for the benefit of the FWC. However, CSOs may not receive funds from the FWC or the Fish and Wildlife Research Institute by grant or gift unless specifically authorized by the Legislature.[93] The FWC may permit its CSOs to use the FWC property, facilities, and personnel free of charge, as long as such use does not unreasonably interfere with normal the FWC operations.[94]

The FWC holds agreements with two CSOs: Fish & Wildlife Foundation of Florida, Inc. and Wildlife Alert Reward Association, Inc. The statute that authorizes the CSOs for the FWC is repealed October 1, 2019, unless reviewed and saved from repeal beforehand by the Legislature.[95]

Fish & Wildlife Foundation of Florida, Inc.

Fish & Wildlife Foundation of Florida, Inc. (Foundation) was formed in 1994 to support the health and well-being of Florida's fish and wildlife resources and their habitats. According to its website, the Foundation has raised and donated more than $30 million in grant funds for conservation and outdoor recreation since its founding in 1994.[96] The Foundation focuses its projects on providing outdoor education and recreational opportunities for youth, wildlife conservation, reefs, and hunting and shooting sports.[97]

The Foundation is involved with several programs related to conservation, including launching a rare plant conservation endowment, funding captive breeding of wildlife species, providing funds for communities and homeowners to purchase bear-proof garbage cans to reduce bear-human interactions, helping expand panther rehabilitation facilities and identifying ways of reducing panther-car collisions, and underwriting research on freshwater springs restoration and management. [98]

As stated on its website, the Foundation is the largest private funder of youth outdoor education and works with the Florida Youth Conservation Centers Network to provide outdoor experiences to more than 200,000 children and teens annually through summer camp scholarships, school field trip funds, outdoor gear, and educational materials.[99] The Foundation recently completed funding for a wheelchair-accessible boardwalk and fishing pier at the Suncoast Youth Conservation Center. The Foundation is working with the FWC to fund renovation of the historic

[93] Section 379.223(1)(b), F.S.
[94] Section 379.223(2)(a), F.S.
[95] Section 379.223(4), F.S.
[96] Fish and Wildlife Foundation of Florida, Inc., *About Us*, https://wildlifeflorida.org/our-mission/ (last visited April 23, 2019).
[97] Fish and Wildlife Foundation of Florida, Inc., *Presentation on Citizen Support Organizations to the Florida Senate Committee on Environment and Natural Resources* (Jan. 22, 2019), *available at* http://www.flsenate.gov/PublishedContent/Committees/2018-2020/EN/MeetingRecords/MeetingPacket_4355.22.19.pdf (last visited April 23, 2019) [hereinafter *Foundation Presentation*].
[98] Fish and Wildlife Foundation of Florida, Inc., *Conserving Wildlife*, https://wildlifeflorida.org/wildlife/ (last visited April 23, 2019).
[99] Fish and Wildlife Foundation of Florida, Inc., *Getting Kids Back to Nature*, https://wildlifeflorida.org/youth-programs/ (last visited April 23, 2019).

Everglades Youth Conservation Camp, which has hosted more than 25,000 children and teens since the early 1960s.[100]

The Foundation successfully manages its initiatives with support from various sources. The Foundation raises funds for its conservation projects through the sale of Florida's conservation license plates.[101] The Foundation also generates funds through one-on-one major gift fundraising, direct mail and electronic solicitations, and an annual dinner and auction.[102]

Senate Professional Staff Review of the FWC and the Foundation

The statutory authority for the FWC's CSOs is scheduled to repeal on October 1, 2019, unless reviewed and saved from repeal by the Legislature.[103] Professional staff of the Senate Committee on Environment and Natural Resources reviewed the Foundation to verify its compliance with applicable Florida Statutes. After reviewing the submitted documents and other requirements to which the Foundation is subject, staff found that the Foundation is an active CSO that supports Florida's fish and wildlife and provides educational opportunities to youth. Staff concluded that it appears the Foundation is in substantial compliance with its enabling legislation, s. 379.223, F.S., as well as the CSO requirements in s. 20.058, F.S.

The Foundation and the FWC have a letter of agreement and memorandum of understanding which serve as a written approval of the CSO by the commission.[104] However, the authorization lacks specific parameters. The agreements do not provide guidance on the general operation or management of funds. Statutory provisions require that any contract between an agency and a CSO contain a provision stating that if the statutory authorization is repealed, the contract is terminated, or the organization is dissolved, the CSO must cease operations and return funds to the state within 30 days.[105] The written authorization does not provide guidance on the CSO's use of state property or the provision of equal membership as required by statute. There is no guidance on the use of funds for proper purposes. However, the FWC has indicated that it is drafting an agreement with the Foundation that includes the statutorily required provisions.[106] The Foundation has committed to revising its existing contracts to include the statutorily required provisions.[107]

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[100] *Foundation Presentation*, (Jan. 22, 2019), *available at* http://www.flsenate.gov/PublishedContent/Committees/2018-2020/EN/MeetingRecords/MeetingPacket_4355.22.19.pdf (last visited April 23, 2019).
[101] Fish and Wildlife Foundation of Florida, Inc., *Buy A Plate*, https://wildlifeflorida.org/buy-a-plate/ (last visited April 23, 2019).
[102] *Foundation Presentation*, (Jan. 22, 2019), *available at* http://www.flsenate.gov/PublishedContent/Committees/2018-2020/EN/MeetingRecords/MeetingPacket_4355.22.19.pdf (last visited April 23, 2019).
[103] Section 379.223, F.S.
[104] Letter of Agreement between FWC and Wildlife Foundation of Florida (Apr. 3, 2003) (on file with Senate Committee on Environment and Natural Resources).
[105] Section 20.058, F.S.
[106] Email from Jennifer Fitzwater, Chief of Staff, FWC, to Senate Committee on Environment and Natural Resources professional staff (Jan. 22, 2019) (on file with the Senate Committee on Environment and Natural Resources).
[107] Email from Andrew Walker, President and CEO, Foundation, to Senate Committee on Environment and Natural Resources professional staff (Dec. 28, 2018) (on file with the Senate Committee on Environment and Natural Resources).

The Foundation has substantially complied with specific statutory requirements and has posted its organization documents, IRS forms, and annual audit on its website.[108] The Foundation has complied with statutory ethics requirements and has posted its code of ethics on its website.[109] Each CSO with annual expenditures in excess of $100,000 must provide for an annual financial audit of its accounts and records pursuant to statutory requirements. The Foundation's annual expenses for 2017 totaled $4,686,730, an amount that exceeds the annual audit requirement.[110] The Foundation conducts annual audits and the operating expenses described in the audit are presented in the chart below.[111]

FISH & WILDLIFE FOUNDATION OF FLORIDA, INC.
STATEMENTS OF OPERATING EXPENSES
FOR THE YEAR ENDED JUNE 30, 2017
WITH COMPARATIVE TOTALS FOR THE YEAR ENDED JUNE 30, 2016

	Program	Administrative and Office	Fundraising	2017 Total	2016 Total
Expenses					
Accounting and Legal Expense	$ 6,165	$ 30,288	$ -	$ 36,452	$ 33,022
Advertising Expenses	41,777	7,889	-	49,667	162,734
Business Registration Fees	-	488	-	488	1,551
Cash Awards and Grants	4,034,075	-	-	4,034,075	7,581,507
Employee Benefits	34,190	41,787	-	75,977	37,080
Fundraising	-	-	11,889	11,889	121,818
Fundraising - Donated	-	-	-	-	16,285
Insurance	-	8,223	-	8,223	5,715
Investment Account Charges	97,779	1,424	-	99,204	92,767
Meeting Expense	18,549	4,722	-	23,270	16,601
Merchant Account Fees	29,085	1,341	-	30,426	12,672
Miscellaneous Expenses	5,666	45,911	-	51,576	4,267
Occupancy	300	1,078	-	1,378	459
Occupancy - Donated	10,583	12,935	-	23,518	16,001
Outside Contract Services	73,479	975	-	74,454	83,704
Outside Contract Services- Donated	-	82,544	-	82,544	21,797
Payments in Accordance with Trust & Fund Agreements	105,089	-	-	105,089	295,693
Payroll Taxes	16,136	19,722	-	35,857	22,684
Payroll Taxes - Donated	-	-	-	-	803
Postage	-	1,540	-	1,540	488
Printing and Copying	-	2,201	-	2,201	432
Salaries and Wages	193,463	236,455	-	429,919	296,519
Salaries and Wages - Donated	-	-	-	-	10,500
Supplies	-	3,813	-	3,813	1,088
Telephone and Telecommunications	1,466	700	-	2,166	2,595
Transfer of Assets Held for Others	(6,042)	-	-	(6,042)	(6,773)
Travel	11,776	13,512	-	25,288	24,648
Web Site Fees	12,212	2,844	-	15,056	21,240
Total Expenses Before Depreciation	4,685,747	520,390	11,889	5,218,026	8,877,897
Depreciation Expense	983	-	-	983	525
TOTAL EXPENSES	**$ 4,686,730**	**$ 520,390**	**$ 11,889**	**$ 5,219,009**	**$ 8,878,422**

[108] Fish and Wildlife Foundation of Florida, Inc., *Organizational Documents*, https://wildlifeflorida.org/organizational-documents/ (last visited April 23, 2019).
[109] *Id*.
[110] Fish and Wildlife Foundation of Florida, Inc., *Financial Statements and Supplementary Information*, June 30, 2017 and 2016, *available at* https://wildlifeflorida.org/wp-content/uploads/2018/05/Audited-Financial-Statements-2017-1.pdf (last visited April 23, 2019).
[111] *Id*. at 8.

Staff finds that while the Foundation has substantially complied with many of its statutory requirements, the lack of contractual guidance on the operations and management of the Foundation funds should be addressed. The FWC and the Foundation have indicated that they are drafting an agreement with more detailed guidance that includes the statutorily required provisions and will amend existing contracts to resolve the contractual deficiencies. Staff recommends repealing the sunset date for future legislative review of the FWC CSOs to allow for the organizations' continued operation.

The Wildlife Alert Reward Association, Inc.

The Wildlife Alert Reward Association, Inc. (Wildlife Alert) is a non-profit program, created in 1979, which offers rewards to members of the public in exchange for information leading to the arrest of poachers or other violators of the state's fish, wildlife, environmental, and boating laws.[112] Wildlife Alert's goal is to provide incentives for concerned citizens to report witnessed violations.[113] The reward categories range from $100 to $600 for reporting violations such as illegal hunting, taking saltwater game fish out of season, taking protected wildlife species, boating under the influence, and illegal tire dumping.[114]

Most of Wildlife Alert's funding comes from judges requiring violators to make donations to Wildlife Alert in addition to any penalty assessed for a violation of the law.[115] When a violator is arrested and convicted in court, judges often order that a donation be made to the Wildlife Alert Reward Fund separate from any fines ordered.[116] Funds from such donations are used to pay rewards for reporting violations and for promotion of the Wildlife Alert program. In 2017, Wildlife Alert paid a total of $16,700 for 64 rewards and collected $77,579.88 in fines.[117]

Senate Professional Staff Review of the FWC and Wildlife Alert

The statutory authority for the FWC CSOs is scheduled to repeal on October 1, 2019, unless reviewed and saved from repeal by the Legislature.[118] Professional staff of the Senate Committee on Environment and Natural Resources reviewed Wildlife Alert to verify its compliance with applicable Florida Statutes. After reviewing the submitted documents and other requirements to which Wildlife Alert is subject, staff found that Wildlife Alert is an active CSO that supports Florida's fish and wildlife species and provides rewards to incentivize members of the public to report violators. Staff concluded that it appears Wildlife Alert is in compliance with its enabling legislation, s. 379.223, F.S., as well as the general CSO requirements in s. 20.058, F.S.

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[112] Florida Fish and Wildlife Conservation Commission, *Wildlife Alert brochure* (Sept. 2018) (on file with the Senate Committee on Environment and Natural Resources).
[113] *Id*.
[114] *Id*.
[115] Email from Jessica Crawford, Legislative Affairs Director, Fish and Wildlife Conservation Commission, to Senate Committee on Environment and Natural Resources professional staff (Nov. 16, 2018) (on file with the Senate Committee on Environment and Natural Resources).
[116] *Id*.
[117] FWC, *Citizen Support Organization Direct-Support Organization 2018 Annual Report* (Aug. 15, 2018), *available at* https://myfwc.com/media/19043/cso-annualreport2017-18.pdf (last visited April 23, 2019).
[118] Section 379.223(1), F.S.

Staff identified a few deficiencies where the FWC and Wildlife Alert are not in full compliance with the applicable Florida Statutes. Wildlife Alert and the FWC have a letter of agreement and memorandum of understanding which serve as a written approval of the CSO by the commission.[119] However, the authorization lacks specific parameters. The agreement does not provide guidance on the general operation or management of funds. The statutory provisions require that any contract between an agency and a CSO contain a provision stating that if the statutory authorization is repealed, the contract is terminated, or the organization is dissolved, the CSO must cease operations and return funds to the state within 30 days.[120] The written authorization does not provide guidance on the CSO's use of state property or the provision of equal membership as required by statute. There is no guidance on the use of funds for proper purposes. However, the FWC has indicated that it is drafting an agreement with Wildlife Alert that includes the statutorily required provisions.[121]

Wildlife Alert has substantially complied with specific statutory requirements. Wildlife Alert has an ethics code pursuant to statutory requirements, which is posted on the FWC's website in the CSO annual report.[122] Wildlife Alert did not submit an annual audit because its annual expenditures were below the statutory threshold limits.[123]

Although most of Wildlife Alert's funding comes from judges requiring violators to make donations to Wildlife Alert, this practice is not supported by case law, which indicates that courts must have statutory authority to order a defendant to make a charitable contribution.[124] Staff recommends that this practice be clearly authorized in statute to continue providing funding to the CSO.

Staff finds that while Wildlife Alert has substantially complied with many of its statutory requirements, the lack of contractual guidance on the operations and management of Wildlife Alert funds should be addressed. The FWC and Wildlife Alert have indicated that they are drafting an agreement that includes the statutorily required provisions, which would resolve the contractual deficiencies. Staff recommends repealing the sunset date for future legislative review of the FWC CSOs to allow for the organizations' continued operation.

Department of Education – Division of Vocational Rehabilitation

Vocational Rehabilitation (VR) is a federal-state program that helps people who have physical or mental disabilities get or keep a job. VR is committed to helping people with disabilities find meaningful careers.[125]

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[119] Letter of Agreement between FWC and Wildlife Alert Reward Association, Inc. (Sept. 25, 2014) (on file with Senate Committee on Environment and Natural Resources).
[120] Section 20.058, F.S.
[121] Email from Jennifer Fitzwater, Chief of Staff, FWC, to Senate Committee on Environment and Natural Resources professional staff (Jan. 22, 2019) (on file with the Senate Committee on Environment and Natural Resources).
[122] FWC, *Citizen Support Organization Direct-Support Organization 2018 Annual Report* (Aug. 15, 2018), *available at* https://myfwc.com/media/3887/csoannualreport.pdf (last visited April 23, 2019).
[123] Section 215.981, F.S.
[124] *See Bell v. State*, 216 So. 3d 751 (Fla. 5th DCA 2017); *see also Antosh v. State*, 510 So. 2d 1158 (Fla. 3d DCA 1987); *see also Cumberland v. State*, 225 So. 3d 952 (Fla. 5th DCA 2017).
[125] Florida Division of Vocational Rehabilitation, *Frequently Asked Questions*, http://www.rehabworks.org/faq.shtml (last visited April 23, 2019).

The Division of Vocational Rehabilitation (DVR) is one of several divisions within the Department of Education (DOE).[126] The DVR is the administrative unit designated at the state level to ensure compliance with the Vocational Rehabilitation Act of 1973, as amended.[127] The DVR's mission is "to help people with disabilities find and maintain employment and enhance their independence."[128]

Florida Endowment Foundation for Vocational Rehabilitation

In 1990, the Legislature created the Florida Endowment Foundation for Vocational Rehabilitation (Foundation or The Able Trust[129]) as a direct-support organization of the DVR for the purpose of encouraging public and private support to enhance vocational rehabilitation and employment of citizens who are disabled.[130] The Able Trust endowment fund was created as a long-term, stable, and growing source of revenue to be administered by the Foundation as a direct-support organization of the DVR.[131]

The Foundation operates under contract with the DVR to exclusively raise funds; submit requests and receive grants from the Federal Government, the state, private foundations, and individuals; and to receive, hold, and administer property.

The authorizing statute for the Foundation is scheduled for repeal October 1, 2019, unless reviewed and reenacted by the Legislature.[132]

Youth Program

The Able Trust High School High Tech (HSHT) program is designed to provide high school students with all types of disabilities the opportunity to explore jobs or postsecondary education leading to technology-related careers. HSHT links youth to a broad range of academic, career development, and experiential resources and experiences that will enable them to meet the demands of the 21st century workforce.

During the 2017-2018 school year, HSHT served 1,336 students with disabilities in 40 Florida counties. 533 students participated in work experiences paid through a stipend by the employer, the HSHT program site, the local Career Source, Vocational Rehabilitation, or community grant provider. 307 HSHT students graduated in 2018. The HSHT program achieved a graduation rate of greater than 99 percent of all participating seniors.[133] The current cost to the state for the

[126] Section 20.15(3)(d), F.S.
[127] Section 413.202, F.S.
[128] Florida Division of Vocational Rehabilitation, http://www.rehabworks.org/ (last visited April 23, 2019).
[129] The Foundation conducts business as The Able Trust. The Able Trust, http://www.abletrust.org/ (last visited April 23, 2019).
[130] Section 9, ch. 90-330, L.O.F., codified as s. 413.615(5), F.S.
[131] Section 413.615(4), F.S.
[132] Section 413.615(14), F.S.
[133] The Able Trust, *2018 Annual Report to Florida*, *available at* http://www.abletrust.org/sites/default/files/media/docs/2018%20ANNUAL%20REPORT-web_0.pdf, at 10.

HSHT program is $275 per student, which covers approximately one-third of the total program costs.[134]

Grant Program

The Able Trust awarded 78 grants in 2018, totaling $2,072,119.[135] The Able Trust works with community organizations throughout the state to help Floridians with disabilities gain employment. During any annual period, there are 60 – 70 grant contracts in effect. Several of the current grants are long-term, strategic grants designed to assist organizations and institutions of higher learning to develop education and placement programs for Floridians with disabilities who pursue postsecondary education. No annual legislative appropriations are used in these strategic grant initiatives.[136]

Work Experiences and Relationships with the Business Community

Over the past nine years, The Able Trust has worked to develop relationships with businesses around the state. The Able Trust works with the Florida Chamber of Commerce Foundation, and maintains communication regarding the value of providing work experiences such as internships, job shadowing and mentoring partnerships with the business community. In addition, the Disability Employment Awareness (DEAM) program, for which The Able Trust serves as the lead agency, connects approximately 3,000 businesses and young job seekers together annually, in job shadowing and mentoring experiences. The DEAM program is totally funded by private donations, through the fundraising efforts of The Able Trust.[137]

Independent Research

The Able Trust uses private sources to fund independent research. Research is conducted to obtain information on program outcomes, to update data on the perceptions of the business community on the inclusion of people with disabilities in its workforce, to learn ways to address barriers and to inform the general public on the employability of such workers. Continuing to collect data and update such information is integral to improving the employment rate for people with disabilities, as it is the basis for effective communications on the recruiting, hiring, training and retaining of those workers.[138]

Communication

The Able Trust sponsors a communication campaign every year to address misperceptions of the skills and talents of people with disabilities. Communications include targeting businesses, community leaders, and policy makers using print, electronic, and in-person presentations.[139]

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[134] Florida Department of Education, *2019 Agency Bill Analysis, Senate Bill 172* (Jan. 8, 2019), at 2.
[135] The Able Trust, *2018 Annual Report to Florida, available at* http://www.abletrust.org/sites/default/files/media/docs/2018%20ANNUAL%20REPORT-web_0.pdf, at 12.
[136] Florida Department of Education, *2019 Agency Bill Analysis, Senate Bill 172* (Jan. 8, 2019), at 3.
[137] *Id.* at 3.
[138] Florida Department of Education, *2019 Agency Bill Analysis, Senate Bill 172* (Jan. 8, 2019), at 3.
[139] *Id.*

Direct Support to the Division of Vocational Rehabilitation

The Able Trust currently provides direct support (approximately $48,000 per year) on behalf of the DVR through:

- Seven full-day annual training events designed to enhance staff skills and increase employment for VR customers.
- Promotional and outreach materials for VR distributed throughout the year at community outreach events that advance VR's mission.

Legislative Findings and Recommendations

Senate professional staff reviewed documents related to the Foundation for compliance with accountability and authorizing statutes. The Foundation appears to be substantially in compliance with such statutes. Findings and recommendations are summarized below.

Foundation Compliance with Accountability Requirements

- The Foundation must submit specified information to the DOE by August 1.[140]
  Finding: The Foundation submitted the information by the specified deadline.[141]
- The DOE must make the information received from the Foundation available to the public through the agency's website. If the Foundation maintains a website, the DOE's website must provide a link to the Foundation's website.[142]
  Finding: The DOE includes a link to The Able Trust on the DVR webpage, but the required report is only available through the Florida Fiscal Portal.[143]
  Recommendation: Provide a link to the required report[144] directly on the DOE website.
- The DOE must report, by August 15 of each year, to the Governor, Legislature, and OPPAGA the information provided by the Foundation. The report must also include a recommendation by the DOE, with supporting rationale, to continue, terminate, or modify the DOE's association with the Foundation.[145]
  Finding: The DOE has complied with the requirement to report this information and include specified information.[146]
- The contract between the Foundation and the DVR must include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by the organization within 30 days after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved.[147]

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[140] Section 20.058(1), F.S.
[141] Florida Fiscal Portal, Education, *Required Report Pursuant to Chapter 2014-096 Citizen Support and Direct Support Organizations* (Aug. 1, 2017) *available at* http://floridafiscalportal.state.fl.us/Document.aspx?ID=18029&DocType=PDF.
[142] Section 20.058(2), F.S.
[143] The Florida Fiscal Portal is maintained by the Executive Office of the Governor to house a collection of documents that detail the fiscal status of the State of Florida. Florida Fiscal Portal, http://floridafiscalportal.state.fl.us/Home.aspx (last visited April 23, 2019).
[144] Florida Fiscal Portal, Education, *Required Report Pursuant to Chapter 2014-096 Citizen Support and Direct Support Organizations* (Aug. 1, 2017) *available at* http://floridafiscalportal.state.fl.us/Document.aspx?ID=18029&DocType=PDF.
[145] Section 20.058(3), F.S.
[146] Florida Fiscal Portal, Education, *Required Report Pursuant to Chapter 2014-096 Citizen Support and Direct Support Organizations* (Aug. 1, 2017) *available at* http://floridafiscalportal.state.fl.us/Document.aspx?ID=18029&DocType=PDF, at 5.
[147] Section 20.058(4), F.S.

Finding: The current contract includes a provision regarding the orderly cessation of operations, but does not include the provision regarding reversion of state funds within 30 days.[148] However, a proposed amendment to the contract includes a provision to pay the entire balance of the operating account to the State of Florida within 45 days, unless extended by agreement of both parties.[149]
Recommendation: The contract amendment should be approved and should include a provision specifying 30 days, rather than 45 days, for the reversion of state funds.

- The Foundation's Code of Ethics must be conspicuously posted on the Foundation's website,[150] and must address specified standards of conduct.[151]
  Finding: The Able Trust Code of Ethics is posted and includes required provisions.[152]
- The Foundation must provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the DOE. The audit report must be submitted within 9 months after the end of the fiscal year to the Auditor General and to the DOE.[153]
  Finding: The Able Trust has provided for an audit for the 2017-2018 fiscal year within the specified timeframe.[154]

Foundation Compliance with Authorizing Requirements

- The Foundation must separately account for funds received from state sources[155] from bequests, gifts, grants, and donations. Earnings on funds received from state sources and funds received from public or private sources must also be accounted for separately.[156]
  Finding: The Able Trust has separately accounted for revenues[157] and earnings on funds[158] between state and private sources.
- The Foundation must have a contract with the DVR, and must:[159]
  - Be a Florida corporation not for profit
  - Be organized and operated exclusively to raise funds; to submit requests and receive grants from the Federal Government, the state, private foundations, and individuals; to

[148] The Able Trust, *Memorandum of Understanding for The Able Trust, IA-865, available at* http://www.abletrust.org/sites/default/files/media/docs/Memorandum%20Of%20Understanding%20IA-865%20thru%209-30-2020.pdf, at 3.
[149] *Email*, The Able Trust (Mar. 8, 2019).
[150] Section 112.3251, F.S.
[151] Section 112.313, F.S.
[152] The Able Trust, *Ethics Policy* (Dec. 12, 2014), *available at* http://www.abletrust.org/sites/default/files/media/docs/Ethics-Policy-12-2014.pdf; also The Able Trust, *Conflict of Interest Policy* (Sept. 25, 2009), *available at* http://www.abletrust.org/sites/default/files/media/docs/Conflict%20of%20Interest%20as%20revised%206-15-2012.pdf.
[153] Section 215.981(1), F.S.
[154] Law, Redd, Crona & Munroe, P.A., *The Florida Endowment Foundation for Vocational Rehabilitation, Inc. d/b/a The Able Trust, Financial Statements and Additional Information, Years ended June 30, 2018 and 2017* (Oct. 26, 2018), *available at* http://www.abletrust.org/sites/default/files/media/docs/FINAL%20-%202018%20Audited%20Financial%20Statements.pdf.
[155] The ABLE Trust receives state funds only from general revenue for the DOE/DVR High School/High Tech Program. Specific Appropriation 34, ch. 2018-9, L.O.F., appropriates $549,823 in recurring funds for 2018-2019.
[156] Section 413.615(4)(e), F.S.
[157] The Able Trust, *2018 Annual Report to Florida, available at* http://www.abletrust.org/sites/default/files/media/docs/2018%20ANNUAL%20REPORT-web_0.pdf, at 18.
[158] *Email*, The Able Trust (Mar. 8, 2019). Earnings on public funds and investments from July 1, 2017 through June 30, 2018 were $1,252,285.57.
[159] Section 413.615(5), F.S.

receive, hold, and administer property; and to make expenditures to or for the benefit of the VR programs approved by the Foundation board of directors.
Finding: The Able Trust contract with the DVR meets this requirement.[160]

- The Able Trust contract with the DVR must provide information relating to the articles of incorporation, governance, conditions for expenditures of state revenues, and a reversion of state funds following a cessation of operations.[161] In addition, as a part of the contract, the Foundation must submit an annual budget for approval to the DVR, which may not approve such annual budget that does not comply with requirements relating to administrative costs.[162]
  Finding: The Able Trust contact with the DVR complies with this requirement.[163] Additionally, the annual budget for 2017-2018 was approved by the DVR and complies with the requirement that administrative costs be limited to 15 percent of total expenditures.[164]
- The Foundation must comply with requirements relating to confidential and exempt donor records and client information and exemptions from public meetings at which donor or client information is discussed.[165]
  Finding: The Able Trust has ensured that donor confidentiality is respected, and private donations that are confidential and exempt are not included on an agenda for a public meeting.[166]
- The Foundation is administered by a 9-member board of directors (board) qualified for membership on the board and appointed by the Governor to a 3-year term.[167]
  Finding: The composition of the Able Trust board meets this requirement.[168]
- The Foundation board must monitor, review, and annually evaluate funded programs to determine whether funding should be continued, terminated, reduced, or increased.[169]
  Finding: The Able Trust board has enacted mechanisms to evaluate funded programs, which include outcome measurement requirements in each grant award contract.[170]

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[160] The Able Trust, *Memorandum of Understanding for The Able Trust, IA-865, available at* http://www.abletrust.org/sites/default/files/media/docs/Memorandum%20Of%20Understanding%20IA-865%20thru%209-30-2020.pdf, at 1.
[161] Section 413.615(6), F.S.
[162] Section 413.615(9)(j), F.S.
[163] The Able Trust, *Memorandum of Understanding for The Able Trust, IA-865, available at* http://www.abletrust.org/sites/default/files/media/docs/Memorandum%20Of%20Understanding%20IA-865%20thru%209-30-2020.pdf.
[164] *Email*, The Able Trust (Mar. 8, 2019). Administrative costs were $427,742, which was 12% of total expenses.
[165] Section 413.615(7), F.S.
[166] The Able Trust, *2018 Annual Report to Florida, available at* http://www.abletrust.org/sites/default/files/media/docs/2018%20ANNUAL%20REPORT-web_0.pdf, at 15. See also, *Email*, The Able Trust (Mar. 8, 2019).
[167] Section 413.615(8), F.S.
[168] The Able Trust, *By-Laws* (Adopted Feb. 21, 1991, last amended Sept. 21, 2017), *available at* http://www.abletrust.org/sites/default/files/media/docs/BY-LAWS-REVISED%2010_6_2017.doc. *See also*, The Able Trust, *Board of Directors, Officers, & Ambassadors*, http://www.abletrust.org/about-us/board-directors-officers-and-ambassadors (last visited April 23, 2019).
[169] Section 413.615(9)(g), F.S.
[170] The Able Charitable Foundation, *Grant Policy—Process for Grant Requests from The Able Trust* (Nov. 30, 2018), *available at* http://www.abletrust.org/sites/default/files/media/images/documents/Able%20Trust-Able%20Charitable%20Grant%20Policy%20-%20final%2011-30-2018.pdf. The application requires that proposals outline how employment outcomes will be measured up to three years after the grant period has ended. The Able Trust, *Instructions for Application for General Support of Employment Programs Grant* (Dec. 2016), *available at* http://www.abletrust.org/sites/default/files/media/docs/GeneralEmploymentPlacementGrantInstructions2017.pdf, at 2.

- The board is required to limit administrative costs to the minimum amount necessary for the efficient and effective administration of the foundation; such costs are limited to 15 percent of total estimated expenditures in any calendar year. For the 2017-2018 fiscal year, administrative costs may be paid from interest and earnings on the endowment principal.[171]
  Finding: Administrative costs in 2017-2018 were $427,742, or 12 percent of expenses.[172] Additionally, for 2017-2018, The Able Trust used interest and dividends to cover operating expenses.[173]
- The Foundation is required to publish on its website:[174]
  - The required annual audit and annual report.
  - For each position filled by an officer or employee, the position's compensation level.
  - A copy of each contract into which the foundation enters.
  - Information on each program, gift, or grant funded by the foundation, including specified information.
  - The foundation's contract with the DVR.
    Finding: The Foundation has posted its annual audit,[175] the annual report,[176] compensation policy[177] and officer compensation,[178] contracts,[179] grant information,[180] and the Foundation's contract.[181]
- The Foundation board must establish an operating account,[182] which must provide for purposes specified in law.[183]
  Finding: The Foundation board has established an operating account. For 2017-2018, The Able Trust used interest and dividends to cover operating expenses.[184]

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[171] Section 413.615(9)(j), F.S. In subsequent years administrative costs may be paid from a specified combination of interest and earnings and private fund sources, until 2020-2021 and thereafter when costs may be paid from private sources only. *Id.*
[172] The Able Trust, *2018 Annual Report to Florida*, *available at* http://www.abletrust.org/sites/default/files/media/docs/2018%20ANNUAL%20REPORT-web_0.pdf, at 20. Total expenses were $3,686,905.
[173] Law, Redd, Crona & Munroe, P.A., *The Florida Endowment Foundation for Vocational Rehabilitation, Inc. d/b/a The Able Trust, Financial Statements and Additional Information, Years ended June 30, 2018 and 2017* (Oct. 26, 2018), *available at* http://www.abletrust.org/sites/default/files/media/docs/FINAL%20-%202018%20Audited%20Financial%20Statements.pdf, at 5.
[174] Section 413.615(9)(k), F.S.
[175] Law, Redd, Crona & Munroe, P.A., *The Florida Endowment Foundation for Vocational Rehabilitation, Inc. d/b/a The Able Trust, Financial Statements and Additional Information, Years ended June 30, 2018 and 2017* (Oct. 26, 2018), *available at* http://www.abletrust.org/sites/default/files/media/docs/FINAL%20-%202018%20Audited%20Financial%20Statements.pdf.
[176] The Able Trust, *2018 Annual Report to Florida*, *available at* http://www.abletrust.org/sites/default/files/media/docs/2018%20ANNUAL%20REPORT-web_0.pdf.
[177] The Able Trust, *Compensation Policy: Officers and Directors* (June 15, 2012), *available at* http://www.abletrust.org/sites/default/files/media/docs/Compensation-Policy-Revisions-6-15-2012-Current-7-29-14.pdf.
[178] The Able Trust, *Salary Posting*, http://www.abletrust.org/node/212 (last visited April 23, 2019).
[179] The Able Trust, *Other Contracts*, http://www.abletrust.org/about-us/other-contracts (last visited April 23, 2019).
[180] The Able Trust, *Grant Award Contracts*, http://www.abletrust.org/about-us/grant-award-contracts (last visited April 23, 2019).
[181] The Able Trust, *Memorandum of Understanding for The Able Trust, IA-865, available at* http://www.abletrust.org/sites/default/files/media/docs/Memorandum%20Of%20Understanding%20IA-865%20thru%209-30-2020.pdf.
[182] The Able Trust board of directors is required to establish an operating account to deposit non-principal funds from investment and reinvestment transmitted from the State Board of Administration. Section 413.615(4)(d), F.S.
[183] Section 413.615(10), F.S.
[184] *Email*, The Able Trust (Mar. 8, 2019). *See also* Law, Redd, Crona & Munroe, P.A., *The Florida Endowment Foundation for Vocational Rehabilitation, Inc. d/b/a The Able Trust, Financial Statements and Additional Information, Years ended June*

- Any allocation of funds for research, advertising, or consulting is subject to a competitive solicitation process.[185]
  Finding: The Able Trust policy regarding competitive bidding is to require that purchases over $2,500 must be subject to competitive bidding. Amounts under $2,500 may also be subject to competitive bidding.[186]
- State funds may not be used to fund events for private sector donors or potential donors or to honor supporters.[187]
  Finding: The Able Trust does not use state funds to fund events for private donors or potential donors. Donor recognition may occur at events for other programs, but private funds cover those expenses.[188]
- The Foundation board must provide for an annual financial audit of the foundation in accordance with Florida law.[189] The auditor's report must maintain the anonymity of donors and prospective donors who desire to remain anonymous.[190]
  Finding: The Foundation board provided for an audit for the 2017-2018 fiscal year, which does not contain specific donor information.[191]
- The Foundation board must issue a report by December 30 each year summarizing the performance of the endowment fund for the previous fiscal year. The report must summarize the Foundation's fundraising activities, and detail those activities and programs supported by the endowment principal or earnings on the endowment principal and those activities and programs supported by private sources, bequests, gifts, grants, donations, and other valued goods and services received. The report must also include:[192]
  - Financial data, by service type, including expenditures for administration and the provision of services.
  - The amount of funds spent on administrative expenses and fundraising and the amount of funds raised from private sources.
  - Outcome data, including the number of individuals served and employment outcomes.

  Finding: The Foundation issued its annual report in the required timeframe.[193] The annual report includes financial data related to administration and expenditures,[194] fundraising,[195] program outcomes, and[196] programs supported by endowment principal or earnings and those supported by private sources.[197]

30, 2018 and 2017 (Oct. 26, 2018), *available at* http://www.abletrust.org/sites/default/files/media/docs/FINAL%20-%202018%20Audited%20Financial%20Statements.pdf, at 5.
[185] Section 413.615(10), F.S.
[186] *Email*, The Able Trust (Mar. 8, 2019).
[187] Section 413.615(10), F.S.
[188] *Email*, The Able Trust (Mar. 8, 2019).
[189] Section 215.981, F.S.
[190] Section 413.615(11), F.S.
[191] Law, Redd, Crona & Munroe, P.A., *The Florida Endowment Foundation for Vocational Rehabilitation, Inc. d/b/a The Able Trust, Financial Statements and Additional Information, Years ended June 30, 2018 and 2017* (Oct. 26, 2018), *available at* http://www.abletrust.org/sites/default/files/media/docs/FINAL%20-%202018%20Audited%20Financial%20Statements.pdf.
[192] Section 413.615(12), F.S.
[193] The Able Trust, *2018 Annual Report to Florida*, *available at* http://www.abletrust.org/sites/default/files/media/docs/2018%20ANNUAL%20REPORT-web_0.pdf.
[194] *Id.* at 20.
[195] *Id.* at 14.
[196] *Id.* at 3, 10, and 11.
[197] *Id.* at 20. *See also Email*, The Able Trust (Mar. 8, 2019).

Florida Department of Agriculture and Consumer Services

The Florida Department of Agriculture and Consumer Services (DACS) supports and promotes Florida agriculture, protects the environment, safeguards consumers, and ensures the safety and wholesomeness of food.[198]

DSOs for the Florida Department of Agriculture and Consumer Services

Friends of the Florida State Forests

The Friends of the State Forests, through community support, assists the Florida Forest Service to expand opportunities for recreation (hunting, horseback riding, hiking, Off Highway Vehicle, etc.), environmental education, and forest management within Florida's state forests.

Forestry Arson Alert Association, Inc.

The Forestry Arson Alert Association, Inc., through internal and external support, helps reduce the incidence of wildland arson by making it possible to offer rewards for information leading to arrests of arsonists. It also increases public awareness about wildland arson and the destruction it can cause.

Florida Agricultural Museum

The Florida Agricultural Museum, with the assistance of volunteers, preserves Florida's agricultural past, interprets agricultural issues of yesterday, today, and tomorrow, and educates the public about those issues through enjoyable experiences such as guided horseback trail rides, farmers markets, and learning about Florida's rare heritage Cracker cattle, horses, and sheep.

Florida Agriculture in the Classroom, Inc. (FAITC)

The agriculture specialty license plate funds FAITC's ability to reach out to teachers and students in kindergarten through 12th grade. FAITC maintains a website of more than 100 agriculture-related lessons and activities, teacher school garden workshops and related farm tours on how to use agriculture lessons to teach core subjects, school garden curricula and grants programs, and the elementary school reading program, Florida Agriculture Literacy Day.

Florida Agriculture Center and Horse Park Authority

The Florida Agriculture Center and Horse Park Authority, through internal and external support, is a recreational and sporting organization dedicated to developing an international facility with opportunities for equine, agriculture, livestock, recreation, and educational events.

Living Healthy in Florida, Inc.

Seventeen private sector partners work with numerous state agencies, individuals, organizations, and communities to share ideas and best practices to optimize health and wellness.

[198] https://www.freshfromflorida.com/About/

Florida Beef Council, Inc.

The federal Beef Promotion and Research Act was passed as part of the 1985 Farm Bill and provides the mission and the base for development of a producer-funded beef promotion and research program, the national Beef Checkoff Program, aimed at building demand for beef and beef products, both domestically and internationally.[199] The act required cattle producers to pay a fee, or "checkoff" on all sales of cattle to fund advertisements for the cattle industry. This act was challenged by cattle producers who disagreed with the content of those advertisements and brought action against the United States Department of Agriculture alleging that the government-required fee for advertising violated their First Amendment right to free speech. In response to this challenge, the Florida cattle industry worked with the Legislature to create the Beef Market Development Act in the event that they decided to hold a referendum to start a state "checkoff" program. The act included the Florida Beef Council, Inc., which was created to operate as a DSO within the DACS. Since the original federal challenge was not successful, the council was never set up as a DSO of the DACS. There is currently another challenge before the United States Court of Appeals for the Ninth Circuit, and therefore the Florida producers have requested that the DSO remain in statute in the event that they decide to move forward with a state program.[200]

CSO for the Florida Department of Agriculture and Consumer Services

Friends of the Babcock Ranch Preserve, Inc.

The Babcock Ranch acquisition was one of the largest preservation purchases in the history of Florida and was made possible through the Babcock Ranch Preserve Act that was passed by the Legislature in 2006. The Act authorized the Babcock Ranch Preserve (Preserve) as a working ranch and to protect regionally important water resources, diverse natural habitats, scenic landscapes and historic and cultural resources in southwest Florida. Public recreational opportunities include hunting, hiking, wildlife viewing, bicycling, fishing, camping and horseback riding.[201] Section 259.10521, F.S., authorizes the creation of a CSO to raise funds, request and receive grants, gifts, and bequests of money, acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal. It may also make expenditures to or for the direct or indirect benefit of the Preserve. The Friends of the Babcock Ranch Preserve, Inc., will be established when the sale agreement for the Preserve is completed. The DACS anticipates the CSO will be in place before the end of the year.[202]

III. Effect of Proposed Changes:

Section 1 amends s. 20.2551, F.S., to require the DEP to submit a report to the President of the Senate and the Speaker of the House of Representatives that examines the financial transparency, accountability, and ethics of those CSOs with annual expenditures of more than $300,000 and those CSOs under the Florida Coastal Office, as of November 1, 2018.

[199] https://www.beefboard.org/library/beefact_order.asp (Last visited April 23, 2019).
[200] Information provided by the Department of Agriculture and Consumer Services on file in the Senate Agriculture office.
[201] April 4, 2013, analysis of CS/CS/SB 1628.
[202] Information provided by the Department of Agriculture and Consumer Services on file in the Senate Agriculture office.

The bill provides that the report must include audits for the last three fiscal years for any CSO that is subject to the statutory requirement for an audit. Of the DEP's 96 CSOs, this requirement only includes those with annual expenditures of $300,000 or more. Audits conducted after March 1, 2019, must be conducted in accordance with Government Auditing Standards, which explicitly reinforces the existing requirement that audits be conducted in accordance with rules adopted by the Auditor General. The Auditor General rules specify Government Auditing Standards as the standards for audits of nonprofit and for-profit organizations. The bill provides that the report must demonstrate that the CSOs within the Florida Coastal Office, as of November 1, 2018, are in compliance with statutory provisions.

The bill provides that the report must identify any of the DEP's CSOs included in the report that are not in compliance with statutory requirements and describe whether the DEP has terminated its contracts with those CSOs. The report must also demonstrate how the contracts between the DEP and its CSOs have been revised to comply with all relevant provisions of law.

Sections 2 amends s. 257.43, F.S., to delete the scheduled repeal of the Friends of the State Library and Archives of Florida, Inc., currently scheduled for repeal on October 1, 2019, allowing this CSO under the Department of State to continue operating.

Section 3 amends s. 258.015, F.S., to delete the scheduled repeal of provisions governing CSOs established under the DEP, allowing the existing CSOs to continue operating and providing benefits to the DEP.

Section 4 amends s. 259.10521, F.S., to extend the repeal date for the Friends of the Babcock Ranch Preserve, Inc., which serves as a CSO within the DACS, from October 1, 2019, to October 1, 2024.

Section 5 amends s. 265.703, F.S., to delete the scheduled repeal of the Citizens for Florida Arts, Inc. and the Friends of the Museums of Florida, Inc., CSOs within the Department of State, allowing these support organizations to continue operating.

Section 6 amends s. 267.17, F.S., to delete the scheduled repeal of the Friends of Florida History, Inc., allowing this CSO within the Department of State to continue operating.

Section 7 amends s. 288.772(1), F.S., to conform the definition of "account" to the changes made in section 4, which provide for the discontinuance of the FIRF effective October 1, 2019. Specifically, in light of the forthcoming termination, the reference to the FIRF is removed from the definition.

Section 8 provides that s. 288.809, F.S., which created the FIRF, a DSO, is repealed effective October 1, 2019.

Section 9 requires the Executive Office of the Governor and the FIRF to ensure any funds of the foundation remaining following satisfaction of any liabilities be transferred to the Florida International Trade and Promotion Trust Fund within the Department of Economic Opportunity by September 15, 2019.

Section 10 deletes the scheduled repeal of provisions governing CSOs established under the FWC, allowing the organizations to continue operating.

Section 11 provides statutory authorization to courts to continue an existing practice of ordering a person convicted of a violation of the FWC rules or orders to pay an assessment to Wildlife Alert Association, Inc. The bill authorizes Wildlife Alert to pay a reward from the assessments collected by court order to persons who provide information leading to an arrest of a person for a violation of the FWC rules or orders.

Section 12 amends s. 413.615, F.S., to remove the schedule repeal of the Florida Endowment for Vocational Rehabilitation, allowing for the continuation of this DSO established to support the DVR within the DOE.

Section 13 amends s. 570.691, F.S., to remove the scheduled repeal date for the law governing the following direct-support organizations within the DACS:

- Friends of the Florida State Forests;
- Forestry Arson Alert Association, Inc.;
- Florida Agricultural Museum;
- Florida Agriculture in the Classroom, Inc.;
- Florida Agriculture Center and Horse Park Authority; and
- Living Healthy in Florida, Inc.

Section 14 amends s. 570.83, F.S., to extend the scheduled repeal date for the law governing the Florida Beef Council, Inc., which serves as a DSO within the DACS, from October 1, 2019, to October 1, 2024.

Section 15 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By saving the various CSOs and DSOs from repeal, the bill sustains sources of financial assistance to, and supports the functions of the various departments and benefits Florida citizens.

By repealing FIRF, the DSO will experience an impact as it satisfies its liabilities, if any, and prepares to end its operations.

C. Government Sector Impact:

The bill has no fiscal impact on state funds, however, by saving the statutes governing the various CSOs and DSOs from repeal, the bill allows these support organizations to continue benefitting the respective departments and supporting the departments in reaching its goals.

As the entity designated to receive any funds remaining following FIRF's satisfaction of liabilities, the Florida International Trade and Promotion Trust Fund within the Department of Economic Opportunity may experience a beneficial fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 20.2551, 257.43, 258,015, 259.10521, 265.703, 267.17, 288.772, 288.809, 379.223, 379.2231, 413.615, 570.691 and 570.83, of the Florida Statutes.

IX. Additional Information:

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

CS by Rules on April 23, 2019:
The committee substitute deletes the scheduled repeal dates of the laws authorizing:

- Two current citizen support organizations associated with the Florida Fish and Wildlife Commission;
- Six current direct support organizations associated with the Department of Agriculture and Consumer Services;
- 96 current citizen support organizations associated with the Department of Environmental Protection; and
- The Florida Endowment for Vocational rehabilitation Fund, a direct support organization under the Department of Education, Division of Vocational Rehabilitation.

The committee substitute also:

- Extends the repeal date for the Florida Beef Council and the Friends of the Babcock Ranch Preserve, Inc., to October 1, 2024.
- Requires the Department of Environmental Protection to report to the Legislature by December 1, 2019, on financial transparency, accountability, and ethics of certain CSO.
- Authorizes courts to order a person convicted of a violation of commission rules or orders to pay an assessment to Wildlife Alert Reward Association, Inc., allowing courts to continue an existing practice that provides a significant portion of Wildlife Alert Reward Association, Inc.'s funding. These funds will be used to pay rewards to persons who provide information leading to an arrest.

B. Amendments:

None.

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

145574

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2019	.	
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The Committee on Rules (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (6) of section 20.2551, Florida Statutes, is amended to read:

20.2551 Citizen support organizations; use of property; audit; public records; partnerships.—

(6) REPORT ~~REPEAL~~.—By December 1, 2019, the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives which examines the

financial transparency, accountability, and ethics of its citizen support organizations. The report must:

(a) Include audits for the most recent 3 fiscal years for its citizen support organizations that are subject to audit requirements under s. 215.981. An audit conducted after March 1, 2019, must be conducted in accordance with government auditing standards.

(b) Demonstrate that its citizen support organizations within the Florida Coastal Office, as of November 1, 2018, are in compliance with ss. 20.058 and 20.2551.

(c) Identify any citizen support organizations under paragraph (a) or paragraph (b) which are not in compliance with ss. 20.058 and 20.2551 and describe whether the department has terminated a contract with such organization.

(d) Demonstrate how the contracts between the department and its citizen support organizations have been revised to comply with all relevant provisions of law ~~This section is repealed October 1, 2019, unless reviewed and saved from repeal by the Legislature~~.

Section 2. Subsection (4) of section 257.43, Florida Statutes, is amended to read:

257.43 Citizen support organization; use of state administrative services and property; audit.—

~~(4) REPEAL.—This section is repealed October 1, 2019, unless reviewed and saved from repeal by the Legislature.~~

Section 3. Subsection (4) of section 258.015, Florida Statutes, is amended to read:

258.015 Citizen support organizations; use of property; audit.—

~~(4) REPEAL.—This section is repealed October 1, 2019, unless reviewed and saved from repeal by the Legislature.~~

Section 4. Subsection (4) of section 259.10521, Florida Statutes, is amended to read:

259.10521 Citizen support organization; use of property.—

(4) REPEAL.—This section is repealed October 1, 2024 ~~2019~~, unless reviewed and saved from repeal by the Legislature.

Section 5. Subsection (4) of section 265.703, Florida Statutes, is amended to read:

265.703 Citizen support organizations; use of state administrative services and property; audit.—

~~(4) REPEAL.—This section is repealed October 1, 2019, unless reviewed and saved from repeal by the Legislature.~~

Section 6. Subsection (4) of section 267.17, Florida Statutes, is amended to read:

267.17 Citizen support organizations; use of state administrative services and property; audit.—

~~(4) REPEAL.—This section is repealed October 1, 2019, unless reviewed and saved from repeal by the Legislature.~~

Section 7. Subsection (1) of section 288.772, Florida Statutes, is amended to read:

288.772 Definitions.—For purposes of ss. 288.771-288.778:

(1) "Account" means the Florida Export Finance Corporation account ~~in the Florida Intergovernmental Relations Foundation, Inc~~.

Section 8. Effective October 1, 2019, section 288.809, Florida Statutes, is repealed.

Section 9. The Executive Office of the Governor and the Florida Intergovernmental Relations Foundation, created pursuant

to s. 288.809, Florida Statutes, shall ensure that any liabilities of the foundation are satisfied by September 1, 2019. Any funds of the foundation remaining following satisfaction of any liabilities must be transferred to the Florida International Trade and Promotion Trust Fund within the Department of Economic Opportunity by September 15, 2019.

Section 10. Subsection (4) of section 379.223, Florida Statutes, is amended to read:

379.223 Citizen support organizations; use of state property; audit.—

~~(4) This section is repealed October 1, 2019, unless reviewed and saved from repeal by the Legislature.~~

Section 11. Section 379.2231, Florida Statutes, is created to read:

379.2231 Additional assessment; Wildlife Alert Reward Association, Inc.—

(1) As used in this section, the term "convicted" or "conviction" means any judicial disposition other than acquittal or dismissal.

(2) In addition to any other penalty provided by law, a court may order a person who is convicted of a violation of this chapter or of a rule or order of the commission to pay an assessment directly to Wildlife Alert Reward Association, Inc.

(3) Wildlife Alert Reward Association, Inc., may pay a reward, from the funds assessed pursuant to subsection (2), to a person who provides information leading to the arrest of an individual or individuals for a violation of this chapter or of a rule or order of the commission.

Section 12. Subsection (14) of section 413.615, Florida

145574

Statutes, is amended to read:

413.615 Florida Endowment for Vocational Rehabilitation.—

~~(14) REPEAL.—This section is repealed October 1, 2019, unless reviewed and saved from repeal by the Legislature.~~

Section 13. Subsection (10) of section 570.691, Florida Statutes, is amended to read:

570.691 Direct-support organization.—

~~(10) This section is repealed October 1, 2019, unless reviewed and saved from repeal by the Legislature.~~

Section 14. Subsection (14) of section 570.83, Florida Statutes, is amended to read:

570.83 Beef Market Development Act; definitions; Florida Beef Council, Inc., creation, purposes, governing board, powers, and duties; referendum on assessments imposed on gross receipts from cattle sales; payments to organizations for services; collecting and refunding assessments; vote on continuing the act; council bylaws.—

(14) REPEAL.—This section is repealed October 1, 2024 ~~2019~~, unless reviewed and saved from repeal by the Legislature.

Section 15. Except as otherwise expressly provided in this act, 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 support organizations; amending s. 20.2551, F.S.; requiring the Department of

145574

Environmental Protection to submit a report to the Legislature by a specified date; providing requirements for the report; removing the scheduled repeal of provisions governing citizen support organizations established under the Department of Environmental Protection; amending s. 257.43, F.S.; removing the scheduled repeal of provisions governing the citizen support organization providing support for the Division of Library and Information Services of the Department of State; amending s. 258.015, F.S.; removing the scheduled repeal of provisions governing citizen support organizations established under the Department of Environmental Protection for the benefit of the state park system; amending s. 259.10521, F.S.; extending the scheduled repeal of the provisions governing the citizen support organizations operating to the benefit of the Babcock Ranch Preserve; amending s. 265.703, F.S.; removing the scheduled repeal of provisions governing citizen support organizations providing support for the Division of Cultural Affairs of the Department of State; amending s. 267.17, F.S.; removing the scheduled repeal of provisions governing citizen support organizations providing support for the Division of Historical Resources of the Department of State; amending s. 288.772, F.S.; revising a definition to conform to changes made by the act; repealing s. 288.809, F.S., relating to the Florida Intergovernmental Relations Foundation; requiring the Executive Office of the Governor and the foundation to

145574

ensure the satisfaction of the foundation's remaining liabilities by a certain date; providing for the transfer of any remaining funds by a certain date; amending s. 379.223, F.S.; removing the scheduled repeal of provisions governing citizen support organizations established under the Fish and Wildlife Conservation Commission; creating s. 379.2231, F.S.; defining the terms "convicted" and "conviction"; authorizing a court to order persons convicted of certain violations to pay an additional assessment; authorizing a specified citizen support organization to post certain rewards; amending s. 413.615, F.S.; removing the future repeal of provisions governing the Florida Endowment Foundation for Vocational Rehabilitation; amending s. 570.691, F.S.; removing the scheduled repeal of provisions relating to direct-support organizations of the Department of Agriculture and Consumer Services; amending s. 570.83, F.S.; extending the scheduled repeal of provisions governing the Florida Beef Council, Inc., direct-support organization; providing effective dates.

By the Committee on Governmental Oversight and Accountability

585-02953-19 20197074__

A bill to be entitled

An act relating to support organizations; amending s. 257.43, F.S.; removing the scheduled repeal of provisions governing the citizen support organization providing support for the Division of Library and Information Services of the Department of State; amending s. 265.703, F.S.; removing the scheduled repeal of provisions governing citizen support organizations providing support for the Division of Cultural Affairs of the Department of State; amending s. 267.17, F.S.; removing the scheduled repeal of provisions governing citizen support organizations providing support for the Division of Historical Resources of the Department of State; repealing s. 288.809, F.S., relating to the Florida Intergovernmental Relations Foundation; requiring the Executive Office of the Governor and the foundation to ensure the satisfaction of the foundation's remaining liabilities by a certain date; providing for the transfer of any remaining funds by a certain date; providing effective dates.

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

Section 1. Subsection (4) of section 257.43, Florida Statutes, is amended to read:

257.43 Citizen support organization; use of state administrative services and property; audit.—

~~(4) REPEAL.—This section is repealed October 1, 2019, unless reviewed and saved from repeal by the Legislature.~~

Section 2. Subsection (4) of section 265.703, Florida Statutes, is amended to read:

265.703 Citizen support organizations; use of state administrative services and property; audit.—

~~(4) REPEAL.—This section is repealed October 1, 2019, unless reviewed and saved from repeal by the Legislature.~~

Section 3. Subsection (4) of section 267.17, Florida Statutes, is amended to read:

267.17 Citizen support organizations; use of state administrative services and property; audit.—

~~(4) REPEAL. This section is repealed October 1, 2019, unless reviewed and saved from repeal by the Legislature.~~

Section 4. Effective October 1, 2019, section 288.809, Florida Statutes, is repealed.

Section 5. The Executive Office of the Governor and the Florida Intergovernmental Relations Foundation, created pursuant to s. 288.809, Florida Statutes, shall ensure that any liabilities of the foundation are satisfied by September 1, 2019. Any funds of the foundation remaining following satisfaction of any liabilities must be transferred to the Florida International Trade and Promotion Trust Fund within the Department of Economic Opportunity by September 15, 2019.

Section 6. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2019.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 746
INTRODUCER:	Senator Wright
SUBJECT:	Public Records/Judicial Assistants
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	**Favorable**
2.	Hackett	McVaney	GO	**Favorable**
3.	Tulloch	Phelps	RC	**Favorable**

I. Summary:

SB 746 amends s. 119.071(4)(d)2.e., F.S., which contains public records exemptions for home addresses and various other information identifying specified court personnel.

The bill makes exempt from public disclosure requirements the following information relating to current or former judicial assistants to justices and judges:

- The judicial assistant's address, date of birth, and telephone number.
- The names, home addresses, telephone numbers, dates of birth, and places of employment of the judicial assistant's spouse and children.
- The names and locations of schools and day care facilities attended by the judicial assistant's children.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption and expands other public records exemptions, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect July 1, 2019.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] This applies to the official business

[1] FLA. CONST., art. I, s. 24(a).

of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.[3] The Public Records Act states that

> [i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[4]

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.[5] Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

Only the Legislature may create an exemption to public records requirements.[10] An exemption must be created by general law and must specifically state the public necessity justifying the

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[2] *Id*.
[3] Public records laws are found throughout the Florida Statutes.
[4] Section 119.01(1), F.S.
[5] *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST., art. I, s. 24(c).

exemption.[11] An exemption serves an identifiable purpose if it meets one of the following statutory purposes, the Legislature finds that the purpose of the exemption outweighs open government policy, *and* the purpose cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[12]
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[13] or
- It protects trade or business secrets.

Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill enacting an exemption may not contain other substantive provisions[14] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[15]

When creating or expanding a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[16] Records designated as "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as 'exempt' may be released at the discretion of the records custodian under certain circumstances.[17]

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,[18] with specified exceptions.[19] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[20] The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[21]

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[11] *Id.*
[12] Section 119.15(6)(b)1., F.S.
[13] Section 119.15(6)(b)2., F.S.
[14] The bill may, however, contain multiple exemptions that relate to one subject.
[15] FLA. CONST., art. I, s. 24(c).
[16] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[17] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[18] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).
[19] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.
[20] Section 119.15(3), F.S.
[21] Section 119.15(6)(b), F.S. In examining an exemption, the Review Act asks the Legislature to carefully question the purpose and necessity of reenacting the exemption, and specifically requires that the Legislature consider the following questions:

General Public Records Exemptions for State Agency Personnel

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's (1) social security number, (2) medical information, and (3) personal identifying information of dependent children who are insured by an agency group insurance plan.[22]

(1) ***Social Security Numbers***

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.[23] An employing agency may only release social security numbers for the following reasons:

- It is required by law.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.[24]

In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.[25] This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.[26]

(2) ***Medical Information***

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current and former employees.[27]

(3) ***Personal Identifying Information***

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.[28]

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[22] Section 119.071(4)(a) and (b), F.S.
[23] Section 119.071(4)(a)1., F.S.
[24] Section 119.071(4)(a)1., F.S.
[25] Section 119.071(5)(a)5., F.S.
[26] Section 119.071(5)(a)5.f. and g., F.S.
[27] Section 119.071(4)(b)1., F.S.
[28] Section 119.071(4)(b)2., F.S.

Public Records Exemptions for Enumerated Personnel

Provisions in s. 119.071(4)(d), F.S., make exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses and their children. The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.[29] Additionally, all of these exemptions have retroactive application.[30]

Justices and Judges

In Florida, the justices of the Supreme Court and the judges in Florida's five District Courts of Appeal, 20 Circuit Courts, and 67 County Courts adjudicate all legal matters and oversee the legal profession.[31] Additionally, all judges and justices preside over matters that may be emotionally charged, from a trial, appeal, or other type of review of a criminal proceeding to dependency and other domestic or family law matters.[32]

In 1991, the Legislature enacted a public records exemption for current justices and judges and their families.[33] Because public necessity statements were not required for public records exemptions prior to the adoption of Article I, section 24, Florida Constitution, there is no public necessity statement explaining why the exemption was created.

In 2012, the Legislature expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members.[34] The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual. In addition, the Legislature expanded the exemption to include former justices and judges as well as their families. The public necessity statement for this expansion indicated that justices and judges as well as their family members can be targets of revenge and that risk continues after justices and judges complete their public service.[35]

In 2017, the Legislature expanded this exemption to also exempt from disclosure the names of the justices' or judges' spouses and children.[36]

Judicial Assistants

Judicial assistants are assigned to justices or judges to provide administrative, secretarial and clerical support and to complete tasks of high responsibility. At the trial court level in particular, the judicial assistant is generally responsible for: maintaining the judge's professional and personal calendar; coordinating with attorneys to schedule hearings and trials; prepare orders, notices, and other correspondence; and preparing financial disclosures and travel vouchers. Most

[29] Section 119.071(4)(d)3., F.S.
[30] Section 119.071(4)(d)4., F.S.
[31] FLA CONST. art V. *See also* Florida Courts, http://www.flcourts.org/florida-courts (last visited Feb. 24, 2019).
[32] FLA CONST. art V., ss. 3.(b), 4.(b), 5.(b), 6.(b) (setting out the jurisdiction of the supreme court, district courts of appeal, circuit courts, and county courts, respectively); ss. 26.012, 34.01, F.S. (setting out the jurisdiction of the circuity and county courts, respectively).
[33] Ch. 91-149, Laws of Fla.
[34] Ch. 2012-149, Laws of Fla.
[35] Ch. 2012-149, Laws of Fla.
[36] Ch. 2017-66, Laws of Fla.

significantly, trial court level judicial assistants interact "with attorneys and litigants and their family members to resolve problems such as scheduling conflicts or other case-related issues."[37]

Based on this type of interaction, several trial court judicial assistants have reported that attorneys, litigants, or a litigant's family members have held the judicial assistant responsible for an adverse decision made by the judge. These judicial assistants reported instances of a litigant or litigant's family members showing up at the judicial assistant's home, contacting the judicial assistant on his or her personal cell phone, making threats against the judicial assistant, or naming the judicial assistant in a civil law suit.[38]

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(4)(d)2.e., F.S. to make certain information regarding judicial assistants exempt from public disclosure requirements. The following information for current or former judicial assistants will be exempt:

- The judicial assistant's address, date of birth, and telephone number.
- The names, home addresses, telephone numbers, dates of birth, and places of employment of the judicial assistant's spouse and children.
- The names and locations of schools and day care facilities attended by the judicial assistant's children.

Section 1 also provides that the exemptions in s. 119.071(4)(d)2.e., F.S., are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 sets out the public necessity statement for expanding the foregoing exemption to judicial assistants. The public necessity statement provides that, because judicial assistants and their family members are at risk as targets of revenge or fraud by disgruntled litigants who know the judicial assistants' names, the personal information of former and current judicial assistants and their family members should be exempt from public disclosure.

Section 3 provides that the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

[37]Florida State Courts System Class Specification, Class Title: Judicial Assistant – Circuit Court, *Examples of Work Performed*, available at https://www.flcourts.org/content/download/217825/1972896/Judicial-Assistant-Circuit-Court-508.pdf.

[38] *See* Judicial Assistants Association of Florida, *JA Threats* (2019) (on file with Senate Judiciary Committee).

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. The bill expands an existing exemption. Therefore, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement notes that judicial assistants can create ill will with litigants through the course of their work, and having their personal identifying information available publicly puts them at risk for acts of revenge. For these reasons, the exemptions do not appear broader than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071, Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Wright

14-01023-19 2019746__

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for certain identifying and location information of current and former judicial assistants and their spouses and children; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties

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14-01023-19 2019746__

are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

c. The home addresses, telephone numbers, dates of birth,

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

and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, ~~and~~

county court judges, and judicial assistants; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices, ~~and~~ judges, and judicial assistants; and the names and locations of schools and day care facilities attended by the children of current or former justices, ~~and~~ judges, and judicial assistants are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024 ~~2022~~, unless reviewed and saved from repeal through reenactment by the Legislature.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers,

dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth,

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and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers,

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dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

l. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; and the names and locations of schools and day care facilities attended by the children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open

Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and

saved from repeal through reenactment by the Legislature.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this sub-subparagraph, the term "addiction treatment facility" means a county government, or agency thereof, that is licensed pursuant to s. 397.401 and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26). This sub-

subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

t. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1) and fulfills the screening requirement of s. 39.3035(2), and the members of a child protection team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a

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written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

Section 2. The Legislature finds that it is a public necessity that the home addresses, dates of birth, and telephone numbers of current or former judicial assistants; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such judicial assistants; and the names and locations of schools and day care facilities attended by the children of such judicial assistants be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Such identifying and location information can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial harm to the individual. In the course of assisting in making rulings, entering judgments, imposing sentences, or reviewing cases, judicial assistants frequently do not create good will with litigants, the accused, the convicted, and their associates and families, thus making the judicial assistants, and their spouses and children, targets for acts of revenge. This risk continues after judicial assistants complete their public service. Disgruntled individuals may wait to commit an act of revenge until the employment of a judicial assistant ends. If such identifying and location information were released, the safety of current or former judicial assistants and their spouses and children could

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be seriously jeopardized. For these reasons, the Legislature finds that it is a public necessity that such information be made exempt from public records requirements.

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

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT
14th District

April 2, 2019

The Honorable Lizbeth Benacquisto
400, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 746 – Public Records/Judicial Assistants

Dear Chair Benacquisto:

Senate Bill 746, relating to Judicial Assistants/Public Records has been referred to the Committee on Rules. I am requesting your consideration on placing SB 746 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Tom A. Wright

Tom A. Wright, District 14

cc: John B. Phelps, Staff Director of the Committee on Rules
Cynthia Futch, Administrative Assistant of the Committee on Rules

REPLY TO:
❒ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
❒ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

SB 746
Bill Number (if applicable)

Topic Public Records / Judicial Assistants

Amendment Barcode (if applicable)

Name Alison Dudley

Job Title President AB Dudley & Ass

Address P.O. Box 428
Street

Tall / FL / 32302
City / *State* / *Zip*

Phone 850/559-1139

Email alison@dudleyanddudleyandassociates.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Judicial Assistants Association of FL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SM 804
INTRODUCER:	Judiciary Committee and Senator Torres and others
SUBJECT:	Humanitarian Assistance/Government of Venezuela
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	**Fav/CS**
2.	Tulloch	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SM 804 is a memorial recognizing the humanitarian aid crisis in Venezuela and the violations of its citizens' rights at the hands of the now illegitimate Venezuelan "President," Nicholás Maduro, and the other parts of the Venezuelan government under his regime. The memorial is addressed to the Congress of the United States, and makes three requests:
(1)That Congress urge Maduro to allow delivery of humanitarian aid, in particular food and medicine;
(2)That Congress not only maintain the current financial sanctions but intensify financial sanctions against Maduro and the Venezuelan government; and
(3)That Congress instruct all federal agencies to hold Maduro and officials of the Venezuelan government responsible for violations and abuses of internationally recognized human rights.

II. Present Situation:

Formally, the government of Venezuela is "a multiparty, constitutional republic[.]"[1] However, for over a decade, beginning with the election of Hugo Chávez in 1998[2] to his successor, Nicholás Maduro, political power in Venezuela has been "concentrated in a single party with an increasingly authoritarian executive exercising significant control over the legislative, judicial,

[1] U.S. Department of State, Bureau of Democracy, Human Rights and Labor. *Venezuela 2016 Human Rights Report, Executive Summary*, p. 1, https://www.state.gov/documents/organization/265834.pdf (last visited March 1, 2019).
[2] *See* BBC News, *Venezuela profile – Timeline* (Feb. 25, 2019), http://www.bbc.com/news/world-latin-america-19652436. After two unsuccessful coup attempts in 1992, in 1998, military Lieutenant Colonel Hugo Chávez was elected president of Venezuela "amid disenchantment with established parties." *Id.*

citizen, and electoral branches of government."[3] The election of Hugo Chávez launched the "Bolivarian Revolution,"[4] which brought Venezuela a new constitution as well as "socialist and populist economic and social policies funded by high oil prices, and increasingly vocal anti-US foreign policy."[5]

From 2001 until his death in 2013, Chávez expanded the government's role in the Venezuelan economy by expropriating major enterprises, particularly petroleum, and discouraging private investment through strict currency exchange and price controls.[6] "As oil prices rose during the 2000s and early 2010s, the Chávez government used oil revenues, as well as foreign borrowing, to spend generously on domestic social programs[,]" but "did not create a stabilization fund."[7] "When oil prices crashed by nearly 50% in 2014," the government under Chávez's successor, Nicholás Maduro, "was ill-equipped to soften the blow to the Venezuelan economy."[8]

Following Chavez's death in April of 2013, his hand-picked successor, Nicholás Maduro of the United Socialist Party of Venezuela (PSUV) was "elected" president.[9] Because of the extremely narrow 1.5 percent margin of victory and "allegations of pre- and postelection fraud including government interference, the use of state resources by the ruling party, and voter manipulation[,]"[10] Maduro's election results were challenged by the opposition.[11] However, by the end of 2013, Maduro was given emergency powers by the National Assembly for a year to deal with Venezuela's 50 percent inflation rate, which Maduro used to limit profit margins. This decision was also met with opposition protests.[12]

February and March 2014 Opposition Protests and Violence

Since the 2013 election, Maduro has attempted to "consolidate his authority" and suppress the opposition.[13] According to the Congressional Research Service, in 2014, Maduro's security forces and allied civilian groups "violently suppressed protests and restricted freedom of speech

[3] *See* n. 1, *supra.*
[4] Named for Venezuelan hero, Simón Bolívar.
[5] *See* n. 2, *supra*.
[6] *Id.*. For example, in 2001, Chavez used an enabling act to pass 49 laws aimed at redistributing land and wealth. *Id.* In 2005, he signed a decree to eliminate large estates, which ranchers viewed as an attack on private property. In 2007, he announced that "key energy and telecommunications companies will be nationalised under [an] 18-month enabling act approved by parliament." *Id.* Also that year, the Venezuelan government expropriated operations by two US oil companies after they refused to hand over majority control. *Id.* In 2010, Chavez devalued the Venezuelan currency, the bolivar, "by 17% against the US dollar for 'priority' imports and by 50% for items considered non-essential, to boost revenue from oil exports after [the] economy shrank 5.8% in [the] last quarter of 2009." *Id.* In 2010, parliament granted Chavez special powers to deal with devastating floods, prompting opposition fears of greater authoritarianism." *Id.* In 2012, to battle inflation, the Venezuelan government extended price controls on basic goods, and "President Chavez threatens to expropriate companies that do not comply with the price controls." *Id.*
[7] Congressional Research Service Report, *Venezuela: Background and U.S. Policy*, May 10, 2017, p. 10, https://www.everycrsreport.com/files/20170510_R44841_fa3ec514ed07bb711220465fb833d0432061f98a.pdf.
[8] *Id.*
[9] *Id.* at 1.
[10] Bureau of Democracy, Human Rights, and Labor, United States Department of State, Country Reports on Human Rights Practices for 2015, Venezuela 2015 Human Rights Report, https://www.state.gov/documents/organization/253261.pdf.
[11] *Id.*
[12] *See* n. 1. *supra*.
[13] See n. 7. *supra* p. 1.

and assembly."[14] An international non-government watch group, Human Rights Watch, documented "45 cases from Caracas and three states, involving more than 150 victims, in which security forces . . . abused the rights of protesters and other people in the vicinity of demonstrations."[15]

December 2014 U.S. Response

Based on reports of Human Rights Watch and others, in December 2014, the U.S. Congress passed the "Venezuela Defense of Human Rights and Civil Society Act" (Act) authorizing the President to "impose targeted sanctions on persons responsible for violations of human rights of antigovernment protesters in Venezuela."[16] The Act's findings indicate that, as of September

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[14] *Id.*

[15] *Id.* Human Rights Watch, *Venezuela: Unarmed Protestors Beaten, Shot:Prosecutors, Judges Complicit in Rights Violations* (May. 5, 2014), https://www.hrw.org/news/2014/05/05/venezuela-unarmed-protestors-beaten-shot (last visited March 1, 2019). Based on reports of the Human Rights Watch and other, in December 2014, the U.S. Congress passed the "Venezuela Defense of Human Rights and Civil Society Act," noting that,

> As of September 1, 2014, 41 people had been killed, approximately 3,000 had been arrested unjustly, and more than 150 remained in prison and faced criminal charges as a result of antigovernment demonstrations throughout Venezuela. . . .Opposition leader Leopoldo Lopez was arrested on February 18, 2014, in relation to the protests and was unjustly charged with criminal incitement, conspiracy, arson, and property damage. . . .Since his arrest, Lopez has been held in solitary confinement and has been denied 58 out of 60 of his proposed witnesses at his ongoing trial. . . .As of September 1, 2014, not a single member of the public security forces of the Government of Venezuela had been held accountable for acts of violence perpetrated against antigovernment protesters.

PUBLIC LAW 113–278 (Dec. 18, 2014), https://www.congress.gov/113/plaws/publ278/PLAW-113publ278.pdf (last visited March 1, 2019). *See also* Irene Caselli, BBC News, *What lies behind the protests in Venezuela?* (March 27, 2014), http://www.bbc.com/news/world-latin-america-26335287 (last visited March 1, 2019). *See also* n. 1, *supra.* In most of the cases documented by Human Rights Watch,

> [A]buse victims were arbitrarily arrested and held for up [to] 48 hours or longer – frequently in military installations. There they were subjected to further abuse, including brutal beatings and, in several cases, electric shocks or burns.
>
> Detainees with serious injuries – such as wounds from rubber bullets and broken bones from beatings – were denied or delayed access to medical attention, exacerbating their suffering, despite their repeated requests to see a doctor. In several cases, national guardsmen and police also subjected detainees to severe psychological abuse, including threatening them with death and rape.
> In at least 10 cases documented, Human Rights Watch believes that the abusive tactics employed by security forces constituted torture.
>
> The fact that the abuses were carried out repeatedly, by multiple security forces, in multiple locations across three states and the capital – including in controlled environments such as military installations and other state institutions, and over the six-week period Human Rights Watch reviewed – supports the conclusion that the abuses were part of a systematic practice, Human Rights Watch said.
>
> Nearly all of the 150 victims were denied basic due process rights. Many were held incommunicado and denied access to lawyers until minutes before their judicial hearings, which were often scheduled in the middle of the night without any plausible justification. Prosecutors and judges routinely turned a blind eye to evidence suggesting that detainees had been abused in detention, including obvious signs of physical abuse.

The scope of these and other due process violations in multiple jurisdictions across several states highlights the failure of the judicial body to fulfill its role as a safeguard against abuse of state power, Human Rights Watch said.

[16] PUBLIC LAW 113–278 (Dec. 18, 2014), https://www.congress.gov/113/plaws/publ278/PLAW-113publ278.pdf (last visited March 1, 2019).

2014, "41 people had been killed, approximately 3,000 had been arrested unjustly, and more than 150 remained in prison and faced criminal charges as a result of antigovernment demonstrations throughout Venezuela." [17] The Act also notes that opposition leader, Leopoldo Lopez, who was arrested in February 2014 in connection with the protests, was "unjustly charged with criminal incitement, conspiracy, arson, and property damage," had been "held in solitary confinement," and had been "denied 58 out of 60 of his proposed witnesses at his ongoing trial."[18] Meanwhile, as noted by the Act, "not a single member" of the Government's public security forces "had been held accountable for acts of violence perpetrated against antigovernment protesters."[19]

The Act also noted that Venezuela was experiencing serious criminal and economic problems with the murder rate rising sharply between 1999 and 2013 to a rate of 79 people out of every 100,000.[20] Venezuela's inflation rate in 2013 was 56.30, "the highest level of inflation in the Western Hemisphere and the third highest level of inflation in the world behind South Sudan and Syria."[21] The Venezuelan Government's imposition of currency controls further exacerbated Venezuela's economic problems and was deemed "the most problematic factor for doing business in Venezuela."[22] As a result, the March 2014 scarcity index indicated that "fewer than one in 4 basic goods" was available at any given time in Venezuela.[23]

2015 to Present: Venezuela Politics

Maduro's government continued to "crack down" on political opposition in 2015, 2016, and 2017. According to the Congressional Reporting Service, "[t]he number of political prisoners detained remained relatively constant from 2014 to 2016 (at an average of 100 prisoners at any given time), but the total number of political arrests made from 2014 to 2016 exceeded 6,800."[24]

The opposition fought on and, in December 2015, won Venezuela's legislative elections by a landslide, capturing "a two-thirds majority in Venezuela's National Assembly—a major setback for Maduro."[25] However, the Venezuelan Supreme Court, under extensive influence by Madero's administration, issued a ruling blocking "three newly elected National Assembly representatives from the [opposition party] from taking office[.]"[26] As a result, the opposition in the National Assembly was "deprived . . . of the two-thirds majority needed to submit bills directly to referendum and remove Supreme Court justices, among other extensive powers."[27]

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[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.* Venezuela's rising crime rate was the reason student protestors took to the streets in February 2014. *See* Irene Caselli, BBC News, *What lies behind the protests in Venezuela?* (Mar. 27, 2014), http://www.bbc.com/news/world-latin-america-26335287 (last visited March 1, 2019). *See also* n. 1, *supra.*
[21] PUBLIC LAW 113–278 (Dec. 18, 2014), https://www.congress.gov/113/plaws/publ278/PLAW-113publ278.pdf.
[22] *Id.*
[23] *Id.*
[24] *See* n. 7, p. 6, *supra.*
[25] Bureau of Democracy, Human Rights and Labor, United States Department of State, *Venezuela 2016 Human Rights Report, Executive Summary*, p. 1, https://www.state.gov/documents/organization/265834.pdf and n. 7, *supra*.
[26] *Id.*
[27] *See* n. 7, *supra*.

The Venezuelan Supreme Court went further in January 2016, blocking "numerous laws approved by the legislature,"[28] undermining its autonomy, ignoring the separation of powers, and enabling "the president to govern through a series of emergency decrees."[29] As a result of these court decisions, Maduro's party, the United Socialist Party, was able to thwart the opposition's efforts to institute a constitutional recall of the president.[30] Additionally, "gubernatorial elections slated for December 2016 were summarily postponed."[31]

Then on March 29, 2017, the Venezuelan Supreme Court made a "power grab" by attempting to dissolve the National Assembly and assume all legislative responsibilities. According to the Congressional Reporting Service, this sparked protests, international condemnation, and "a rare public rebuke by the attorney general (who was appointed by Chávez), who deemed the rulings illegal." "President Maduro urged the court to revise those decisions on March 30[,] [a]lthough the Supreme Court's reversal was incomplete."[32]

The opposition party began massive, sustained protests again on March 30, 2017, some of which were met with "repression by government forces (including the National Guard) and allied civilian militias."[33] These protests intensified when it was announced on April 7, 2017, that Maduro's opponent in the 2013 election, Henrique Capriles, "would be barred from seeking office for 15 years due to 'administrative irregularities' in the state government."[34] As of April 26, 2017, "ongoing violent clashes between protesters and government forces . . . had claimed 26 lives and resulted in 1,300 detentions."[35]

President Maduro convened a Constituent Assembly in May 2017 through a presidential decree, "despite a constitutional requirement that a public referendum be held beforehand in order to rewrite the constitution."[36]

As of May 2017, the Venezuela human rights group *Foro Penal Venezolano* listed more than 140 political prisoners in Venezuela. The group reported more than 6,800 political arrests made from 2014 to 2016.[37] According to the United States Department of State, many of those detained have been subject to torture and other human rights abuses.[38]

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[28] *Id.*
[29] *See* n. 26, *supra*.
[30] *Id.*
[31] *Id.*
[32] *See* n. 7, p. 7, *supra*.
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] Human Rights Watch, *Venezuela, Events of 2017*, https://www.hrw.org/world-report/2018/country-chapters/venezuela#56edeb (last visited March 1, 2019). According to Human Rights Watch, "The assembly is made up exclusively of government supporters chosen through an election in July that Smartmatic, a British company hired by the government to verify the results, later alleged was fraudulent. The Constituent Assembly has sweeping powers that go well beyond drafting a constitution. In August, as soon as the assembly started operating, its members assumed all legislative powers and fired Attorney General Ortega Díaz, a former government loyalist who had become an outspoken critic in late March, and appointed a government supporter to the position." *Id.*
[37] *Id.* at pg. 6.
[38] U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2016-2017*, available at https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dlid=#wrapper (last visited March 1, 2019).

Between April and July 2017, government security forces along with armed, pro-government civilian groups, attacked anti-government protestors. As of July 31, 2017, Attorney General Díaz's office reported that 124 people had been killed, and that her office had investigated nearly 2,000 cases of injuries during such crackdowns.[39] Between April and November 2017, about 5,400 people were arrested in connection to the protests.[40] After being fired, in August 2017, Attorney General Díaz went into exile.[41]

On May 20, 2018, Maduro won reelection for a second six-year term with 67.7 percent of the vote amidst high voter abstention.[42] The elections took place within a climate of state repression and, there has been widespread international condemnation since Maduro's inauguration in January 2019. Juan Guaidó, the leader of the opposition-controlled National Assembly of Venezuela, has declared himself interim president after asserting election was fraudulently conducted to ensure Maduro would win a second six-year term.[43] Guaidó cited Title V, Chapter II, Article 233 of the Constitution of the Bolivarian Republic of Venezuela, which states that if the president fails at his or her duties, or if there is an absence in leadership, the National Assembly's chief will take temporary charge of the nation.[44]

Numerous Western Hemisphere governments, including the United States, have recognized Guaidó as the new interim President of Venezuela. President Trump released a statement stating that the United States would press to restore Venezuela's democracy and would "continue to hold the illegitimate Maduro regime directly responsible for any threats it may pose to the safety of the Venezuelan people."[45] Consequently, Maduro cut diplomatic ties with the United States and told American diplomats to leave the country.

Additionally, the Venezuela military has pledged its allegiance to Nicolás Maduro.

2015 to Present: Venezuela Economic Hardship and Humanitarian Crisis

Other protests occurred in 2016, accompanied by rioting and looting, due to a severe shortage of food, medicine, and other basic goods, as well as the 75 percent devaluation of Venezuela's currency, the bolivar. Estimates put Venezuela's 2016 rate of inflation at 254 percent and 2017 rate of inflation at 1,133 percent. [46] "The International Monetary Fund projects that the

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[39] *Id.*
[40] *Id.*
[41] *See* n. 1, *supra.*
[42] Congressional Research Service Insight Report, *Venezuela's 2018 Presidential Elections,* available at https://webcache.googleusercontent.com/search?q=cache:p67-ogCAUbsJ:https://fas.org/sgp/crs/row/IN10902.pdf+&cd=1&hl=en&ct=clnk&gl=u (last visited March. 1, 2019).
[43] Alex Ward, *Why thousands of protesters and Trump are demanding Venezuela's president step down,* Vox (Jan. 23, 2019), https://www.vox.com/world/2019/1/23/18193533/venezuela-maduro-protest-guaido-pence-trump-23-enero (last visited March 1, 2019).
[44] *Id.*
[45] White House statement, *Recognizing Venezuelan National Assembly President Juan Guaido as the Interim President of Venezuela*, January 23, 2019, available at https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-recognizing-venezuelan-national-assembly-president-juan-guaido-interim-president-venezuela/ (last visited March 1, 2019).
[46] *See* n. 7, p. 7, *supra*.

Venezuelan economy will contract by 18 percent in 2018 under the weight of 1,370,000 percent inflation and with the prospect of 10,000,000 percent inflation in 2019."[47]

Additionally, since 2013, Venezuela's economy has contracted by 30 percent. In August 2016, six checkpoints at the border into Colombia were opened so that the people could enter and buy food and goods. "[A]ccording to a 2016 national survey . . . , 27% of people across the country eat only once a day and 93.3% of households lack enough income to purchase food."[48]

Due to the growing economic crisis in Venezuela, the Vatican mediated talks between Maduro's administration and the opposition in October 2016. However, those talks failed, and Maduro has not allowed international humanitarian aid into the country.[49]

Additionally, healthcare in Venezuela is a serious concern:

> Venezuela's health system has been affected severely by budget cuts, with shortages of medicines and basic supplies. Some hospitals face critical shortages of antibiotics, intravenous solutions, and even food, and 50% of operating rooms in public hospitals are not in use. Pharmacies also are facing shortages, with more than 85% of drugs reported to be unavailable or difficult to find, according to the Pharmaceutical Federation of Venezuela. Declining immunization rates have resulted in a resurgence of diseases that once were eradicated, including diphtheria, a disease that affected 324 people in 2016 (with no cases recorded in 2015). According to health ministry data, infant mortality reportedly increased by 30% from 2015 to 2016 and maternal mortality increased by 65.8%. Mosquito-borne illnesses also increased significantly, with cases of malaria climbing 76.4% from 2015 to more than 240,600. Zika cases rose from 51 in 2015 to more than 59,000 last year. The government has stopped sharing timely health surveillance statistics with the Pan American Health Organization, the regional arm of the World Health Organization, a development that could endanger neighboring countries.[50]

U.S. Responses

President Trump and the State Department have called for the release of opposition leader Leopoldo López and the rest of Venezuela's political prisoners.[51] Additionally, on August 24, 2017, President Trump signed Executive Order 13808 to impose financial sanctions on the government of Venezuela (defined as including the Central Bank and other entities owned or controlled by the government, such as the state-owned oil company). Executive Order 13808

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[47] Center for American Progress, *Venezuela in Crisis: A Way Forward*, available at https://www.americanprogress.org/issues/security/reports/2018/10/16/459352/venezuela-crisis-way-forward/ (citing International Monetary Fund, "Countries: República Bolivariana de Venezuela," available at https://www.imf.org/en/Countries/VEN) (last accessed March 1, 2019).
[48] *See* n. 7, p. 7, *supra*.
[49] Congressional Research Service Report, *Venezuela: Background and U.S. Policy*, May 10, 2017, pg. 5, available at https://www.everycrsreport.com/files/20170510_R44841_fa3ec514ed07bb711220465fb833d0432061f98a.pdf (last visited March 1, 2019).
[50] *Id.*
[51] *Id.* at p. 17.

restricts Venezuela's access to the U.S. financial system by prohibiting persons and entities in the U.S. from engaging in certain financial transactions with the government of Venezuela.[52]

After the Venezuelan election on May 20, 2018, President Trump issued Executive Order 13835,[53] which, among other things, prohibits transactions by the United States or persons within the United States related to the purchase of any debt owed to the government of Venezuela, including Venezuela's state-owned oil company. The executive order also denies the Venezuelan regime the ability to earn money by selling off public assets at the expense of the Venezuelan people.[54]

On March 1, 2019, President Trump announced sanctions against six of Maduro's security officials for blocking humanitarian aid at the border. "The Treasury Department said the six, including brass from the national guard and police . . . closed Venezuela's borders with Brazil and Colombia to prevent help from the US and other countries opposed to his continued hardline rule from entering."[55]

III. Effect of Proposed Changes:

In recognition of the humanitarian aid crisis in Venezuela and the violations of its citizens' rights at the hands of the now illegitimate Venezuelan "President," Nicholás Maduro, and the other parts of the Venezuelan government under his regime, the memorial makes three primary requests:
(1)First, the memorial requests that the United States Congress urge Maduro to allow delivery of humanitarian aid, in particular food and medicine.
(2)Second, the memorial requests that the United States Congress not only maintain the current financial sanctions but intensify financial sanctions against Maduro and the Venezuelan government.
(3)Finally, the memorial requests that the Congress of the United States instruct all federal agencies to hold Maduro and officials of the Venezuelan government responsible for violations and abuses of internationally recognized human rights.

Additionally, the memorial directs that copies should be dispatched to the President U.S. Senate President, U.S. House Speaker, and to each member of Florida's delegation in both houses of Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[52] Exec. Order No. 13808, 3 C.F.R. 41155 (2017).
[53] Exec. Order No. 13835, 3 C.F.R. 24001 (2018).
[54] United States Department of State, *Venezuela-Related Sanctions*, available at https://www.state.gov/e/eb/tfs/spi/venezuela/ (last visited March 1, 2019).
[55] New York Post, *Trump Administration Hits Venezuela with New Sanctions for Blocking Aid*, available at https://nypost.com/2019/03/01/trump-administration-hits-venezuela-with-new-sanctions-for-blocking-aid/ (last visited March 1, 2019).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

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

CS by Judiciary on March 4, 2019:
The Committee Substitute:

- Clarifies that the regime of Nicholás Maduro is illegitimate.

- Removes any reference to Maduro as the Venezuelan "president" throughout the bill.
- Makes technical changes to wording.

B. Amendments:

None.

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

By the Committee on Judiciary; and Senators Torres, Rodriguez, Taddeo, Powell, Bracy, Gibson, Cruz, Thurston, Book, Farmer, and Braynon

590-02664A-19 2019804c1

Senate Memorial

A memorial to the Congress of the United States, requesting Congress to take appropriate actions to assist in the delivery of humanitarian assistance, to continue and intensify financial sanctions against the regime of Nicolás Maduro and the Government of Venezuela, and to instruct appropriate federal agencies to hold Nicolás Maduro and officials of the Government of Venezuela accountable for violations of law and abuses of internationally recognized human rights.

WHEREAS, the hallmark of democracy is the free and peaceful exercise of rights guaranteed under the constitution of a democratically elected government, and

WHEREAS, in an effort to secure his personal rule and oppress Venezuelan freedoms, Nicolás Maduro has caused elections to be manipulated, established an illegitimate Constituent Assembly to undermine the will of the Venezuelan people, nationalized private industry, abandoned private property rights, and improperly assumed control over Venezuela's government and its institutions, and

WHEREAS, the illegitimate regime of Nicolás Maduro has sought to silence peaceful opposition to his government by killing innocent citizens of Venezuela for their political views, and

WHEREAS, the deterioration of basic governance and the economic crisis in Venezuela have led to an unprecedented humanitarian situation in which people are suffering from severe

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590-02664A-19 2019804c1

shortages of basic food products and essential medicines, and

WHEREAS, despite the massive shortages of basic food products and essential medicines, the illegitimate regime of Nicolás Maduro has rejected repeated requests from civil society organizations to bring humanitarian aid into that country, and

WHEREAS, over 8 million Venezuelans voted symbolically for a free and democratic government, and

WHEREAS, those who cherish democratic principles condemn the perpetration of oppression and intimidation against the Venezuelan people, and

WHEREAS, to ensure the demise of such oppression and intimidation, it is imperative that the United States Government remain committed to continuing and intensifying financial sanctions against the illegitimate regime of Nicolás Maduro and the Government of Venezuela, and

WHEREAS, the people of Florida stand proudly with the people of Venezuela in the face of tyranny, NOW, THEREFORE,

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

That the Congress of the United States is requested to take appropriate actions to assist in the delivery of humanitarian assistance, to continue and intensify financial sanctions against the illegitimate regime of Nicolás Maduro and the Government of Venezuela, and to instruct appropriate federal agencies to hold the illegitimate regime of Nicolás Maduro and officials of the Government of Venezuela accountable for violations of law and abuses of internationally recognized human rights.

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BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Vice Chair*
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Children, Families, and Elder Affairs
Governmental Oversight and Accountability
Military and Veterans Affairs and Space

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining

SENATOR VICTOR M. TORRES, JR.
15th District

March 14, 2019

Lizbeth Benacquisto, Chair
Committee on Rules
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Benacquisto:

Please accept this letter as a formal request to schedule CS/SM 804, the Venezuelan memorial for the next available meeting of the Rules Committee. Please let me know if you have any questions or need additional information. Thank you, in advance, for your favorable consideration of this request.

Respectfully,

Victor M. Torres, Jr.
State Senator
District 15

c: John B. Phelps, Staff Director, Committee on Rules
Matthew Hunter, Legislative Assistant

REPLY TO:
❒ 101 Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (850) 410-4817
❒ 226 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 838
INTRODUCER:	Rules Committee; Children, Families, and Elder Affairs Committee; and Senator Powell
SUBJECT:	Public Records/Mental Health Treatment and Services
DATE:	April 22, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	**Fav/CS**
2.	Ponder	McVaney	GO	**Favorable**
3.	Delia	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 838 creates new exemptions from the public records inspection and access requirements of Art. 1, s. 24(a) of the State Constitution and s. 119.07(1), F.S. This bill makes confidential and exempt pleadings, orders, and personal identifying information on a docket relating to Baker Act proceedings. The information may be disclosed upon request to certain persons involved in the proceedings, certain agencies, or when directed by the court.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

Because the bill creates a public records exemption, the State Constitution requires passage by a two-thirds vote in each house of the Legislature.

The bill takes effect on July 1, 2019.

II. Present Situation:

Public Records Law

The Florida Constitution provides the public the right to inspect or copy records made or received in connection with official governmental business.[1] This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.[3] Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act. The Public Records Act states:

> [I]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[4]

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or the method of transmission.[5] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type."[6] A violation of the Public Records Act may result in civil or criminal liability.[7]

Only the Legislature may create an exemption to public records requirements.[8] An exemption must pass by a two-thirds vote of the House and the Senate.[9] In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.[10] A statutory

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.
[4] Section 119.01(1), F.S.
[5] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[7] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[8] FLA. CONST., art. I, s. 24(c).
[9] *Id*.
[10] *Id*.

exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.[11]

When creating or expanding a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[12] Records designated as "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as "exempt" are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.[13]

The Baker Act

The Legislature adopted the Florida Mental Health Act, also known as The Baker Act, in 1971.[14] It is designed to help people receive treatment who are suffering with mental, emotional, and behavioral disorders. Baker Act proceedings provide people with emergency services, sometimes through temporary detention, to obtain a mental health evaluation and treatment. The treatment may be voluntary or involuntary. The Baker Act requires that programs offer comprehensive services to people who need intensive short-term treatment and continued treatment to aid in their recovery. The Baker Act also provides protections and rights for people examined or treated for mental illness. Legal procedures are established for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

Confidentiality of Records under the Baker Act

The concern has been expressed that while "clinical records"[15] under the Baker Act are designated and maintained as confidential by the clerk of the court, it is not clear whether other Baker Act records are open to the public for review.[16] There appears to be a difference of opinion among various clerks of court as to what is and what is not exempt from disclosure. If the petitions, orders, and identifying information in this bill were all classified as confidential and

[11] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

[12] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

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

[14] Chapter 71-131, s. 1, Laws of Fla. The Baker Act is contained in Part I of chapter 394, Florida Statutes.

[15] Section 394.4615, F.S., states that "[a] clinical record is confidential and exempt from the provisions of s. 119.07(1)." The Judicial Administration Rules also provide for the confidentiality of clinical records under the Baker Act. Fla. R. Jud. Admin. 2.420(d)(1)(B)(viii).

[16] Section 394.455(3), F.S. Clinical records are defined as being all parts of the record required to be maintained, including medical records, progress notes, charts, admission and discharge data, and other information recorded by the facility that pertains to the patient's hospitalization or treatment. In lay terms, this is often characterized as records requiring a medical signature.

exempt, then there would be uniformity among the clerks of the court in administering these provisions statewide.

III. Effect of Proposed Changes:

Section 1 creates s. 394.464, F.S., to provide that all petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records filed with or by a court under Part I of Section 397, F.S., are confidential and exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution. The pleadings and other documents may be disclosed by the clerk of court, upon request, to certain persons or agencies, such as the petitioner, the respondent and their legal representatives, as well as the Department of Corrections and Department of Children and Families. The bill provides that records made confidential and exempt from public disclosure can be submitted by the clerk of the court to the Florida Department of Law Enforcement as required by s. 790.065, F.S.[17]

The bill provides that the newly created public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides for retroactive application of the public records exemption.

Section 2 provides a statement of public necessity as required by the State Constitution.[18] The bill provides that making petitions and court records filed under the Baker Act confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution protects a person's personal health information and sensitive personal information which, if released, could cause unwarranted damage to the person's reputation. Additionally, the knowledge that such information could be disclosed could have a chilling effect on the willingness of individuals to seek treatment.

Section 3 provides that the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, section 18, of the State Constitution may apply because clerks of the court may incur additional costs relating to redacting information made confidential and exempt under this bill. However, an exemption may apply based on the limited fiscal impact that is anticipated to be incurred.

[17] Section 790.065, F.S., concerns the sale and delivery of firearms. Clerks of the court are required to transfer the records of certain impaired people to FDLE.
[18] FLA. CONST. art. I, s. 24(c).

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding exemptions to the public records and public meetings requirements. Because the bill creates a public records exemption, the State Constitution requires passage by a two-thirds vote in each house of the Legislature.

Public Necessity Statement

Article I., s. 24(c) of the State Constitution requires a bill creating or expanding exemptions to the public records and public meetings requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The stated purpose of the law is to protect from dissemination to the public the contents of a person's mental health records filed with or by a court or placed on a docket and the personal identifying information, as mental health is an intensely private matter and the public stigma associated with a mental health condition may cause some persons to in need to avoid seeking treatment, and such information could damage the reputation of the person and their family. The bill makes confidential and exempt the petitions for voluntary and involuntary admission for mental health treatment and related court orders and records filed with or by a court under part 1 of ch. 394, F.S. The exemption does not appear to be broader than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Separation of Powers

The judicial branch is not subject to the Public Records Act. Florida Rule of Judicial Administration 2.420(c)(7), however, provides that records made confidential by Florida law shall be confidential, with the burden of having such documents treated as confidential within a court file upon the filing party. Additionally, the judicial branch may adopt the public records exemptions passed by the Legislature.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will be subject to the cost associated with an agency making redactions in response to public records requests.

C. Government Sector Impact:

Clerks of court may incur additional costs associated with training court personnel and performing more redactions of personal identifying information from dockets. It is anticipated that these costs will be absorbed within the existing resources of the offices of the clerks of court.

VI. Technical Deficiencies:

The Office of the State Attorney is not included in the listing of individuals and entities to whom the clerk of court may disclose the confidential and exempt information. The Legislature may want to consider adding the Office of the State Attorney to this list as the state attorney for the circuit in which the patient is located represents the state as the "real party of interest" in a Baker Act proceeding.[19]

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 394.464 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/CS by Rules on April 23, 2019:
The CS corrects a cross-reference from s. 119.071(1), to s. 119.07(1), F.S.

CS by Children, Families, and Elder Affairs on March 11, 2019:
The CS provides an effective date of July 1, 2019.

[19] Section. 364.467, F.S.

B. Amendments:

None.

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

475810

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2019	.	
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	.	
	.	

The Committee on Rules (Powell) recommended the following:

Senate Amendment

Delete line 27
and insert:
confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

By the Committee on Children, Families, and Elder Affairs; and Senator Powell

586-02926-19 2019838c1

A bill to be entitled

An act relating to public records; creating s. 394.464, F.S.; providing an exemption from public records requirements for petitions for voluntary and involuntary admission for mental health treatment, court orders, related records, and personal identifying information regarding persons seeking mental health treatment and services; providing exceptions authorizing the release of such petitions, orders, records, and identifying information to certain persons and entities; providing applicability; prohibiting a clerk of court from publishing personal identifying information on a court docket or in a publicly accessible file; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 394.464, Florida Statutes, is created to read:

394.464 Court records; confidentiality.—

(1) All petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court under this part are confidential and exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution. Pleadings and other documents made confidential and exempt by this section may be disclosed by the

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586-02926-19 2019838c1

clerk of the court, upon request, to any of the following:

(a) The petitioner.

(b) The petitioner's attorney.

(c) The respondent.

(d) The respondent's attorney.

(e) The respondent's guardian or guardian advocate, if applicable.

(f) In the case of a minor respondent, the respondent's parent, guardian, legal custodian, or guardian advocate.

(g) The respondent's treating health care practitioner.

(h) The respondent's health care surrogate or proxy.

(i) The Department of Children and Families, without charge.

(j) The Department of Corrections, without charge, if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.

(k) A person or entity authorized to view records upon a court order for good cause. In determining if there is good cause for the disclosure of records, the court must weigh the person or entity's need for the information against potential harm to the respondent from the disclosure.

(2) This section does not preclude the clerk of the court from submitting the information required by s. 790.065 to the Department of Law Enforcement.

(3) The clerk of the court may not publish personal identifying information on a court docket or in a publicly accessible file.

(4) A person or entity receiving information pursuant to

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this section shall maintain that information as confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(5) The exemption under this section applies to all documents filed with a court before, on, or after July 1, 2019.

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

Section 2. The Legislature finds that it is a public necessity that petitions for voluntary and involuntary admission for mental health treatment and related court orders and records that are filed with or by a court under part I of chapter 394, Florida Statutes, and the personal identifying information of a person seeking mental health treatment published on a court docket and maintained by the clerk of the court under part I of chapter 394, Florida Statutes, be made confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The mental health of a person, including a minor, is a medical condition, which should be protected from dissemination to the public. A person's mental health is also an intensely private matter. The public stigma associated with a mental health condition may cause persons in need of treatment to avoid seeking treatment and related services if the record of such condition is accessible to the public. Without treatment, a person's condition may worsen, the person may harm himself or herself or others, and the person may become a financial burden on the state. The content of such records or personal identifying information

should not be made public merely because they are filed with or by a court or placed on a docket. Making such petitions, orders, records, and identifying information confidential and exempt from disclosure will protect such persons from the release of sensitive, personal information which could damage their and their families' reputations. The publication of personal identifying information on a physical or virtual docket, regardless of whether any other record is published, defeats the purpose of protections otherwise provided. Further, the knowledge that such sensitive, personal information is subject to disclosure could have a chilling effect on a person's willingness to seek out and comply with mental health treatment services.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 2, 2019

I respectfully request that **Senate Bill #838**, relating to Public Records/Mental Health Treatment and Services, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Bobby Powell
Florida Senate, District 30

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

838
Bill Number (if applicable)

Topic Mental Health Treatment & Services

Amendment Barcode (if applicable)

Name Dr. Nancy Lawther

Job Title ?

Address 1747 Orlando Central Pkwy
Street

Phone 407 855 7604

Orlando FL 32809
City *State* *Zip*

Email President@mdccpta.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florda PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/19 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 838

Meeting Date *Bill Number (if applicable)*

Topic Mental Health Public Records *Amendment Barcode (if applicable)*

Name Alisa LaPolt

Job Title Lobbyist

Address PO Box 1344 Phone

Street

TLH 32302 Email alisa@gotfsa.com

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information Waive Speaking: ☒ In Support ☐ Against

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

Representing National Alliance on Mental Illness

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/2019
Meeting Date

838
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Public Records/Mental Health Treatment and Services

Name Shane Messer

Job Title Government Affairs Director

Address 316 East Park Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-224-6048

Email shane@fccmh.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Council For Behavioral Healthcare

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1024
INTRODUCER:	Rules Committee; Innovation, Industry, and Technology Committee and Senator Gruters
SUBJECT:	Blockchain Technology
DATE:	April 24, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Favorable**
2.	Wiehle	Imhof	IT	**Fav/CS**
3.	Knudson	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1024 establishes the Florida Blockchain Task Force comprised of government and private sector representatives to study the ways in which the state, county and municipal governments can benefit from transitioning to a blockchain-based system for recordkeeping, security, and service delivery. The task force is established within the Department of Financial Services. It will explore and develop a master plan for fostering the expansion of the blockchain industry in this state, recommend policies and state investments to help make Florida a leader in blockchain technology, and issue a report to the Legislature. The task force will develop and submit recommendations to the Governor and Legislature concerning the potential for implementation of blockchain-based systems that promote government efficiencies, better services for citizens, economic development, and safer cyber-secure interaction between government and the public.

II. Present Situation:

Blockchain

A blockchain is a digital ledger that allows parties to conduct transactions without the use of a third party acting as a central authority to validate those transactions.[1] In a blockchain, the identities of each party to the transaction are verified, and as each transaction occurs and the

[1] Congressional Research Service, Blockchain: Background and Policy Issues R45116, pg. 1 (Feb. 28, 2018) https://fas.org/sgp/crs/misc/R45116.pdf (last visited Mar. 21, 2019).

parties agree to its details, it is permanently encoded into a block of data and given a unique digital signature.[2] Each block of data is permanently connected to the one before and after it.[3] The ledger is available to all parties to the transaction.

The ledger may be audited because each block of transactions is dependent upon the previous block, and changes to the ledger would alert other users of a change to the transaction history.[4] Blockchain is designed to allow transacting parties to avoid the use of a third-party, central validating authority, an example of which is a bank in a financial transaction between two persons.[5] Blockchain may reduce the costs associated with verifying transactions to the extent that it obviates the need for intermediaries in transactions that charge fees for their services.[6] To the extent blockchain reduces costs for parties to a transaction, it may allow individuals and small startup businesses to directly compete with more entrenched businesses. Security for the ledger is usually accomplished through cryptography.[7]

Promoters of blockchain technology point to a number of potential uses. Perhaps the most prevalent use currently is in the transfer of cryptocurrency. Cryptocurrency is digital currency that has no central issuing or regulating authority, uses a decentralized system such as blockchain to record transactions and manage the issuance of new units of currency, and relies on cryptography to prevent counterfeiting and fraud.[8]

A variety of other uses of the technology have been proposed. Blockchain may enable greater use of digital "smart contracts" that validate that the conditions of the contract are met and then transfer assets.[9] Blockchain may be a useful tool to verify the ownership of real property as a smart contract executed to the purchase of a home or automobile could update governmental title records. Blockchain technology may have useful applications within the insurance industry to facilitate the claims process, allow insurers to gather reliable loss histories, and enable efficient payments between insurers and third parties.[10] The healthcare industry may be able to use blockchain for purposes such as managing patient health information.[11]

Florida has begun addressing cryptocurrency issues that use blockchain technology. In 2017, the Florida Money Laundering Act was amended to include virtual currency.[12] The Chief Financial Officer announced the appointment of a cryptocurrency chief for the purpose of ensuring that

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[2] IBM, What is Blockchain? https://www.ibm.com/blockchain/what-is-blockchain (last visited Mar. 21, 2019).
[3] *Id*.
[4] *See* Congressional Research Service, *supra* note 1, at pg. 1.
[5] *See* Congressional Research Service, *supra* note 1, at pg. 1.
[6] Christian Catalini and Joshua S. Gans, Some Simple Economics of the Blockchain (Sept. 21, 2017). Rotman School of Management Working Paper No. 2874598; MIT Sloan Research Paper No. 51.91-16. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2874598 (last visited Mar. 21, 2019).
[7] MIT Sloan School of Management, Blockchain, Explained (May 25, 2017). http://mitsloan.mit.edu/ideas-made-to-matter/blockchain-explained (last visited Mar. 21, 2019).
[8] Merriam-Webster, Cryptocurrency. https://www.merriam-webster.com/dictionary/cryptocurrency (last visited Mar. 21, 2019).
[9] See Congressional Research Service *supra* note 1, at pg. 7.
[10] Jim Struntz, Ultimate Guide to Blockchain in Insurance (Dec. 5, 2018). https://insuranceblog.accenture.com/ultimate-guide-to-blockchain-in-insurance (last visited Mar. 21, 2019).
[11] See Congressional Research Service, *supra* note 1, at pg. 6.
[12] Ch. 2017-155, L.O.F.

cryptocurrencies are reliable forms of payment that do not expose Floridians to financial fraud.[13] The Seminole County Tax Collector's Office in April 2018, began accepting bitcoin and bitcoin cash as payment for new identification cards, license plates, and property taxes.[14]

Aspects of blockchain may hinder its use in various industries. Data portability is a significant issue, for instance if a person chooses to use one blockchain, the records may not be transferred to a new system.[15] Also, users of a blockchain access their funds using a private digital key. If the key is lost or the computer containing the key is corrupted, the user will be unable to access the resource tied to the encrypted key.[16] Also, blockchain is a new technology, and thus there are different versions of the technology and its attributes may not prove appropriate for some of the purposes being proposed for it.

III. Effect of Proposed Changes:

The bill establishes the Florida Blockchain Task Force (task force) comprised of government and private sector representatives to study the ways in which the state, county, and municipal governments can benefit from transitioning to a blockchain-based system for recordkeeping, security, and service delivery. The task force is established within the Department of Financial Services.

The task force will explore and develop a master plan for fostering the expansion of the blockchain industry in this state, recommend policies and state investments to help make Florida a leader in blockchain technology, and issue a report to the Governor and the Legislature. The task force will develop and submit recommendations to the Governor and Legislature concerning the potential for implementation of blockchain-based systems that promote government efficiencies, better services for citizens, economic development, and safer cyber-secure interaction between government and the public.

The task force consists of 13 members as follows:

- Three agency heads or executive directors of cabinet agencies, or their designees, appointed by the Governor.
- Four members of the private sector with knowledge and experience in blockchain technology, appointed by the Governor.
- Three members from the private sector with knowledge and experience in blockchain technology, appointed by the Chief Financial Officer.
- One member from the private sector with knowledge and experience in blockchain technology, appointed by the President of the Senate.
- One member from the private sector with knowledge and experience in blockchain technology, appointed by the Speaker of the House of Representatives.

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[13] Department of Financial Services, CFO Jimmy Patronis: Florida Needs Cryptocurrency Oversight (June 26, 2018) https://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?id=5057 (last visited Mar. 21, 2019).
[14] Martin E. Comas, Seminole Tax Collector Joel Greenberg Hires Blockchain Director as Legislators Study Technology, Orlando Sentinel (Mar. 4, 2019) https://www.orlandosentinel.com/news/seminole/os-ne-seminole-tax-collector-greenberg-blockchain-20190304-story.html (last visited Mar. 21, 2019).
[15] See Congressional Research Service, *supra* note 1, at pg. 8.
[16] See Congressional Research Service, *supra* note 1, at pg. 9.

- One certified public accountant licensed under ch. 473, F.S., with knowledge and experience in blockchain technology, appointed by the governor.

Members of the task force shall reflect the ethnic diversity of the state.

The task force must be appointed and hold its first meeting no later than 90 days after the effective date of the act. Members of the task force will serve without compensation but are allowed per diem and travel expenses as provided in s. 112.061, F.S.

Specific topics the task force must study include, but are not limited to:

- The opportunities and risks associated with using blockchain and distributed ledger technology for state and local government;
- Different types of blockchains, both public and private, and different consensus algorithms;
- Projects and cases currently under development in other states and local governments, and how these cases could be applied in Florida;
- Ways the Legislature can amend general law to support secure, paperless recordkeeping, increase cybersecurity, improve interactions with citizens, and encourage blockchain innovation for businesses in Florida;
- Identifying potential economic incentives for companies investing in blockchain technologies in collaboration with the state;
- Recommending projects for potential blockchain solutions, including, but not limited to, use cases for state agencies that would improve services for citizens or business; and
- Identifying the technical skills necessary to develop blockchain technology and ensuring that instruction in such skills is available at secondary and postsecondary educational institutions in this state.

The task force must, within 180 days of its first meeting, submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives, and present its findings to the appropriate legislative committees. The report must include:

- A general description of the costs and benefits of state and local government agencies using blockchain technology;
- Recommendations concerning the feasibility of implementing blockchain technology in the state and the best approach to finance implementation costs;
- Recommendations for specific implementations to be developed by relevant state agencies;
- Any draft legislation the task force deems appropriate to implement blockchain technologies;
- Identification of one pilot project that may be implemented in Florida; and
- Any other information the task force deems relevant.

The Department of Financial Services must provide support staff for the task force and any relevant studies, data, and materials in its possession to assist the task force in the performance of its duties.

The task force terminates upon submission of the report and the presentation of findings.

The act is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on April 23, 2019:
The committee substitute adds a 13th member to the task force, a certified public accountant licensed under ch. 473, F.S., with knowledge and experience in blockchain technology, appointed by the governor.

CS by Innovation, Industry, and Technology on April 2, 2019:
The committee substitute:

- Creates a task force instead of a working group;
- Reduces the number of members from 19 to 12 members;
- Revises the membership and appointments; and
- Requires that the members of the task force reflect the ethnic diversity of the state.

B. Amendments:

None.

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

343332

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2019	.	
	.	
	.	
	.	

The Committee on Rules (Gruters) recommended the following:

Senate Amendment

Delete lines 83 - 97
and insert:
(b) The task force shall consist of 13 members. Membership shall be as follows:
1. Three agency heads or executive directors of cabinet agencies, or their designees, appointed by the Governor.
2. Four members of the public or private sector with knowledge and experience in blockchain technology, appointed by the Governor.

343332

3. Three members from the public or private sector with knowledge and experience in blockchain technology, appointed by the Chief Financial Officer.

4. One member from the private sector with knowledge and experience in blockchain technology, appointed by the President of the Senate.

5. One member from the private sector with knowledge and experience in blockchain technology, appointed by the Speaker of the House of Representatives.

6. One certified public accountant licensed pursuant to chapter 473 with knowledge and experience in blockchain technology, appointed by the Governor.

By the Committee on Innovation, Industry, and Technology; and Senator Gruters

580-03763-19 20191024c1

A bill to be entitled

An act relating to blockchain technology; providing legislative findings; establishing the Florida Blockchain Task Force within the Department of Financial Services; requiring the task force to develop a specified master plan; specifying the composition of the task force; specifying duties and procedures of the task force; providing that task force members shall serve without compensation but are entitled to certain reimbursement; requiring the task force to submit a specified report to the Governor and the Legislature and to make presentations; providing that the task force is entitled to assistance and services of state governmental entities; requiring the department to provide support staff and other assistance to the task force; providing for termination of the task force; providing an effective date.

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

Section 1. (1) The Legislature finds that:

(a) Blockchain technology and distributed ledger technology allow the secure recording of transactions through cryptographic algorithms and distributed record sharing, and such technology has reached a point where the opportunities for efficiency, cost savings, and cybersecurity deserve study.

(b) Blockchain technology is a promising way to facilitate more efficient government service delivery models and economies

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

580-03763-19 20191024c1

of scale, including facilitating safe paperless transactions and recordkeeping that are nearly impervious to cyberattacks and data destruction.

(c) Blockchain technology can reduce the prevalence of disparate government computer systems, databases, and custom-built software interfaces; reduce costs associated with maintenance and implementation; streamline information sharing; and allow more areas of the state to electronically participate in government services.

(d) Nations, other states, and municipalities across the world are studying and implementing governmental reforms that bolster trust and reduce bureaucracy through verifiable open source blockchain technology in a variety of areas, including, but not limited to, medical and health records, land records, banking, tax and fee payments, smart contracts, professional accrediting, and property auctions.

(e) It is in the public interest to establish a Florida Blockchain Task Force comprised of government and industry representatives to study the ways in which state, county, and municipal governments can benefit from a transition to a blockchain-based system for recordkeeping, security, and service delivery and to develop and submit recommendations to the Governor and the Legislature concerning the potential for implementation of blockchain-based systems that promote government efficiencies, better services for citizens, economic development, and safer cyber-secure interaction between government and the public.

(2) The Florida Blockchain Task Force, a task force as defined in s. 20.03, Florida Statutes, is established within the

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

Department of Financial Services to explore and develop a master plan for fostering the expansion of the blockchain industry in the state, to recommend policies and state investments to help make this state a leader in blockchain technology, and to issue a report to the Governor and the Legislature. The task force shall study if and how state, county, and municipal governments can benefit from a transition to a blockchain-based system for recordkeeping, data security, financial transactions, and service delivery and identify ways to improve government interaction with businesses and the public.

(a) The master plan shall:

1. Identify the economic growth and development opportunities presented by blockchain technology.

2. Assess the existing blockchain industry in the state.

3. Identify innovative and successful blockchain applications currently used by industry and other governments to determine viability for state applications.

4. Review workforce needs and academic programs required to build blockchain technology expertise across all relevant industries.

5. Make recommendations to the Governor and the Legislature that will promote innovation and economic growth by reducing barriers to and expedite the expansion of the state's blockchain industry.

(b) The task force shall consist of 12 members. Membership shall be as follows:

1. Three agency heads or executive directors of cabinet agencies, or their designees, appointed by the Governor.

2. Four members of the private sector with knowledge and

experience in blockchain technology, appointed by the Governor.

3. Three members from the private sector with knowledge and experience in blockchain technology, appointed by the Chief Financial Officer.

4. One member from the private sector with knowledge and experience in blockchain technology, appointed by the President of the Senate.

5. One member from the private sector with knowledge and experience in blockchain technology, appointed by the Speaker of the House of Representatives.

Members of the task force shall reflect the ethnic diversity of the state.

(c) Within 90 days after the effective date of this act, a majority of the members of the task force must be appointed and the task force shall hold its first meeting. The task force shall elect one of its members to serve as chair. Members of the task force shall serve for the duration of the existence of the task force. Any vacancy that occurs shall be filled in the same manner as the original appointment. Task force members shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061, Florida Statutes.

(d) The task force shall study blockchain technology, including, but not limited to, the following:

1. Opportunities and risks associated with using blockchain and distributed ledger technology for state and local governments.

2. Different types of blockchains, both public and private,

and different consensus algorithms.

3. Projects and cases currently under development in other states and local governments, and how these cases could be applied in this state.

4. Ways the Legislature can modify general law to support secure paperless recordkeeping, increase cybersecurity, improve interactions with citizens, and encourage blockchain innovation for businesses in the state.

5. Identifying potential economic incentives for companies investing in blockchain technologies in collaboration with the state.

6. Recommending projects for potential blockchain solutions, including, but not limited to, use cases for state agencies that would improve services for citizens or businesses.

7. Identifying the technical skills necessary to develop blockchain technology and ensuring that instruction in such skills is available at secondary and postsecondary educational institutions in this state.

(3) The task force shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives and present its findings to the appropriate legislative committees in each house of the Legislature within 180 days after the initial meeting of the task force. The report must include:

(a) A general description of the costs and benefits of state and local government agencies using blockchain technology.

(b) Recommendations concerning the feasibility of implementing blockchain technology in the state and the best approach to finance the cost of implementation.

(c) Recommendations for specific implementations to be developed by relevant state agencies.

(d) Any draft legislation the task force deems appropriate to implement such blockchain technologies.

(e) Identification of one pilot project that may be implemented in the state.

(f) Any other information deemed relevant by the task force.

(4) The task force is entitled to the assistance and services of any state agency, board, bureau, or commission as necessary and available for the purposes of this act.

(5) The Department of Financial Services shall provide support staff for the task force and any relevant studies, data, and materials in its possession to assist the task force in the performance of its duties.

(6) The task force shall terminate upon submission of the report and the presentation of findings.

Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS
23rd District

April 4, 2019

The Honorable Lizbeth Benacquisto, Chair
Rules Commitee
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto:

I am writing to request that Senate Bill 1024, Blockchain Technology, be placed on the agenda of the next Rules Committee meeting.

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

Warm regards,

Joe Gruters

cc: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

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

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1024
Bill Number (if applicable)

343332
Amendment Barcode (if applicable)

Topic Blockchain

Name Justin Thames

Job Title Director of Governmental Affairs

Address _____ Phone 850-528-2209
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 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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1024
Bill Number (if applicable)

Topic Blockchain

Amendment Barcode (if applicable)

Name Meredith Stanfield

Job Title Director of Legislative and Cabinet Affairs

Address PL 11 The Capitol
Street

Phone (850) 413-2890

Tallahassee FL 32399
City *State* *Zip*

Email Meredith.Stanfield@MyFloridaCFO.Com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CFO Jimmy Patronis

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1252
INTRODUCER:	Banking and Insurance Committee and Senator Gruters
SUBJECT:	Public Accountancy
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	IT	**Favorable**
2.	Billmeier	Knudson	BI	**Fav/CS**
3.	Oxamendi	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1252 adds an attestation engagement to the services that require a certified public accountant license (CPA) for a person to perform or offer to perform. An attestation engagement is an arrangement with a client where an independent third party CPA investigates and reports on subject matter created by a client. Examples of attestation engagements include reporting on financial information formulated by a client, and reporting on how well the client's internal controls process functions. An attestation engagement gives users a higher level of confidence regarding the subject of the engagement.

The bill decreases the percentage of the required total hours of CPA continuing education that must relate to accounting-related and auditing-related subjects from 25 percent to 10 percent.

The bill also eliminates the process and the separate continuing education requirements for reactivation of a license that was inactive or delinquent on June 30, 2014. Under the bill, all inactive licensees must satisfy the same minimum continuing education requirements.

The effective date of the bill is July 1, 2019.

II. Present Situation:

The Florida Board of Accounting (board) in the Department of Business and Professional Regulation (DBPR) is the agency responsible for regulating and licensing more than 35,000

active and inactive CPAs and more than 5,400 accounting firms in Florida.[1] The Division of Certified Public Accounting provides administrative support to the nine-member board, which consists of seven CPAs and two laypersons.[2]
A certified public accountant is a person who holds a license to practice public accounting in this state under ch. 473, F.S., or an individual who is practicing public accounting in this state pursuant to the practice privilege granted in s. 473.3141, F.S.[3]

The practice of public accounting includes offering to the public the performance of services involving audits, reviews, compilations, tax preparations, management advisory or consulting services, or preparation of financial statements.[4] To engage in the practice of public accounting, as defined in s. 473.302(8)(a), F.S., an individual or firm must be licensed pursuant to ss. 473.308 or 473.3101, F.S., and business entities must meet the requirements of s. 473.309, F.S.

Definitions

Section 473.302(8), F.S., define the terms "practice of," "practicing public accountancy," or "public accounting" to mean:

> (a) Offering to perform or performing for the public one or more types of services involving <u>the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information</u>, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability of an assertion by one party for the use by a third party;
> (b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of tax, management advisory, or consulting services, by any person who is a certified public accountant who holds an active license, issued pursuant to this chapter, or who is authorized to practice public accounting pursuant to the practice privileges granted in s. 473.3141, [F.S.,] including the performance of such services by a certified public accountant in the employ of a person or firm; or
> (c) Offering to perform or performing for the public one or more types of services involving the preparation of financial statements not included within paragraph (a), by a certified public accountant who holds an active license, issued pursuant to this chapter, or who is authorized to practice

[1] Florida Department of Business and Professional Regulation, Fiscal Year 2017-2018 Annual Report, page 14, available at http://www.myfloridalicense.com/DBPR/os/documents/ProfessionsAnnualReport2017-2018.pdf (last visited Mar. 1, 2019).
[2] Section 473.303, F.S.
[3] *See* s. 473.302(4), F.S. Section 473.3141, F.S., permits a person who does not have an office in Florida to practice public accountancy in this state without obtaining a license under ch. 473, F.S., notifying or registering with the board, or paying a fee if the person meets the required criteria.
[4] Section 473.302(8), F.S.

> public accounting pursuant to the practice privileges granted in s. 473.3141[, F.S.]; by a firm of certified public accountants; or by a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person. The board shall adopt rules establishing standards of practice for such reports and financial statements; provided, however, that nothing in this paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting Florida certified public accountants employed by unlicensed firms from preparing financial statements as authorized by this paragraph.

(Emphasis added.)

A "client" is any person, public officer, corporation, association, or other organization or entity, either public or private, who agrees with an accountant or accountant's employer to receive professional services.[5]

Continuing Education

Certified public accountants, as part of the license renewal procedure, are required to submit proof satisfactory to the board that, during the 2 years prior to their application for renewal, they have successfully completed not less than 48 or more than 80 hours of continuing professional education programs in public accounting subjects approved by the board.[6] The board has the authority to prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period.[7]

At least 25 percent of the total hours required by the board must be in accounting-related and auditing-related subjects, as distinguished from federal and local taxation matters and management services.[8] Not less than 5 percent of the total hours required by the board must be in ethics applicable to the practice of public accounting.[9]

Inactive Licenses

Section 473.313(1), F.S., allows Florida-licensed CPAs to request that their license be placed on inactive status. Section 473.313(2), F.S., authorizes the board to adopt rules establishing the minimum requirements for placing a license on inactive status, renewing an inactive license, and reactivating the inactive license.[10]

Section 473.313(2), F.S., provides that a CPA who holds an inactive license due to failure to complete the continuing education requirements in s. 473.312, F.S., may be reactivated under

[5] *See* s. 473.316(1)(b), F.S.
[6] Section 473.312(1)(a), F.S.
[7] *Id.*
[8] Section 473.312(1)(b), F.S.
[9] Section 473.312(1)(c), F.S.
[10] See Fla. Admin R. 61H1-33.006.

s. 473.311, F.S.,[11] upon application to the department. The minimum continuing education requirements are those required by board rule, the required hours for the most recent biennium reporting period, and one-half of the requirements under s. 473.312, F.S.[12]

A different continuing education requirement applies to a license that was inactive on June 30, 2014. To reactivate a license that was inactive on June 30, 2014, an applicant must have completed 120 hours of continuing education, including at least 30 hours in accounting-related and auditing-related subjects, not more than 30 hours in behavioral subjects, and a minimum of 8 hours in ethics subjects approved by the board. To reactivate, the applicant must also have notified the board by December 31, 2014, of his or her intention to reactivate such a license and have completed such reactivation by June 30, 2016.[13]

During the 2014 Regular Session, the Legislature extended the deadlines in the process for reactivation of licenses that had become inactive due to failure to complete the continuing education requirements. The deadlines or relevant dates were extended from:

- June 30, 2012, to June 30, 2014, the date by which a person must have been inactive or delinquent for failure to complete the continuing education requirement; and
- June 30, 2014, to June 30, 2016, the deadline to complete the reactivation of the license.[14]

Section 473.313(3), F.S., permits a license that has become inactive due to failure to meet the continuing education requirements to be renewed upon the licensee applying to the department with payment of the required fee.[15] The applicant must submit proof of satisfactorily completing the continuing education requirements. The applicant must also submit the completed application to the board by March 15 immediately following the inactive period.

Attestation Engagements

An attestation engagement is an arrangement with a client where an independent third party investigates and reports on subject matter created by a client. Examples of attestation engagements include reporting on financial information formulated by a client, and reporting on how well the client's internal controls process functions. An attestation engagement gives users a higher level of confidence regarding the subject of the engagement.[16]

The Auditing Standards Board (ASB) is the senior technical committee designated by the American Institute of Certified Public Accountants (AICPA) to issue auditing, attestation, and

[11] Section 473.311, F.S., provides for the renewal of licenses upon the satisfaction of continuing education requirements.
[12] Section 473.312(1), F.S., requires that at least 48, but not more than 80 hours, of continuing education must be completed within 2 years prior to the application for renewal.
[13] Section 473.312(2), F.S.
[14] *See* ch. 2014-88, s. 2, Laws of Fla.
[15] Section 473.305, F.S., authorizes the board to establish, by rule, a reactivation fee, and a delinquency fee not to exceed $50 for continuing professional education reporting forms. This section also provides that the board must "establish fees which are adequate to ensure the continued operation of the board and to fund the proportionate expenses incurred by the department which are allocated to the regulation of public accountants." The fees established by the board must be based on department estimates of the revenue required to implement ch. 473, F.S., and the provisions of law with respect to the regulation of certified public accountants.
[16] *See* Accounting Tools, *Attestation Engagement*, Nov. 11, 2018, available at: https://www.accountingtools.com/articles/2017/5/7/attestation-engagement (last visited Mar. 13, 2019).

quality control standards applicable to the performance and issuance of audit and attestation reports.[17] The ASB has issued a Statement on Standards for Attestation Engagements to be followed by a CPA performing an attestation engagement.[18]

III. Effect of Proposed Changes:

Section 1 creates s. 473.302(8)(d), F.S., to add an attestation engagement within the types of services that require a CPA license for a person to perform or offer to perform. Pursuant to the bill, a person who performs or offers to perform one or more types of services involving any attestation engagement in accordance with the Statements on Standards for Attestation Engagements[19] promulgated by the American Institute of Certified Public Accountants is practicing public accounting. The "Statements on Standards for Attestation Engagements" applicable would be the version in effect at the time the Legislature acts but would not include future revisions unless those revisions are adopted by a future Legislature.[20]

Section 4 amends s. 473.322(1)(c), F.S., which prohibits offering or performing specified services without a CPA license, to incorporate the offering or performance of an attestation engagement as provided by the bill.

Section 2 amends s. 473.312(2), F.S., to decrease the percentage of the required total hours of CPA continuing education that must relate to accounting-related and auditing-related subjects from 25 percent to 10 percent.

Section 3 amends s. 473.313(2), F.S., to eliminate the process and separate continuing education requirements for reactivation of a license that was inactive or delinquent on June 30, 2014. Under the bill, all inactive licensees must satisfy the same minimum continuing education requirements. The bill provides that the maximum number of continuing education hours necessary to reactivate a license is 120.

Section 5 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[17] See Auditing Standards Board, at: https://www.aicpa.org/research/standards/auditattest/asb.html (last visited: Mar. 4, 2019).
[18] *See* Clarified Statements on Standards for Attestation Engagements at: https://www.aicpa.org/research/standards/auditattest/ssae.html (last visited: Mar. 4, 2019).
[19] The bill does not specify that the "Statements on Standards for Attestation Engagements" are promulgated by the American Institute of Certified Public Accountants.
[20] *See Galaxy Fireworks, Inc. v. City of Orlando*, 842 So.2d 160, 167 (Fla. 5th DCA 2003)(noting that the "adoption of future code provisions may constitute an unlawful delegation of powers by a legislative body").

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 473.302, 473.312, 473.313, and 473.322.

IX. Additional Information:

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

CS by Banking and Insurance on April 1, 2019:
The CS provides that the attestation standards are promulgated by the American Institute of Certified Public Accountants and provides that the maximum number of continuing education hours that are required to reactivate an inactive license is 120 hours.

B. Amendments:

None.

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

By the Committee on Banking and Insurance; and Senator Gruters

597-03706-19 20191252c1

A bill to be entitled

An act relating to public accountancy; amending s. 473.302, F.S.; revising a definition; amending s. 473.312, F.S.; revising the percentage of total hours of accounting-related and auditing-related continuing education required by the Board of Accountancy for license renewal; amending s. 473.313, F.S.; updating provisions relating to license reactivation; amending s. 473.322, F.S.; prohibiting a person from performing or offering to perform certain services without a license; revising criminal penalties; providing an effective date.

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

Section 1. Subsection (8) of section 473.302, Florida Statutes, is amended to read:

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

(8) "Practice of," "practicing public accountancy," or "public accounting" means:

(a) Offering to perform or performing for the public one or more types of services involving the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability

597-03706-19 20191252c1

of an assertion by one party for the use by a third party;

(b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of tax, management advisory, or consulting services, by any person who is a certified public accountant who holds an active license, issued pursuant to this chapter, or who is authorized to practice public accounting pursuant to the practice privileges granted in s. 473.3141, including the performance of such services by a certified public accountant in the employ of a person or firm; ~~or~~

(c) Offering to perform or performing for the public one or more types of service involving the preparation of financial statements not included within paragraph (a), by a certified public accountant who holds an active license, issued pursuant to this chapter, or who is authorized to practice public accounting pursuant to the practice privileges granted in s. 473.3141; by a firm of certified public accountants; or by a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person. The board shall adopt rules establishing standards of practice for such reports and financial statements; provided, however, that nothing in this paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting Florida certified public accountants employed by unlicensed firms from preparing financial statements as authorized by this paragraph; or

(d) Offering to perform or performing for the public one or more types of services involving any attestation engagements in accordance with the Statements on Standards for Attestation

Engagements promulgated by the American Institute of Certified Public Accountants.

However, these terms shall not include services provided by the American Institute of Certified Public Accountants or the Florida Institute of Certified Public Accountants, or any full service association of certified public accounting firms whose plans of administration have been approved by the board, to their members or services performed by these entities in reviewing the services provided to the public by members of these entities.

Section 2. Paragraph (b) of subsection (1) of section 473.312, Florida Statutes, is amended to read:

473.312 Continuing education.—

(1)

(b) Not less than 10 ~~25~~ percent of the total hours required by the board shall be in accounting-related and auditing-related subjects, as distinguished from federal and local taxation matters and management services.

Section 3. Subsection (2) of section 473.313, Florida Statutes, is amended to read:

473.313 Inactive status.—

(2) A license that has become inactive under subsection (1) or for failure to complete the requirements in s. 473.312 may be reactivated under s. 473.311 upon application to the department. The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The maximum ~~minimum~~ continuing education requirements for reactivating a license are ~~those prescribed by board rule and those of the most recent biennium plus one-half of the requirements in s. 473.312. Notwithstanding any other provision of this section, the continuing education requirements are~~ 120 hours, including at least 30 hours in accounting-related and auditing-related subjects, not more than 30 hours in behavioral subjects, and a minimum of 8 hours in ethics subjects approved by the board, for the reactivation of a license that is inactive or delinquent ~~on June 30, 2014, if the Florida certified public accountant notifies the Board of Accountancy by December 31, 2014, of an intention to reactivate such a license and completes such reactivation by June 30, 2016~~.

Section 4. Paragraph (c) of subsection (1) of section 473.322, Florida Statutes, is amended, and subsection (2) of that section is republished, to read:

473.322 Prohibitions; penalties.—

(1) A person may not knowingly:

(c) Perform or offer to perform any services described in s. 473.302(8)(a) or (d) unless such person holds an active license under this chapter and is a licensed firm, provides such services through a licensed firm, or complies with ss. 473.3101 and 473.3141. This paragraph does not prohibit the performance by persons other than certified public accountants of other services involving the use of accounting skills, including the preparation of tax returns and the preparation of financial statements without expression of opinion thereon;

(2) Any person who violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS
23rd District

April 4, 2019

The Honorable Lizbeth Benacquisto, Chair
Rules Committee
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto:

I am writing to request that Senate Bill 1252, Public Accountancy, be placed on the agenda of the next Rules Committee meeting.

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

Warm regards,

Joe Gruters

cc: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

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

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

SB 1252
Bill Number (if applicable)

Topic Public Accountancy

Amendment Barcode (if applicable)

Name Justin Thames

Job Title Director of Gov. Affairs

Address _____ Phone _____
Street

_____ Email _____
City *State* *Zip*

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

Waive Speaking: [X] 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: [X] Yes [ ] No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1422
INTRODUCER:	Senator Gruters
SUBJECT:	Health Plans
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Favorable**
2.	Harmsen	McKay	CM	**Favorable**
3.	Johnson	Phelps	RC	**Favorable**

I. Summary:

SB 1422 revises regulatory provisions relating to alternative coverage arrangements, such as short-term limited duration insurance policies and association health plans (AHPs). The bill codifies 2018 federal regulations to provide consumers and employers with more affordable coverage options and choices for health insurance coverage.

An AHP is a type of multiple employer welfare association, which constitutes a legal arrangement that allows business associations or unrelated employer groups to offer jointly health insurance and other fringe benefits to their members or employees. Changes in federal rules allow small employers, through associations, to gain regulatory and economic advantages that were previously only available to large employers. As a result of the federal regulatory changes, small employers, including working owners without employees, can form an AHP that would be treated as a large group rather than a small group for insurance purposes, which would lower insurance costs and regulatory burdens. In addition, the federal rule allows an AHP to form based on a geographic test, such as a common state, city, county, or a metropolitan area across state lines. The regulations also allow working owners without employees, including sole proprietors, to join.

The bill also provides that short-term limited duration insurance is an individual or group health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and has a duration of no longer than 36 months in total. Short-term limited duration insurance was designed primarily to fill temporary gaps in coverage that may occur when an individual is transitioning from one plan or coverage to another plan or coverage. Currently, a short-term limited duration insurance policy must expire within 12 months of the date of the contract, taking into account any extensions. The bill requires disclosure in the short-term limited duration insurance contract regarding the scope of the coverage.

II. Present Situation:

Health Care Spending

Health care spending in the United States is expected to grow an average of 5.5 percent annually from 2018 through 2027, reaching nearly $6.0 trillion by 2027.[1] Consumers are becoming responsible for a growing proportion of this spending, as demonstrated in the increased use of high deductible health plans and other forms of cost sharing. Since 2012, the percentage of workers covered by a plan with a deductible of $1,000 or greater has grown from 34 to 51 percent.[2]

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities.[3] The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S., and before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency.[4]

Individual and Small Group Markets

Nine health insurance companies writing individual policies or contracts submitted rate filings to the OIR in June 2018. In August 2018, the OIR announced that premiums for the individual federal Patient Protection and Affordable Care Act (PPACA)[5] compliant plans would increase an average of 5.2 percent effective January 1, 2019.[6] The average approved rate changes to the plans on the exchange ranged from -1.5 percent to +9.8 percent. Only one insurer, Blue Cross Blue Shield, offers individual coverage in all 67 counties.[7] During the 2019 open enrollment period, 1,786,679 individuals enrolled in Florida plans through the federally administered exchange.[8]

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[1] Office of the Actuary, Centers for Medicare & Medicaid Services (CMS), *National Health Expenditure Projections 2018-2027*, available at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ForecastSummary.pdf (last viewed Mar. 22, 2019).
[2] North Carolina Medical Journal, 79. 1.34.
[3] Section 20.121(3)(a), F.S.
[4] Section 641.21(1), F.S.
[5] The Patient Protection and Affordable Care Act (Pub. L. No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111–152), which amended and revised several provisions of the PPACA, was enacted on March 30, 2010.
[6] Office of Insurance Regulation, *Individual PPACA Market Monthly Premiums for Plan Year 2019*, available at https://floir.com/siteDocuments/IndividualMarketPremiumSummary.pdf (last viewed February 11, 2019). *See also* OIR Press Release, *OIR Announces 2019 PPACA Individual Market Health Insurance Plan Rates*, available at https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2234 (last viewed Mar. 22, 2019).
[7] OIR, *Individual Market County Offerings*, available at https://www.floir.com/sitedocuments/IndividualMarketCountyOfferings.pdf, (last viewed Mar. 22, 2019).
[8] CMS, *Final Weekly Enrollment Snapshot for the 2019 Enrollment Period* **(**Jan. 3, 2019) available at https://edit.cms.gov/newsroom/fact-sheets/final-weekly-enrollment-snapshot-2019-enrollment-period (last viewed Mar. 22, 2019).

The OIR approved the 2019 rates for 14 small group insurers.[9] The weighted average change in approved rates from 2018 was 6 percent. The percentage change in approved rates from 2018 ranged from -11.8 percent to +14.5 percent. Florida Blue and United Healthcare (and affiliates) offer small group plans in every county.

State Regulation of Short-term Limited Duration Insurance Policies

In Florida, short-term limited duration insurance (STLDI) is an individual health insurance coverage with an issuer or insurer that has specified in the contract an expiration date that is within 12 months of the contract's effective date.[10]An STLDI policy that is renewable or is for a term longer than 6 months cannot exclude preexisting conditions for more than 24 months.[11]

Currently in Florida there are two licensed insurers (Blue Cross Blue Shield and Integon Indemnity Corporation) providing short term limited duration individual policies for an estimated 10,000 members.

Florida Regulation of Association Health Plans or Multiple Employer Welfare Arrangements

In Florida, an AHP consisting of multiple employers is referred to as a multiple employer welfare arrangement (MEWAs).[12] A MEWA is an employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health insurance benefits or any other benefits described in s. 624.33, F.S., other than life insurance benefits, to the employees of two or more employers, or to their beneficiaries.[13] Current state law requires AHPs or MEWAs to be based on a common industry. The AHPs may not have less than 25 members and must have been organized and maintained in good faith for at least 1 year.[14] A small group health alliance must be organized as a not-for-profit corporation under ch. 617, F.S.[15]

In the Florida, there are two AHPs/MEWAs licensed by the OIR. These AHPs are the Independent Colleges and Universities Benefits Association, which is comprised of 26 employers with approximately 15,000 members, and the Florida Bankers Association comprised of 64 employers with approximately 6,000 members.

[9] OIR, *Small Group PPACA Market Monthly Premiums for Plan Year 2019* (Aug. 22, 2018), *available at* OIR https://www.floir.com/siteDocuments/SGMarketPremiumSummary.pdf (last viewed Mar. 22, 2019).
[10] Rule 69O-154.104, F.A.C. The Insurance Code does not prohibit the OIR from approving a short-term limited duration rider that offered a guaranteed renewability option for up to 36 months. However, Rule 69O-154.104 prevents guaranteed renewability.
[11] Section 627.6045, F.S.
[12] *See* ss. 624.436-624.446, F.S., which may be cited as the "Florida Nonprofit Multiple Welfare Arrangement Act."
[13] Section 627.437, F.S. This section does not apply to a multiple-employer welfare arrangement which offers or provides benefits which are fully insured by an authorized insurer, to an arrangement which is exempt from state insurance regulation in accordance with Pub. L. No. 93-406, the Employee Retirement Income Security Act, or to the state group health insurance program administered pursuant to s. 110.123, F.S.
[14] Section 627.438, F.S.
[15] *Id.*

Federal Regulation of Health Insurance Products

The PPACA requires health insurers to make major medical or comprehensive coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA also mandates required essential health benefits,[16] rating and underwriting standards, and other provisions. The PPACA requires insurers and HMOs that offer qualified health plans to provide ten categories of essential health benefits.[17] The PPACA preempts any state law that prevents the application of a provision of PPACA.[18]

In 2017, the federal Tax Cuts and Jobs Act[19] reduced the tax penalty for individuals who fail to comply with PPACA's individual mandate to maintain minimum essential health coverage to zero beginning tax year 2019.[20] However, the act did not repeal the individual mandate.

Federal Regulation of Short-Term Limited Duration Plans

Federal law[21] defines individual health insurance coverage as health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance. A STLDI policy is not required to meet the essential health benefits requirements, and are not subject to the prohibitions on preexisting condition exclusions or lifetime and annual dollar limits. A STLDI policy is also not subject to requirements regarding guaranteed availability, guaranteed renewability, and rating requirements based on health status. As a result, an insurer would be able to offer short-term limited duration insurance policies to individuals who are in good health at a substantially lower premium than available in the individual market.

The U.S. Department of Health and Human Services adopted final rules[22] which revised the definition of STLDI to specify that a STLDI policy is health coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration of no longer than 36 months in total.[23] Previously, the policy term of a STLDI policy was limited to 3 months.[24] The rule requires disclosures in the STLDI insurance

[16] 42 U.S.C. s.18022.
[17] *See* Center for Consumer Information & Insurance Oversight, *Information on Essential Health Benefits (EHB) Benchmark Plans* https://www.cms.gov/cciio/resources/data-resources/ehb.html (last viewed Mar. 22, 2019) for Florida's benchmark plan.
[18] The PPACA preempts any state law that prevents the application of a provision of the PPACA. The PPACA effectively allows states to adopt and enforce laws that provide greater consumer protections than the PPACA, but any state law that does not meet the federal minimum standards will be preempted. Pub. L. No. 111–148, s. 1321(d).
[19] Public L. No. 115-97, Stat. 2054 (2017).
[20] Prior to tax year 2019, the PPACA required that, for each month during the year, an individual must have minimum essential coverage or individual mandate; qualify for an exemption; or pay a penalty or shared responsibility payment when filing the federal income tax return. 26 U.S.C. s 5000A. *See* Internal Revenue Service, *Individual Shared Responsibility Provision*, https://www.irs.gov/taxtopics/tc561 (last viewed Mar. 22, 2019).
[21] Section 2791(b)(5) of the PHS Act.
[22] 45 CFR Parts 144, 146, and 148.
[23] 83 FR 38212.
[24] 81 FR 75316.

contract regarding the scope of the coverage. The federal regulations are effective for STLDI policies issued on or after October 1, 2018.[25]

Federal Regulation of Association Health Plans

The federal Employee Retirement Income Security Act (ERISA) gives states regulatory authority over self-insured MEWAs and some authority over fully insured MEWAs to ensure solvency, require state licensure, and require financial reporting. An AHP is one type of MEWA. Further, ERISA authorizes the U.S. Department of Labor to require fully insured and self-insured MEWAs to register with the department.

Under current federal law and regulations, health insurance coverage offered or provided through an employer trade association, chamber of commerce, or similar organization, to individuals and small employers, is generally regulated under the same federal standards that apply to insurance coverage sold by health insurance issuers[26] directly to these individuals and small employers, unless the coverage sponsored by the group or association constitutes a single ERISA covered plan.

Generally, unless the arrangement sponsored by the group or association constitutes a single ERISA covered plan, the current regulatory framework disregards the group or association in determining whether the coverage obtained by any particular participating individual or employer is individual, small group, or large group market coverage. Instead, the test for determining the type of coverage focuses on whether the coverage is offered to individuals or employers. If the coverage is offered to employers, whether the group coverage is large group or small group coverage depends on the number of employees of the particular employer obtaining the coverage. As a result, associations that want to form AHPs and existing AHPs currently face a complex and costly compliance environment, insofar as the various employer members of the association and the association's health insurance coverage arrangement may simultaneously be subject to large group, small group, and individual market regulation, which undermines one of the core purposes and advantages of an association forming and its employer members joining an AHP.

In June 2018, the U.S. Department of Labor issued its final rule on the regulation of AHPs.[27] The final rule maintained the existing regulatory framework but also created a second option for both new and existing AHPs/MEWAs that may elect to follow the new regulations. The second option contains the following key differences with the previous federal regulations:

- Allows for AHPs/MEWAs to be based on a common geography area or a common industry.
- Allows small employers to join together to form an AHP/MEWA and be treated as a large employer for the purpose of buying insurance. Current federal law has a look-through provision that treats small employers that are part of an AHP/MEWA as part of the small

[25] 83 FR 38212.

[26] A ''health insurance issuer'' or ''issuer'' is an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law that regulates insurance (within the meaning of section 514(b)(2) of ERISA). Such term does not include a group health plan. 29 CFR 2590.701–2. The terms ''health insurance issuer'' and ''issuer'' are used interchangeably in this preamble.

[27] 29 CFR Part 2510, *available at* https://www.govinfo.gov/content/pkg/FR-2018-06-21/pdf/2018-12992.pdf (last viewed Mar. 22, 2019).

employer market, and are subject to coverage requirements of the PPACA. Insurance purchased by large employers is not subject to essential health benefit requirements (such as providing mental health, maternity benefits, etc.).

- The rules provide protections that prohibit associations from conditioning membership based on a health factor but does not prohibit other factors such as gender, age, geography, and industry. The association may not charge higher premiums or deny coverage to people because of preexisting conditions, or cancel coverage because an employee becomes ill.
- Self-funded MEWAs that are recognized as bona fide associations or groups under previously issued guidance from the U.S. Department of Labor remain eligible under federal law in accordance with 29 CFR 2510.3-5(a).
- Self-employed individuals with no other employees can also join an AHP, along with their families. Self-employed individuals who employ other individuals have always been eligible to join an AHP.
- The new rule eliminates a provision that requires a group or association acting as an employer to exist for purposes other than providing health benefits. The rule requires that a group or association of employers have at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its employer members and their employees, even if the primary purpose of the group or association is to offer such coverage to its members.
- States will continue to have regulatory oversight of AHPs and share enforcement authority with the federal government.

The new rule does not affect previously existing AHPs, which were authorized under prior guidance**.** Such plans can continue to operate as before, or elect to follow the new requirements if they want to expand within a geographic area, regardless of industry, or to cover the self-employed. New plans can also form and elect to follow either the old guidance or the new rules. New and existing plans may use experience rating by underwriting premiums for individual employer members based on health status. However, the AHPs that want to do so must continue to meet the prior federal regulations, which are more stringent standards in areas such as commonality of interest; and they could not enroll working owners in an AHP coverage.

Many experts are evaluating the impact of the new federal rules. Four million Americans, including 400,000 who otherwise would lack insurance, are expected to join an AHP by 2023 according to a Congressional Budget Office report.[28] Some large employers could be a part of an AHP; however, it is anticipated that many AHPs will draw the majority of their membership primarily from the small-group market and, to a lesser extent, the individual market. Both markets have shown a high degree of price sensitivity, particularly in the nonsubsidized segment of the individual market (i.e. those individuals with income above 400 percent of the federal poverty level) who pay full costs with no employer contribution or government subsidy.[29] Low price will still be a key consideration and AHPs will need to have comprehensive strategies that produce the best chance of being competitive with the small-group PPACA market as well as

[28] U.S. Congressional Budget Office, *Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2018 to 2028* (May 2018), *available at* https://www.cbo.gov/system/files?file=2018-06/53826-healthinsurancecoverage.pdf (last viewed Mar. 22, 2019).

[29] Milliman, Inc., *Association health plans after the final rule*, (Aug. 22, 2018) available at http://www.milliman.com/insight/2018/Association-health-plans-after-the-final-rule/ (last viewed Mar. 22, 2019).

with other alternative offerings, such as small group level-funded (self-insured) products. Price will be a significant consideration for employers, but features unrelated to price, such as payment reform, benefits, value-added features, and branding may be significant factors in the choice between AHP coverage and other options.

With the implementation of the new federal rule, all associations (new or existing) may establish a fully-insured AHP on September 1, 2018. Existing associations that sponsored an AHP on or before the date the final rule was published may establish a self-funded AHP on January 1, 2019. All other associations (new or existing) may establish a self-funded AHP on April 1, 2019.

Recent Federal Litigation Relating to the Regulation of AHPs

Eleven states and the District of Columbia sued the United States Department of Labor alleging that its final rule interpreting the definition of "employer" in ERISA is unlawful under the Administrative Procedure Act.[30] The Court concluded that the bona fide association and working owner provisions of the final rule, codified at 29 C.F.R. ss. 2510.3-5(b), (c), and (e) are unreasonable interpretations of ERISA, and were vacated by the Court. The Court notes that the final rule includes a severability provision, which provides that if a provision is found entirely invalid then "the provision shall be severable from {the Final Rule} and shall not affect the remainder thereof." In light of this provision, the Court remands the Final Rule to the agency for consideration in the first instance of how the severability provision affects the remaining portions of the Final Rule.

III. Effect of Proposed Changes:

Section 1 amends s. 624.438, F.S., to revise the eligibility requirements for a MEWA to codify the new, expanded eligibility requirements contained in federal rule. The section removes provisions relating to eligibility requirements that were in effect prior to the adoption of the new federal rules, including the requirement that a MEWA have been organized and maintained in good faith for a continuous period of 1 year for purposes other than obtaining or providing insurance, and commonality of trades or profession.

Section 2 amends s. 624.6045, F.S., to provide that short-term health insurance policies are not required to cover preexisting conditions. Currently, short-term policies that are renewable for a term longer than 6 months cannot exclude preexisting conditions for more than 24 months.

Section 3 amends s. 627.6425, F.S., to require that individual short-term policies be guaranteed renewable at the option of the individual by including such policies in the definition of health insurance.

Sections 4 and 5 amend ss. 627.6426 and 627.654, F.S., to define "short term health insurance" to mean health insurance coverage provided by an issuer with an expiration date that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration not to exceed 36 months. Section 4 applies the new definition of short-term health insurance to the individual market. Section 5 applies it to group, blanket, or franchise

[30] State of New York, et al., v. United States Department of Labor, Civil Action No. 18-1747.

policies of health insurance. Sections 4 and 5 each codify the federal disclosure notice requirement for short-term policies for individual and group policies into state law, which would allow the OIR to enforce this provision.

Section 6 amends s. 627.654, F.S., to codify the federal rule that allows an association to be insured under a group policy purchased from a licensed insurer. The section also removes the requirements that an association may not have less than 25 members and have been organized and maintained in good faith for a period of 1 year. Lastly, it removes the requirement that a small group health alliance be organized as a not-for-profit corporation under ch. 617, F.S., and meet other requirements.

Section 7 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. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Consumers and employers will have a greater choice of health insurance options with lower costs. Many consumers unable to afford major medical insurance coverage may be able to afford other coverage options now available.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Self-funded MEWAs that were recognized to be bona fide associations or groups under previously issued guidance from the United States Department of Labor remain eligible under federal law in accordance with 29 CFR part 2510.3-5(a). However, this provision is not included in Section 1 of the bill. It may be beneficial to include such groups under Section 1 as the two currently licensed MEWAs are organized under this prior federal guidance and new MEWAs have the option under federal law to follow this guidance rather than the recently expanded federal definition of bona fide group or association.

There is an apparent conflict between Sections 3 and 4 of the bill. In particular, Section 3 requires guaranteed renewability for short-term plans at the option of the individual whereas Section 4 limits short-term plans to 36 months as required by federal law. It is unclear what would happen if a consumer has had a short-term plan for 36 months and wants to renew as Section 3 would require an insurer to renew the same policy but would be prohibited from renewing the same policy by Section 5 and federal law.

It appears that the primary purpose of adding a bona fide group or association of employers as defined in 29 CFR part 2510.3-5(a) to Section 6 is to allow health insurers to sell comprehensive, major medical policies to these types of groups. However, as written, the bill would allow health insurers to offer other types of health insurance products to these newly included groups such as accident policies, hospital indemnity policies, and specified disease policies.

Under federal law, employee leasing companies, also known as professional employer organizations or PEOs, are considered a type of MEWA. Employee leasing companies are licensed under s. 468.529, F.S. Section 468.529(1), F.S., states in part that "no licensed employee leasing company shall sponsor a plan of self-insurance for health benefits, except as may be permitted by the provisions of the Florida Insurance Code." Employee leasing companies are typically comprised of employers from disparate trades or industries. Since the bill would allow MEWAs that consist of employers from disparate trades or industries, it would be beneficial to clarify the OIR's role in the regulation of health plans of self-insured employee leasing organizations.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.438, 627.6045, 627.6425, and 627.654.

This bill creates the following sections of the Florida Statutes: 627.6426 and 627.6525.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/23/2019	.	
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	.	
	.	

The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete lines 59 - 139
and insert:
Section 2. Section 627.6045, Florida Statutes, is repealed.
Section 3. Subsection (1) of section 627.6425, Florida Statutes, is amended to read:
627.6425 Renewability of individual coverage.—
(1) Except as otherwise provided in this section, an insurer that provides individual health insurance coverage to an individual shall renew or continue in force such coverage at the

646986

option of the individual. For the purpose of this section, the term "individual health insurance" means health insurance coverage, as described in s. 624.603, offered to an individual in this state, including certificates of coverage offered to individuals in this state as part of a group policy issued to an association outside this state, but the term does not include ~~short-term limited duration insurance or~~ excepted benefits specified in s. 627.6513(1)-(14).

Section 4. Section 627.6426, Florida Statutes, is created to read:

627.6426 Short-term health insurance.—

(1) For purposes of this part, the term "short-term health insurance" means health insurance coverage provided by an issuer with an expiration date specified in the contract which is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration not to exceed 36 months in total.

(2) All contracts for short-term health insurance entered into by an issuer and an individual seeking coverage:

(a) Must include the following disclosure:

"This coverage is not required to comply with certain federal market requirements for health insurance, including some requirements contained in the Patient Protection and Affordable Care Act. Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage."

646986

(b) May not exclude, limit, deny, or delay coverage due to a preexisting condition. As used in this paragraph, the term "preexisting condition" means a condition that was present before the effective date of coverage under a contract, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the effective date of coverage. The term includes a condition identified as a result of a preenrollment questionnaire or physical examination given to the individual, or review of medical records relating to the preenrollment period.

Section 5. Section 627.6525, Florida Statutes, is created to read:

627.6525 Short-term health insurance.—

(1) For purposes of this part, the term "short-term health insurance" means a group, blanket, or franchise policy of health insurance coverage provided by an issuer with an expiration date specified in the contract which is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration not to exceed 36 months in total.

(2) All contracts for short-term health insurance entered into by an issuer and a party seeking coverage:

(a) Must include the following disclosure:

"This coverage is not required to comply with certain federal market requirements for health insurance, including some requirements contained in the Patient Protection and Affordable Care Act. Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or

you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage."

(b) May not exclude, limit, deny, or delay coverage due to a preexisting condition. As used in this paragraph, the term "preexisting condition" means a condition that was present before the effective date of coverage under a contract, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the effective date of coverage. The term includes a condition identified as a result of a preenrollment questionnaire or physical examination given to the individual, or review of medical records relating to the preenrollment period.

Section 6. Section 627.6046, Florida Statutes, is created to read:

627.6046 Preexisting conditions coverage.—

(1) As used in this section, the term "preexisting condition" means a condition that was present before the effective date of coverage under an individual health insurance policy, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the effective date of coverage. The term includes a condition identified as a result of a preenrollment questionnaire or physical examination given to the individual, or review of medical records relating to the preenrollment period.

(2) A nongrandfathered individual health insurance policy issued or delivered in this state may not exclude, limit, deny, or delay coverage due to a preexisting condition.

Section 7. Section 627.65612, Florida Statutes, is created

to read:

627.65612 Preexisting conditions coverage.—

(1) As used in this section, the term "preexisting condition" means a condition that was present before the effective date of coverage under a group health insurance policy, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the effective date of coverage. The term includes a condition identified as a result of a preenrollment questionnaire or physical examination given to the individual, or review of medical records relating to the preenrollment period.

(2) A group health insurance policy issued or delivered in this state may not exclude, limit, deny, or delay coverage due to a preexisting condition.

Section 8. Subsection (45) is added to section 641.31, Florida Statutes, to read:

641.31 Health maintenance contracts.—

(45)(a) As used in this subsection, the term "preexisting condition" means a condition that was present before the effective date of coverage under a health maintenance contract, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the effective date of coverage. The term includes a condition identified as a result of a preenrollment questionnaire or physical examination given to the individual, or review of medical records relating to the preenrollment period.

(b) A health maintenance contract issued or delivered in this state may not exclude, limit, deny, or delay coverage due to a preexisting condition.

646986

128
129 ================ T I T L E A M E N D M E N T ================
130 And the title is amended as follows:
131 Delete lines 4 - 14
132 and insert:
133 employer welfare arrangements; repealing s. 627.6045,
134 F.S., relating to preexisting conditions; amending s.
135 627.6425, F.S.; revising the definition of the term
136 "individual health insurance" relating to renewability
137 of individual coverage; creating ss. 627.6426 and
138 627.6525, F.S.; defining the terms "short-term health
139 insurance" and "preexisting condition"; providing
140 disclosure requirements for short-term individual,
141 group, blanket, and franchise health insurance
142 contracts; prohibiting such contracts from excluding,
143 limiting, denying, or delaying coverage due to
144 preexisting conditions; creating ss. 627.6046 and
145 627.65612, F.S.; defining the term "preexisting
146 condition"; prohibiting nongrandfathered individual
147 health insurance policies and group health insurance
148 policies, respectively, from excluding, limiting,
149 denying, or delaying coverage due to preexisting
150 conditions; amending s. 641.31, F.S.; defining the
151 term "preexisting condition"; prohibiting health
152 maintenance contracts from excluding, limiting,
153 denying, or delaying coverage due to preexisting
154 conditions; amending s. 627.654, F.S.;

By Senator Gruters

23-01636-19 20191422__

A bill to be entitled

An act relating to health plans; amending s. 624.438, F.S.; revising eligibility requirements for multiple-employer welfare arrangements; amending s. 627.6045, F.S.; revising applicability of requirements relating to preexisting conditions; revising the font size for a certain disclosure; amending s. 627.6425, F.S.; revising the definition of the term "individual health insurance" relating to renewability of individual coverage; creating ss. 627.6426 and 627.6525, F.S.; defining the term "short-term health insurance"; providing disclosure requirements for short-term individual, group, blanket, and franchise health insurance policies; amending s. 627.654, F.S.; revising requirements for, and applicability relating to, association and small employer policies; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 624.438, Florida Statutes, is amended to read:

624.438 General eligibility.—

(1) To meet the requirements for issuance of a certificate of authority and to maintain a multiple-employer welfare arrangement, an arrangement:

(b) ~~1.~~ Must be established by a bona fide group ~~trade association, industry association,~~ or ~~professional~~ association of employers as defined in 29 C.F.R. s. 2510.3-5 ~~or~~

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

Florida Senate - 2019 **SB 1422**

23-01636-19 20191422__

~~professionals~~ which has a constitution or bylaws specifically stating its purpose and which has been organized ~~and maintained in good faith for a continuous period of 1 year~~ for purposes in addition to ~~other than that of~~ obtaining or providing insurance.

~~2. Must not combine member employers from disparate trades, industries, or professions as defined by the appropriate licensing agencies, and must not combine member employers from more than one of the employer categories defined in sub-subparagraphs a.-c.~~

~~a. A trade association consists of member employers who are in the same trade as recognized by the appropriate licensing agency.~~

~~b. An industry association consists of member employers who are in the same major group code, as defined by the Standard Industrial Classification Manual issued by the federal Office of Management and Budget, unless restricted by sub-subparagraph a. or sub-subparagraph c.~~

~~c. A professional association consists of member employers who are of the same profession as recognized by the appropriate licensing agency.~~

The requirements of this paragraph ~~subparagraph~~ do not apply to an arrangement licensed before ~~prior to~~ April 1, 1995, regardless of the nature of its business. However, an arrangement exempt from the requirements of this paragraph ~~subparagraph~~ may not expand the nature of its business beyond that set forth in the articles of incorporation of its sponsoring association as of April 1, 1995, except as authorized in this paragraph ~~subparagraph~~.

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

Section 2. Subsection (3) of section 627.6045, Florida Statutes, is amended to read:

627.6045 Preexisting condition.—A health insurance policy must comply with the following:

(3) This section does not apply to short-term~~, nonrenewable~~ health insurance ~~policies of no more than a 6-month policy term~~, provided that it is clearly disclosed to the applicant in the advertising and application, in 14-point ~~10-point~~ contrasting type, that "This policy does not meet the definition of qualifying previous coverage or qualifying existing coverage as defined in s. 627.6699. As a result, if purchased in lieu of a conversion policy or other group coverage, you may have to meet a preexisting condition requirement when renewing or purchasing other coverage."

Section 3. Subsection (1) of section 627.6425, Florida Statutes, is amended to read:

627.6425 Renewability of individual coverage.—

(1) Except as otherwise provided in this section, an insurer that provides individual health insurance coverage to an individual shall renew or continue in force such coverage at the option of the individual. For the purpose of this section, the term "individual health insurance" means health insurance coverage, as described in s. 624.603, offered to an individual in this state, including certificates of coverage offered to individuals in this state as part of a group policy issued to an association outside this state, but the term does not include ~~short-term limited duration insurance or~~ excepted benefits specified in s. 627.6513(1)-(14).

Section 4. Section 627.6426, Florida Statutes, is created

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

to read:

627.6426 Short-term health insurance.—

(1) For purposes of this part, the term "short-term health insurance" means health insurance coverage provided by an issuer with an expiration date specified in the contract which is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration not to exceed 36 months in total.

(2) All contracts for short-term health insurance entered into by an issuer and an individual seeking coverage shall include the following disclosure:

"This coverage is not required to comply with certain federal market requirements for health insurance, principally those contained in the Patient Protection and Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage."

Section 5. Section 627.6525, Florida Statutes, is created to read:

627.6525 Short-term health insurance.—

(1) For purposes of this part, the term "short-term health

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

insurance" means a group, blanket, or franchise policy of health insurance coverage provided by an issuer with an expiration date specified in the contract which is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration not to exceed 36 months in total.

(2) All contracts for short-term health insurance entered into by an issuer and a party seeking coverage shall include the following disclosure:

"This coverage is not required to comply with certain federal market requirements for health insurance, principally those contained in the Patient Protection and Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage."

Section 6. Subsection (1) of section 627.654, Florida Statutes, is amended to read:

627.654 Labor union, association, and small employer health alliance groups.—

(1)(a) A bona fide group or association of employers, as defined in 29 C.F.R. s. 2510.3-5, or a group of individuals may

be insured under a policy issued to an association, including a labor union, which association has a constitution and bylaws ~~and not less than 25 individual members~~ and which has been organized ~~and has been maintained in good faith for a period of 1 year~~ for purposes in addition to ~~other than that of~~ obtaining insurance, or to the trustees of a fund established by such an association, which association or trustees shall be deemed the policyholder, insuring at least 15 individual members of the association for the benefit of persons other than the officers of the association, the association, or trustees.

(b) A small employer, as defined in s. 627.6699 and including the employer's eligible employees and the spouses and dependents of such employees, may be insured under a policy issued to a small employer health alliance by a carrier as defined in s. 627.6699. ~~A small employer health alliance must be organized as a not-for-profit corporation under chapter 617. Notwithstanding any other law, if a small employer member of an alliance loses eligibility to purchase health care through the alliance solely because the business of the small employer member expands to more than 50 and fewer than 75 eligible employees, the small employer member may, at its next renewal date, purchase coverage through the alliance for not more than 1 additional year. A small employer health alliance shall establish conditions of participation in the alliance by a small employer, including, but not limited to:~~

~~1. Assurance that the small employer is not formed for the purpose of securing health benefit coverage.~~

~~2. Assurance that the employees of a small employer have not been added for the purpose of securing health benefit~~

~~coverage.~~

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1124
INTRODUCER:	Innovation, Industry, and Technology Committee and Senator Harrell
SUBJECT:	Dispensing Medicinal Drugs
DATE:	April 22, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Brown	HP	**Favorable**
2.	Oxamendi	Imhof	IT	**Fav/CS**
3.	Rossitto-Van Winkle	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1124 amends s. 465.019, F.S., to authorize individuals licensed to prescribe medicinal drugs to dispense a 48-hour supply, rather than a 24-hour supply, of medicinal drugs to any patient, including a discharged patient, of a hospital emergency department that operates a Class II or Class III institutional pharmacy with a community pharmacy permit from the Department of Health (DOH), under certain conditions.

The bill authorizes individuals licensed to prescribe medicinal drugs to dispense a 72-hour supply, rather than a 48-hour supply provided in the bill, during a declared state of emergency in the area, under certain conditions.

The effective date of the bill is July 1, 2019.

II. Present Situation:

Medicinal Prescribing and Dispensing Practitioners

There are several professions in Florida that have prescriptive authority at various levels, including:

- Allopathic physicians;

- Osteopathic physicians;
- Podiatrists;
- Dentists;
- Advanced registered nurse practitioners;[1]
- Physician assistants;[2] and
- Pharmacists.[3]

A person may not dispense medicinal drugs unless licensed as a pharmacist, except that a practitioner authorized by law to prescribe drugs may dispense medicinal drugs to his or her patients in the regular course of her or his practice.[4] A practitioner who dispenses medicinal drugs for human consumption for fee or remuneration of any kind, whether directly or indirectly, must:

- Register with her or his professional licensing board as a dispensing practitioner and pay a board-established fee at the time of such registration and upon each renewal of his or her license;
- Comply with, and be subject to, all laws and rules applicable to pharmacists and pharmacies, including, but not limited to, chs. 456, 499 and 893, F.S., and all applicable federal laws and federal regulations; and
- Give each patient a written prescription and, orally or in writing, advise the patient that the prescription may be filled in the practitioner's office or at any pharmacy, before dispensing any drug.[5]

Pharmacy

The practice of pharmacy and the licensure of pharmacies are regulated by ch. 465, F.S. The "practice of the profession of pharmacy" includes:

- Compounding, dispensing, and consulting the consumer concerning the contents, therapeutic values, and uses of any medicinal (prescription)[6] drug; and
- Other pharmaceutical services.[7,8]

[1] See s. 464.012(3)(a), F.S.
[2] *See* ss. 458.347 (4)(e)4., and 459.022(4)(e)4., F.S.
[3] *See* s. 465.186, F.S. and Fla. Admin. Code R. 64B8-36.001 (2019).
[4] Section 465.0276, F.S.
[5] Section 465.0276(2), F.S.
[6] Under s. 465.003(8), F.S., "medicinal drugs" means substances commonly known as "prescription" or "legend" drugs required by law to be dispensed by prescription only.
[7] Section 465.003(13), F.S.
[8] In the context of pharmacy practice, "other pharmaceutical services" means the monitoring of the patient's drug therapy and assisting the patient in the management of his or her drug therapy, and includes review of the patient's drug therapy and communication with the patient's prescribing health care provider as licensed under chs. 458, 459, 461, or 466, F.S., or similar statutory provision in another jurisdiction, or such provider's agent or such other persons as specifically authorized by the patient, regarding the drug therapy. The "practice of the profession of pharmacy" also includes any other act, service, operation, research, or transaction incidental to, or forming a part of, any of the foregoing acts, requiring, involving, or employing the science or art of any branch of the pharmaceutical profession, study, or training, expressly permits a pharmacist to transmit information from persons authorized to prescribe medicinal drugs to their patients, and includes the administration of vaccines to adults. Section 465.003(13), F.S.

The Board of Pharmacy

The Board of Pharmacy (board) is created within the DOH and is authorized to make rules to regulate the practice of professional pharmacy in pharmacies meeting minimum requirements for safe practice.[9] All pharmacies must obtain a permit before operating, unless exempt by law. This is true whether opening a new establishment or simply changing locations or owners.[10]

The Practice of Pharmacy

There are seven types of pharmacies eligible for various operating permits issued by the DOH:
- Community pharmacy;[11]
- Institutional pharmacy;[12]
- Nuclear pharmacy;[13]
- Special pharmacy;[14]
- Internet pharmacy;[15]
- Non-resident sterile compounding pharmacy;[16] and
- Special sterile compounding pharmacy.[17]

Institutional Pharmacies

An "institutional pharmacy" includes any pharmacy located in a health care institution, which includes a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medicinal drugs are compounded, dispensed, stored, or sold.[18] Institutional pharmacy permits are required for any pharmacy located in any health care institution.[19]

All institutional pharmacies must designate a consultant pharmacist[20] who is responsible for maintaining all drug records required by law, and for establishing drug handling procedures for the safe handling and storage of drugs. The consultant pharmacist may also be responsible for

[9] Sections 465.002, and 465.0155, F.S.
[10] *See* Fla. Admin. Code R. 64B16-28.100(1) (2019).
[11] The term "community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis. *See* ss. 465.003(11)(a)1. and 465.018, F.S.
[12] *See* ss. 465.003(11)(a)2. and 465.019, F.S.
[13] The term "nuclear pharmacy" includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, but does not include hospitals licensed under ch. 395, F.S., or the nuclear medicine facilities of such hospitals. *See* ss. 465.003(11)(a)3. and 465.0193, F.S.
[14] The term "special pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined by law. *See* ss. 465.003(11)(a)4. and 465.0196, F.S.
[15] The term "internet pharmacy" includes locations not otherwise licensed or issued a permit under ch. 465, F.S., whether or not in Florida, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. *See* ss. 465.003(11)(a)5. and 465.0197, F.S.
[16] The term "nonresident sterile compounding pharmacy" includes a pharmacy that ships, mails, delivers, or dispenses, in any manner, a compounded sterile product into Florida, and a nonresident pharmacy registered under s. 465.0156, F.S., or an outsourcing facility, must hold a nonresident sterile compounding permit. *See* s. 465.0158, F.S.
[17] *See* Fla. Admin. Code R. 64B16-28.100 and 64B16-28.802 (2019). An outsourcing facility is considered a pharmacy and must hold a special sterile compounding permit if it engages in sterile compounding.
[18] Section 465.003(11)(a)2., F.S.
[19] *See* Fla. Admin. Code R. 64B16-28.100(3) (2019).
[20] *See* ss. 465.003(11), and 465.0125, F.S.

ordering and evaluating any laboratory or clinical tests when such tests are necessary for the proper performance of his or her responsibilities.[21] Such laboratory or clinical tests may be ordered only with regard to patients residing in a nursing home, and then only when authorized by the facility's medical director. The consultant pharmacist must complete additional training and demonstrate additional qualifications in the practice of institutional pharmacy, as required by the board, and be licensed as a registered pharmacist.[22,23]

Currently there are four types of institutional pharmacy permits issued by the board to institutional pharmacies: Institutional Class I, Class II, Modified Class II, and Class III.[24]

Institutional Class I Pharmacy

A Class I institutional pharmacy is an institutional pharmacy in which all medicinal drugs are administered from individual prescription containers to an individual patient; and in which medicinal drugs are not dispensed on the premises, except licensed nursing homes[25] may purchase medical oxygen for administration to residents.[26]

Institutional Class II Pharmacy

A Class II institutional pharmacy is a pharmacy that employs the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, provide dispensing and consulting services on the premises to patients of the institution, for use on the premises of the institution.[27] A Class II institutional pharmacy is required to be open sufficient hours to meet the needs of the hospital facility.[28] The consultant pharmacist of record is responsible for establishing a written policy and procedure manual.[29] An institutional Class II pharmacy may elect to participate in the Cancer Drug Donation Program within the Department of Business and Professional Regulation.[30]

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[21] *Id*.
[22] Section 465.0125, F.S.
[23] As required by Fla. Admin. Code R. 64B16-28.501(1), (2), and (3) (2019), the consultant pharmacist must also "conduct Drug Regimen Reviews required by Federal or State law, inspect the facility and prepare a written report to be filed at the permitted facility at least monthly, . . . monitor the facility system for providing medication administration records and physician order sheets to ensure that the most current record of medications is available for the monthly drug regimen review, and may utilize additional consultant pharmacists to assist in this review and in the monthly facility inspection." A licensed consultant pharmacist may "remotely access a facility or pharmacy's electronic database from outside the facility or pharmacy to conduct any services additional or supplemental to regular drug regimen reviews, subject to the pharmacy or facility establishing policies and procedures to ensure the security and privacy of confidential patient records, including compliance with applicable Federal HIPAA regulations." The board must be notified in writing within ten days of any change in the consultant pharmacist of record, pursuant to Fla. Admin. Code R. 64B16-28.100(3)(b) (2019).
[24] Section 465.019, F.S.
[25] *See* part II, ch. 400, F.S., relating to nursing homes.
[26] Section 465.019(2)(a), F.S.
[27] *See* s. 565.019(2)(b), F.S. Exceptions apply when there is a state of emergency and for single doses of a drug ordered by physicians under limited circumstances.
[28] *See* Fla. Admin. Code R. 64B16-28.603 (2019).
[29] *See* s. 465.019(5), F.S.
[30] *See* s. 499.029, F.S., relating to the Cancer Drug Donation Program Act.

Modified Institutional Class II Pharmacy Permits

Modified Institutional Class II pharmacies are those institutional pharmacies in short-term, primary care treatment centers that meet all the requirements for a Class II permit, except space and equipment requirements.[31] Modified Class II Institutional pharmacies are designated as Type A, Type B, and Type C according to the specialized type of the medicinal drug delivery system utilized at the facility, either a patient-specific or bulk drug system, and the quantity of the medicinal drug formulary at the facility.[32]

All Modified Class II institutional pharmacies must be under the control and supervision of a certified consultant pharmacist. The consultant pharmacist of record is responsible for developing and maintaining a current policy and procedure manual. The permittee must make available the policy and procedure manual to the appropriate state or federal agencies upon inspection.[33]

Institutional Class III Pharmacies

Class III institutional pharmacies are those pharmacies, including central distribution facilities, affiliated with a hospital that provide the same services that are authorized by a Class II institutional pharmacy permit. Class III institutional pharmacies may also:

- Dispense, distribute, compound, and fill prescriptions for medicinal drugs;
- Prepare prepackaged drug products;
- Conduct other pharmaceutical services for the affiliated hospital and for entities under common control that are each permitted under ch. 465, F.S., to possess medicinal drugs; and
- Provide the services in Class I institutional pharmacies, Class II institutional pharmacies, and Modified Class II institutional pharmacies which hold an active health care clinic establishment permit.[34,35]

A Class III institutional pharmacy must also maintain policies and procedures addressing the following:

- Safe practices for the preparation, dispensing, prepackaging, distribution, and transportation of medicinal drugs and prepackaged drug products;

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[31] *See* s. 465.019(2)(c), F.S.

[32] *See* Fla. Admin. Code R. 64B16-28.702(2), (2019). Modified Class II Institutional Pharmacies and provide the following pharmacy services: 1) Type "A" Modified Class II Institutional Pharmacies provide pharmacy services in a facility which has a formulary of not more than 15 medicinal drugs, excluding those medicinal drugs contained in an emergency box, and in which the medicinal drugs are stored in bulk and in which the consultant pharmacist provides on-site consultations not less than once every month, unless otherwise directed by the board after review of the policy and procedure manual; 2) Type "B" Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and in bulk form and which has an expanded drug formulary, and in which the consultant pharmacist provides on-site consultations not less than once per month, unless otherwise directed by the board after review of the policy and procedure manual; and 3) Type "C" Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and which has an expanded drug formulary, and in which the consultant pharmacist provides onsite consultations not less than once per month, unless otherwise directed by the board after review of the policy and procedure manual.

[33] See Florida Board of Pharmacy, *Institutional Pharmacy Permit* http://floridaspharmacy.gov/licensing/institutional-pharmacy-permit/ (last visited Feb. 19, 2019).

[34] Section 465.019(2)(d)1., F.S.

[35] *See* s. 499.01(2)(r), F.S.

- Recordkeeping to monitor the movement, distribution, and transportation of medicinal drugs and prepackaged drug products;
- Recordkeeping of pharmacy staff responsible for each step in the preparation, dispensing, prepackaging, transportation, and distribution of medicinal drugs and prepackaged drug products; and
- Medicinal drugs and prepackaged drug products that may not be safely distributed among Class III institutional pharmacies.[36]

Institutional Pharmacies – Dispensing Medicinal Drugs

Class II and Class III institutional pharmacies are permitted to dispense medicinal drugs to outpatients only when that institution has been issued a community pharmacy permit from the DOH.[37] An individual licensed to prescribe medicinal drugs may dispense up to a 24-hour supply of a medicinal drug to any patient of an emergency department of a hospital that operates a Class II or Class III institutional pharmacy, provided that the physician treating the patient in such hospital's emergency department determines the following:

- The medicinal drug is warranted; and
- Community pharmacy services are not readily accessible, geographically or otherwise, to the patient.[38]

Such dispensing from the emergency department must be in accordance with the procedures of the hospital. For any such patient for whom a medicinal drug is warranted for a period to exceed 24 hours, an individual licensed to prescribe such drug must dispense a 24-hour supply of such drug to the patient and must provide the patient with a prescription for the drug for use after the initial 24-hour period.[39]

III. Effect of Proposed Changes:

The bill permits an individual licensed to prescribe medicinal drugs to dispense up to a 48-hour supply, rather than 24-hour supply, of medicinal drugs to any patient of, or patient discharged from, a hospital emergency department that operates a Class II or Class III institutional pharmacy with a community pharmacy permit from the DOH. The physician treating the patient must determine that:

- The medicinal drug is warranted; and
- Community pharmacy services are not readily accessible to the patient, geographically or otherwise.

The bill does not affect the existing requirement in s. 465.019(4), F.S., that an emergency department with a Class II or Class III institutional pharmacy hold a community pharmacy permit, before it may dispense medicinal drugs to any patient, including a discharged patient. The institutional pharmacy must also dispense the medicinal drugs in accordance with hospital procedures. If the dispensing of a medicinal drug to a patient is warranted for a period of longer than 48 hours, the individual licensed to prescribe the drug must provide a 48-hour supply to the

[36] Section 465.019(d)2., F.S.
[37] *See* s. 465.019, F.S., which prohibits a Class I institutional pharmacy from dispensing medicinal drugs.
[38] Section 465.019(4), F.S.
[39] *Id.*

patient and must provide the patient with a prescription for the drug for use after the initial 48-hours. The board may adopt rules necessary to carry out these provisions.

The bill also authorizes individuals licensed to prescribe medicinal drugs to dispense a 72-hour supply, rather than a 48-hour supply provided in the bill, during a declared state of emergency in the area. The dispensing of a 72-hour supply is subject to the same conditions provided in the bill for dispensing a 48-hour supply to any patient of, or patient discharged from, a hospital emergency department that operates a Class II or Class III institutional pharmacy with a community pharmacy permit from the DOH.

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. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 465.019 of the Florida Statutes.

IX. Additional Information:

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

CS by Innovation, Industry, and Technology on March 19, 2019:
The CS authorizes individuals licensed to prescribe medicinal drugs to dispense a 72-hour supply, rather than a 48-hour supply provided in the bill, during a declared state of emergency in the area, under certain conditions.

B. Amendments:

None.

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

By the Committee on Innovation, Industry, and Technology; and Senator Harrell

580-03249-19 20191124c1

A bill to be entitled

An act relating to dispensing medicinal drugs; amending s. 465.019, F.S.; authorizing individuals licensed to prescribe medicinal drugs to dispense a 48-hour supply, rather than a 24-hour supply, of such drugs to any patient, including a discharged patient, under certain circumstances; authorizing such individuals to dispense a 72-hour supply if a state of emergency has been declared in the area; authorizing such individuals to provide prescriptions for an additional supply of such drugs; providing an effective date.

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

Section 1. Subsection (4) of section 465.019, Florida Statutes, is amended to read:

465.019 Institutional pharmacies; permits.—

(4)(a) Medicinal drugs shall be dispensed in an institutional pharmacy to outpatients only when that institution has secured a community pharmacy permit from the department. However, an individual licensed to prescribe medicinal drugs in this state may dispense up to a 48-hour ~~24-hour~~ supply of a medicinal drug to any patient of, or patient discharged from, an emergency department of a hospital that operates a Class II or Class III institutional pharmacy, provided that the physician who is treating the patient in such hospital's emergency department, or who is treating the discharged patient, determines that the medicinal drug is warranted and that

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

580-03249-19 20191124c1

community pharmacy services are not readily accessible, geographically or otherwise, to the patient. Such dispensing from the emergency department to any patient, including a discharged patient, must be in accordance with the procedures of the hospital. For any such patient for whom a medicinal drug is warranted for a period to exceed 48 ~~24~~ hours, an individual licensed to prescribe such drug must dispense a 48-hour ~~24-hour~~ supply of such drug to the patient and must provide the patient with a prescription for such drug for use after the initial 48-hour ~~24-hour~~ period.

(b) Notwithstanding paragraph (a), if a state of emergency has been declared for an area of the state pursuant to s. 252.36, an individual licensed to prescribe medicinal drugs in this state may dispense up to a 72-hour supply of a medicinal drug to any patient of, or patient discharged from, an emergency department of a hospital located in that area which operates a Class II or Class III institutional pharmacy, provided that the physician who is treating the patient in such hospital's emergency department, or who is treating the discharged patient, determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise, to the patient. Such dispensing from the emergency department to any patient, including a discharged patient, must be in accordance with the procedures of the hospital. For any such patient for whom a medicinal drug is warranted for a period to exceed 72 hours, an individual licensed to prescribe such drug shall dispense a 72-hour supply of such drug to the patient and shall provide the patient with a prescription for such drug for use after the initial 72-hour

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period.

(c) The board may adopt rules ~~necessary~~ to implement ~~carry out the provisions of~~ this subsection.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GAYLE HARRELL
25th District

COMMITTEES:
Health Policy, *Chair*
Appropriations Subcommittee on Health and Human Services, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Children, Families, and Elder Affairs
Military and Veterans Affairs and Space

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

March 22, 2019

Senator Lizbeth Benacquisto
402 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Benacquisto,

I respectfully request that **SB 1124 – Dispensing Medical Drugs** be placed on the next available agenda for the Committee on Rules. SB 1124 passed its last committee stop unanimously.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

Gayle

Senator Gayle Harrell
Senate District 25

Cc: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

REPLY TO:
☐ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
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Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 1180
INTRODUCER:	Rules Committee, Health Policy Committee, Banking and Insurance Committee, and Senators Mayfield and Harrell
SUBJECT:	Prescription Drug Formulary Consumer Protection
DATE:	April 24, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Lloyd	Brown	HP	**Fav/CS**
3.	Johnson	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1180 amends the Insurance Code to provide additional consumer protections by requiring health insurers and health maintenance organizations to provide to insureds or members at least 60 days' notice before the effective date of any changes to a prescription drug formulary during a policy or contract year. The bill provides that a treating physician may seek continuation of a prescription drug taken off a formulary by certifying its medical necessity on a standardized form submitted to the insurer either electronically or first class mail at least 30 days prior to the formulary change. The insurer or HMO must authorize coverage for the prescription drug based solely on the treating physician's certification that coverage is medically necessary.

Further, the bill generally prohibits a health insurer or health maintenance organization (H MO) from reclassifying a drug to a more restrictive tier, increasing the cost sharing of an insured, reclassifying a drug to higher cost-sharing tier during the policy year, or denying an insured or member coverage of a drug for which the insured or member has been previously approved for coverage by the insurer or HMO. Under current law, only HMOs offering group contracts are prohibited from increasing the copayment for any benefit or removing, amending, or limiting any of the contract benefits except at renewal time, with some exceptions.

The provisions of the bill do not apply if a drug manufacturer increases the list price of a prescription drug on the health insurer or the HMO's formulary after November 1 of the year before the health insurer or the HMO earliest required rate submission date to applicable state

and federal rate review authorities for the succeeding calendar or policy year. A health insurer or HMO is required to maintain records of any changes in its formulary under these circumstances and, within 45 days after the end of the plan year, submit an annual report to the OIR delineating such changes. However, at least 60 days before the effective date of a formulary change as a result of the circumstances described above, the health insurer or HMO is required to provide a general notification of the formulary change to current and prospective insureds in a readily accessible format on the insurer's website; and notify, any insured currently receiving coverage for a prescription drug for which the formulary change modifies coverage and the insured's treating physician, including information on the specific drugs involved.

The fiscal impact of the bill on the Division of State Group Insurance of the Department of Management Services is indeterminate at this time.

Likewise, the implementation of this bill may result in an indeterminate fiscal impact on local governments.

II. Present Situation:

Access to affordable health care can be a significant issue for anyone with an illness, but it is particularly critical for individuals who have conditions with the potential to cause death, disability, or serious discomfort unless treated with the most appropriate medical care in a timely manner. In recent years, many innovative treatments for diseases that affect large populations, such as cancer, hepatitis C, diabetes, and multiple sclerosis have been approved. Some of the benefits of these innovative drugs include fewer side effects, convenience (oral solids instead of injectables), and greater efficacy.[1] However, the financial burden resulting from out-of-pocket drug costs can lead patients with chronic illnesses to forgo prescribed drugs, ultimately affecting their health.

Prescription Drug Cost Containment

Health care spending in the United States is expected to grow an average of 5.5 percent annually from 2018-2027, reaching nearly $6.0 trillion by 2027.[2] Prescription drug spending is projected to have grown 3.3 percent in 2018. This acceleration is due to faster anticipated utilization growth, partially driven by an increase in the introduction of new drugs. Prescription drug spending growth is expected to increase to 4.6 percent in 2019, because of faster utilization growth from both existing and new drugs, as well as a modest increase in drug price growth. For the remainder of the projection, 2020-2027, prescription drug spending is projected to grow by 6.1 percent per year on average, influenced by higher use anticipated from new drugs and efforts by employers and insurers that encourage patients with chronic conditions to consistently treat their disease states.[3]

Due to increasing health care expenditures, public and private employers and insurers continue to look for cost containment methods, including the reduction of prescription drug costs. Many

[1] *See* HEALTH AFFAIRS 35, No. 9 (2016): 1595-1603.
[2] Office of the Actuary, Centers for Medicare & Medicaid Services (CMS), National Health Expenditure Projections 2018-2027, *available at* https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/ForecastSummary.pdf (last viewed April 3, 2019).
[3] *Id.*

employer-sponsored health plans and insurers contract with pharmacy benefit managers (PBMs). The PBMs negotiate drug prices with pharmacies and drug manufacturers on behalf of health plans and, in addition to other administrative, clinical, and cost-containment services, process drug claims for the health plans. A PBM generally manages a preferred drug list or formulary for each of its plan sponsors. Insurers and self-insured employers provide insureds with financial incentives, such as lower copayments, to use preferred drugs.

Non-Medical Switching or Substitution of Prescription Drugs

Non-medical switching or substitution of prescription drugs occurs when there may be multiple options available within a treatment class and a less expensive or patient-preferred medicine is substituted, often for cost containment reasons. There are typically three types of non-medical types of switching that occur with prescription drugs. First, non-medical switching may be as simple as the substitution of a brand name drug for its generic equivalent. Generic drugs are chemically very similar to the brand-name drugs using the same active ingredient, and are the same in dosage form, safety, strength, route of administration, performance characteristics, and intended use.[4] A generic drug must pass the same safety standards as a brand-name drug.

The second method of switching or substitution involves dispensing drugs that are therapeutically equivalent to, but chemically different from, the originally prescribed drug that are expected to produce a similar patient outcome as the reference drug or treatment. [5]

Biosimilar drugs are a third category of drugs which are produced through biotechnology. A biosimilar is highly similar to[6] and has no clinically meaningful differences[7] from an existing Food and Drug Administration-approved reference product.[8] Some research indicates that the biologic therapy medications of some patients are being switched for nonclinical reasons, despite the lack of data to support this practice and an abundance of data demonstrating clinically meaningful differences among biologics.[9] For example, one study reviewing the reason for adjusting anti-tumor necrosis (TNF) agents involving patients primarily with rheumatoid arthritis, psoriasis, psoriatic arthritis, ankylosing spondylitis, Crohn's disease, or ulcerative

[4] U.S. Food and Drug Administration, *Understanding Generic Drugs* (Jun. 6, 2018) *available at* http://www.fda.gov/drugs/resourcesforyou/consumers/buyingusingmedicinesafely/understandinggenericdrugs/default.htm (last visited Mar. 13, 2019).
[5] Rachel Chu, et al, *Patient Safety and Comfort - The Challenges of Switching Medicines* (2010) *available at* http://www.patients-rights.org/uploadimages/Patient_Safety_and_Comfort_The_Challenges_of_Switching.pdf (last viewed Mar. 13, 2019).
[6] "Highly similar to" means the characteristics of the product, such as purity, chemical identity, and bioactivity of both the reference product and the proposed biosimilar product have been compared and have only minor differences in the clinically inactive components. These differences are carefully evaluated by the FDA to ensure the biosimilar meets the FDA's high approval standards and are acceptable.
[7] "No Clinically meaningful differences" means that the proposed biosimilar product has demonstrated through human exposure and response studies its safety and effectiveness, an assessment of clinical immunogenicity, and if needed, additional clinical studies.
[8] U.S. Food and Drug Administration, *Biosimilar and Interchangeable Products* (page last updated: 10/23/2017) *available at* https://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/TherapeuticBiologicApplications/Biosimilars/ucm580419.htm#biological (last viewed April 2, 2019).
[9] *See* Alan Reynolds, et al, *When is switching warranted among biologic therapies in rheumatoid arthritis?* Medscape.com. http://www.medscape.com/viewarticle/768031_5 (last viewed Mar. 13, 2019).

colitis found that non-medical switching of anti-TNF agents was associated with an increase in side effects and lack of efficacy that also led to an increase in health care utilization.[10]

Federal Patient Protection and Affordable Care Act

The federal Patient Protection and Affordable Care Act (PPACA)[11] requires health insurers and HMOs to make coverage available to all individuals and employers, without exclusions for preexisting conditions, and mandates that issuers (insurers and HMOs) provide ten essential health benefits;[12] which includes prescription drugs.

Current Prescription Drug Coverage Requirements

To comply with the essential health benefit requirement for prescription drugs, issuers must include in their formulary or preferred drug lists the greater of one drug for each U.S. Pharmacopeia (USP) category and class; or the same number of drugs in each USP category and class as the state's EHB benchmark plan. Issuers must have a Pharmacy and Therapeutics Committee to design formularies using scientific evidence that will include consideration of safety and efficacy, cover a range of drugs in a broad distribution of therapeutic categories and classes, and provide access to drugs that are included in broadly accepted treatment guidelines. Plans providing EHBs must have procedures in place that allow an enrollee to request and gain access to clinically appropriate drugs not included on the plan's formulary drug list. Such procedures must include a process to request an expedited review.[13]

Proposed Changes to Prescription Drug Coverage for the 2020 Plan Year

The proposed federal rules[14] for the 2020 plan year would allow individual, small group, and large group market health insurance issuers to adopt mid-year formulary changes to optimize the use of new generic drugs as they become available, consistent with the approach to Medicare Part D.[15] At that time, the issuer also would be permitted to remove the equivalent brand drug from the formulary or move the equivalent brand drug to a different cost-sharing tier on the formulary. Issuers would also be required to provide enrollees the option to request coverage for a brand drug that was removed from the formulary through the applicable coverage appeal process or the drug exception request process.

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[10] D.T. Rubin, et al, *Analysis of outcomes after non-medical switching of anti-tumor necrosis factor agents,* European Crohn's and Colitis Organisation (2015) *available at* https://www.ecco-ibd.eu/index.php/publications/congress-abstracts/abstracts-2015/item/p354-analysis-of-outcomes-after-non-medical-switching-of-anti-tumor-necrosis-factor-agents.html?category_id=430 (last viewed Mar. 13, 2019).

[11] The Patient Protection and Affordable Care Act (Pub. Law No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. Law No. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010.

[12] 42 U.S.C. s. 18022.

[13] 45 C.F.R. s. 156.122.

[14] U.S. Department of Health and Human Services, *Proposed HHS Notice of Benefit and Payment Parameters for 2020 Fact Sheet*, available at https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Proposed-2020-HHS-Fact-Sheet.PDF (last viewed Mar. 9, 2019).

[15] The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA, P.L. 108-173) established a voluntary, outpatient prescription drug benefit under Medicare Part D, effective January 1, 2006. Medicare Part D provides coverage through private prescription drug plans (PDPs) that offer only drug coverage, or through Medicare Advantage (MA) prescription drug plans (MA-PDs) that offer coverage as part of broader, managed care plans.

The proposed rule also revises the requirements for how such issuers treat cost-sharing for brand drugs when a generic equivalent is available. The proposed rule would exempt certain cost-sharing from the maximum out-of-pocket limit if an insured selects a brand drug when a medically appropriate generic drug is available. Insurers would be required to provide notice to the patient and the treating provider of the patient. Insurers would be required to provide enrollees the option to request coverage for a brand drug that was removed from the formulary through the applicable coverage appeal process or the drug exception request process.

Regulation of Insurers and Health Maintenance Organizations in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, HMOs, and other risk-bearing entities.[16] The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the AHCA.[17]

Currently, an HMO may increase the copayment for any benefit, or delete, amend, or limit any of the benefits under a group contract only upon written notice to the contract holder at least 45 days in advance of the time of coverage renewal. The HMO may amend the contract with the contract holder, with such amendment to be effective immediately at the time of coverage renewal. The written notice to the contract holder must specifically identify any deletions, amendments, or limitations to any of the benefits provided in the group contract during the current contract period, which will be included in the group contract upon renewal. This provision does not apply to any increases in benefits. The notice requirements do not apply if benefits are amended, deleted, or limited, pursuant to a request of the contract holder.[18]

Florida's State Group Insurance Program

Under the authority of s. 110.123, F.S., the DMS, through the DSGI, administers the state group health insurance program under a cafeteria plan consistent with section 125, Internal Revenue Code. To administer the state group health insurance program, the DMS contracts with third party administrators for self-insured health plans, insured HMOs, and a pharmacy benefit manager (PBM) for the state employees' self-insured prescription drug program pursuant to s. 110.12315, F.S.

The state employees' self-insured prescription drug program has three cost-share categories for members: generic drugs, preferred brand name drugs (those brand name drugs on the preferred drug list), and non-preferred brand name drugs (those brand name drugs not on the preferred drug list).[19] Generic drugs are the least expensive and have the lowest member cost share, preferred brand name drugs have the middle cost share, and non-preferred brand name drugs are the most expensive and have the highest member cost share.

[16] Section 20.121(3), F.S.
[17] Section 641.21(1), F.S.
[18] Section 641.31(36), F.S.
[19] Department of Management Services, *State Employees' Prescription Drug Plan,* available at https://www.mybenefits.myflorida.com/content/download/142818/952917/2019_Benefits_at_a_Glance_PPO_Standard_FINAL_073118.pdf (last viewed Mar. 13, 2019).

State Group Health Insurance Prescription Drug Co-Payments[20]		
Drug Tier	**Retail Up to 30 Day Supply**	**Retail and Mail Up to 90 Days Specialty Medications**
Generic	$7	$14
Preferred Brand	$30	$60
Non-Preferred Brand	$50	$100

The PBM for the state employees' self-insured prescription drug program updates the preferred drug list quarterly as brand drugs enter the market and as the PBM negotiates pricing, including rebates with manufacturers.[21]

Regulation of Changes to Prescription Drug Formularies in Other States

Staff conducted a limited survey of some states that had enacted legislation addressing formulary benefit changes or cost-sharing limits:

- Louisiana: Formulary change must occur at the time of coverage renewal and prior notice must be given to each affected covered employer and enrollee, or individual.[22]
- California: Prohibits changes in cost sharing designs during the plan or policy year, except when such change is required by state or federal law.[23]
- Nevada: Prohibits a health insurer that offers individual coverage from removing prescription drugs from a formulary or moving a drug to a higher cost-sharing tier during the plan year with some exceptions.[24]
- New Mexico: Limits when health insurance policies may change prescription drug coverage, with exceptions, and requires prior notification of all affected enrollees.[25]
- Virginia: Requires insurers to establish a process for insureds to obtain continued access to drugs that they have been receiving for at least 6 months prior to a formulary change at a cost-sharing level that is no higher than the level imposed on formulary drugs.[26]
- Texas: Prohibits insurers and HMOs from making mid-year formulary benefit and cost-sharing changes since 2012.[27]
- Illinois: Protects patients who have previously had coverage approved for a drug to continue at the same benefit level for the duration of a plan year.[28]

[20] Department of Management Services, *supra* note 27.
[21] CVS Caremark, *2019 Plan Year-State Employees' Prescription Drug Plan,* available at https://www.mybenefits.myflorida.com/content/download/142756/952578/OE_for_2019_Brochure_two_-_page_FINAL_rev_081518.pdf (last viewed Mar. 13, 2019).
[22] La Admin. Code title 37, pt. XIII, ss. 14111, 14115, and 14117.
[23] CAL. INS. Code, §10199.449.
[24] Nevada Division of Insurance, *Adopted Regulation R074*-14 (uncodified).
[25] N.M. Stat. ss. 59A-22-49.4, 59A-23-7.13, 59A-46-50.4, and 59A-47-45.4.
[26] *See* Va. Code Ann. s. 38.2-3407.9.01.
[27] Tex. Ins. Code ss. 1369.0541 and 1501.108.
[28] Correspondence on file with Senate Banking and Insurance Committee.

III. Effect of Proposed Changes:

Section 1 creates s. 627.42393, F.S., and **Sections 2 and 3** amend s. 627.6699, F.S., and s. 641.31, F.S., respectively.

The bill amends the Insurance Code to provide additional consumer protections by requiring a health insurer issuing individual or group policies or HMO issuing individual or group contracts to provide at least 60 days' notice of changes to a prescription drug formulary to current and prospective insureds or members in a readily accessible format on the insurer's or HMO's website. The insurers or HMO must also notify any insured or member who is covered by a prescription drug, who is impacted by the modified formulary, as well as their treating physician. The insured's or member's treating physician may request continued coverage of the prescription drug by submitting information to the insurer or HMO at least 30 days before the effective date of the formulary change and by certifying its medical necessity on the request. A health insurer or HMO may make available an electronic portal for the submission of such requests by providers. An insurer or HMO that receives a request that meets all of these requirements must authorize continued coverage of the prescription drug based solely on the treating physician's certification that the prescription is medically necessary. Further, the insurer or HMO may not otherwise modify the coverage through increased out of pocket costs, movement of the drug to a more restrictive tier, or denial of coverage of a drug for which the insured has been previously approved.

The bill does not:

- Prohibit the addition of prescription drugs to the list of drugs covered under the policy during the policy year;
- Amend s. 465.025, F.S., which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product; or
- Amend s. 465.0252, F.S., which provides conditions under which a pharmacist may dispense a substitute biological product for the prescribed biological product.

The provisions of the bill do not apply to the following types of coverage:

- Grandfathered health plans, as described in s. 627.402, F.S.,
- Transitional policies and contracts issued between March 10, 2013, and December 31, 2013,
- Medicaid managed care plans under part IV of ch. 409, F.S., and
- Limited benefits set forth in s. 627.6513(1)-(14), F.S.

The provisions and requirements delineated above would not apply if a drug manufacturer increases the list price of a prescription drug on the health insurer or the HMO's formulary to the health insurer or the HMO after November 1 of the year before the health insurer or HMO's earliest required rate submission date to applicable state and federal rate review authorities for the succeeding calendar or policy year. A health insurer or HMO is required to maintain records of any changes in its formulary under these circumstances and, within 45 days after the end of the plan year submit an annual report to the OIR delineating such changes. The commission must prescribe such form by rule. However, at least 60 days before the effective date of a formulary change as a result of circumstances described in this paragraph, the health insurer or HMO is required to provide a notification of the formulary change to current and prospective insureds or members in a readily accessible format on the insurer's website; and notify, any insured or

member currently receiving coverage for a prescription drug for which the formulary change modifies coverage and the treating physician of the insured or member.

Section 4 provides that the bill fulfills an important state interest.

Section 5 provides the bill is effective January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Article VII, section 18 of the Florida Constitution may apply if the bill requires local governments to spend funds. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest, and one of the following relevant exceptions must apply:

- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

Since this bill requires all public sector health plans to provide the same 60 days' notice of drug changes in the formulary, it appears the bill applies to all persons similarly situated (state, counties, and municipalities).

The bill includes a finding that the act fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By adding the notice requirements regarding changes in the prescription drug formulary and an exceptions process to allow for continuation, CS/CS/CS/SB 1180 could provide greater continuity of care for certain insureds who rely on receiving those drugs.

The bill may make it more difficult for insurers and HMOs to change their formularies during a plan year, which may increase the claim costs for health insurers and HMOs providing prescription drug benefits. Any increased costs would likely be passed along to insureds. The provisions of the bill would not apply to ERISA (the federal Employee Retirement Income Security Act of 1974)[29] self-insured plans, which represent approximately 50 percent of the insureds in Florida. ERISA preempts the regulation of such plans by the states.

C. Government Sector Impact:

Division of State Group Insurance Program

The fiscal impact of the bill on the Division of State Group Insurance of the Department of Management Services is indeterminate at this time.

Likewise, the implementation of this bill may result in an indeterminate fiscal impact on local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not contain a provision that would allow an insurer or an HMO to remove a prescription drug from its formulary of covered drugs during the plan year if the U.S. Food and Drug Administration had issued a statement about the drug which calls into question the clinical safety of the drug; or the manufacturer of the drug has notified the U.S. Food and Drug Administration of a manufacturing discontinuance or potential discontinuance of the drug as required by s. 506C of the federal Food, Drug, and Cosmetic Act.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.6699 and 641.31.

This bill creates section 627.42393 of the Florida Statutes.

[29] 29 U.S.C. 1001 et seq. (1974).

IX. Additional Information:

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

CS/CS/CS by Rules on April 23, 2019:
The CS/CS/CS provides that a health insurer or HMO is exempted from the requirements of the bill if a drug manufacturer increases the list price of a prescription drug on the health insurer or the HMO's formulary to the health insurer or the HMO after November 1 of the year before the health insurer or HMO's earliest required rate submission date to applicable state and federal rate review authorities for the succeeding calendar or policy year. A health insurer or HMO is required to maintain records of any changes in its formulary under these circumstances and, within 45 days after the end of the plan year submit an annual report to the OIR delineating such changes. The commission must prescribe such form by rule.

However, at least 60 days before the effective date of a formulary change as a result of circumstances described above, the health insurer or HMO is required to provide a general notification of the formulary change to current and prospective insureds in a readily accessible format on the insurer's website; and notify, any insured currently receiving coverage for a prescription drug for which the formulary change modifies coverage and the insured's treating physician, including information on the specific drugs involved.

CS/CS by Health Policy on April 8, 2019:
The CS/CS requires a 60-day notice by the insurer of changes to its prescription drug formulary during a policy year. A general notice of the change must be posted on the insurer's website in a readily accessible place and all insureds and their treating physicians affected by the change must be notified electronically or by first class mail. If the treating physician submits a request at least 30 days before the effective date of the change certifying the medical necessity of the drug, it will result in the continuation of the drug for the patient. The Financial Services Commission is responsible for the development of a standardized one page form for use by the treating physicians seeking approval for drug continuation. The insurer must approve coverage for any prescribed drug based on the treating physician certifying that the coverage is medically necessary.

CS by Banking and Insurance on March 18, 2019:
The CS prohibits health insurance policies and health maintenance organization contracts, if such policies and contracts pertain to major medical coverage, from removing or reclassifying to a more restrictive drug tier, a covered prescription drug from its formulary while an insured is taking a medically-necessary prescription drug prescribed by a treating physician, except during the renewal period.

B. Amendments:

None.

635224

LEGISLATIVE ACTION

Senate	.	House
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04/23/2019	.	
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The Committee on Rules (Simpson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 88 - 230

and insert:

627.402, to benefits specified in s. 627.6513(1)-(14), or to any policy issued or delivered between March 23, 2010, and December 31, 2013, inclusive.

(c) Alter or amend s. 465.025, which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.

(d) Alter or amend s. 465.0252, which provides conditions

635224

under which a pharmacist may dispense a substitute biological product for the prescribed biological product.

(e) Apply to a Medicaid managed care plan under part IV of chapter 409.

(f) Apply if a drug manufacturer increases the list price of a prescription drug on the health insurer's formulary to the health insurer or the pharmacy benefit manager after November 1 of the year before the health insurer's earliest required rate submission date to applicable state and federal rate review authorities for the succeeding calendar or policy year. A health insurer shall maintain a record of any change in its formulary under this paragraph.

Section 2. Paragraph (e) of subsection (5) of section 627.6699, Florida Statutes, is amended to read:

627.6699 Employee Health Care Access Act.—

(5) AVAILABILITY OF COVERAGE.—

(e) All health benefit plans issued under this section must comply with the following conditions:

1. For employers who have fewer than two employees, a late enrollee may be excluded from coverage for no longer than 24 months if he or she was not covered by creditable coverage continually to a date not more than 63 days before the effective date of his or her new coverage.

2. Any requirement used by a small employer carrier in determining whether to provide coverage to a small employer group, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employer groups having the same number of eligible employees applying for coverage or

635224

receiving coverage from the small employer carrier, except that a small employer carrier that participates in, administers, or issues health benefits pursuant to s. 381.0406 which do not include a preexisting condition exclusion may require as a condition of offering such benefits that the employer has had no health insurance coverage for its employees for a period of at least 6 months. A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

3. In applying minimum participation requirements with respect to a small employer, a small employer carrier shall not consider as an eligible employee employees or dependents who have qualifying existing coverage in an employer-based group insurance plan or an ERISA qualified self-insurance plan in determining whether the applicable percentage of participation is met. However, a small employer carrier may count eligible employees and dependents who have coverage under another health plan that is sponsored by that employer.

4. A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage, unless the employer size has changed, in which case the small employer carrier may apply the requirements that are applicable to the new group size.

5. If a small employer carrier offers coverage to a small employer, it must offer coverage to all the small employer’s eligible employees and their dependents. A small employer

carrier may not offer coverage limited to certain persons in a group or to part of a group, except with respect to late enrollees.

6. A small employer carrier may not modify any health benefit plan issued to a small employer with respect to a small employer or any eligible employee or dependent through riders, endorsements, or otherwise to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

7. An initial enrollment period of at least 30 days must be provided. An annual 30-day open enrollment period must be offered to each small employer's eligible employees and their dependents. A small employer carrier must provide special enrollment periods as required by s. 627.65615.

8. A small employer carrier shall comply with s. 627.42393 for any change to a prescription drug formulary.

Section 3. Subsection (36) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(36) Except as provided in paragraphs (a), (b), and (c), a health maintenance organization may increase the copayment for any benefit, or delete, amend, or limit any of the benefits to which a subscriber is entitled under the group contract only, upon written notice to the contract holder at least 45 days in advance of the time of coverage renewal. The health maintenance organization may amend the contract with the contract holder, with such amendment to be effective immediately at the time of coverage renewal. The written notice to the contract holder must ~~shall~~ specifically identify any deletions, amendments, or

635224

limitations to any of the benefits provided in the group contract during the current contract period which will be included in the group contract upon renewal. This subsection does not apply to any increases in benefits. The 45-day notice requirement does ~~shall~~ not apply if benefits are amended, deleted, or limited at the request of the contract holder.

(a) At least 60 days before the effective date of any change to a prescription drug formulary during a contract year, the health maintenance organization shall:

1. Provide general notification of the change in the formulary to current and prospective subscribers in a readily accessible format on the health maintenance organization's website; and

2. Notify, electronically or by first-class mail, any subscriber currently receiving coverage for a prescription drug for which the formulary change modifies coverage and the subscriber's treating physician, including information on the specific drugs involved and a statement that the submission of a notice of medical necessity by the subscriber's treating physician to the health maintenance organization at least 30 days before the effective date of the formulary change will result in continuation of coverage at the existing level.

(b) The notice provided by the treating physician to the insurer must include a completed one-page form in which the treating physician certifies to the health maintenance organization that coverage of the prescription drug for the subscriber is medically necessary. The treating physician shall submit the notice electronically or by first-class mail. The health maintenance organization may provide the treating

635224

physician with access to an electronic portal through which the treating physician may electronically file the notice. The commission shall prescribe a form by rule for the notice.

(c) If the treating physician certifies to the health maintenance organization, in accordance with paragraph (b), that the prescription drug is medically necessary for the subscriber, the health maintenance organization:

1. Must authorize coverage for the prescribed drug based solely on the treating physician's certification that coverage is medically necessary; and

2. May not modify the coverage related to the covered drug by:

a. Increasing the out-of-pocket costs for the covered drug;

b. Moving the covered drug to a more restrictive tier; or

c. Denying a subscriber coverage of the drug for which the subscriber has been previously approved for coverage by the health maintenance organization.

(d) Paragraphs (a), (b), and (c) do not:

1. Prohibit the addition of prescription drugs to the list of drugs covered under the contract during the contract year.

2. Apply to a grandfathered health plan as defined in s. 627.402 or to benefits specified in s. 627.6513(1)-(14).

3. Alter or amend s. 465.025, which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.

4. Alter or amend s. 465.0252, which provides conditions under which a pharmacist may dispense a substitute biological product for the prescribed biological product.

5. Apply to a Medicaid managed care plan under part IV of

635224

chapter 409.

6. Apply if a drug manufacturer increases the list price of a prescription drug on the health maintenance organization's formulary to the health maintenance organization or the pharmacy benefit manager after November 1 of the year before the health maintenance organization's earliest required rate submission date to applicable state and federal rate review authorities for the succeeding calendar or policy year. A health maintenance organization shall maintain a record of any change in its formulary under this subparagraph.

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

And the title is amended as follows:

Delete lines 18 - 36

and insert:

applicability; requiring health insurers to maintain a record of certain formulary changes; amending s. 627.6699, F.S.; requiring small employer carriers to comply with certain requirements for any change to a prescription drug formulary under the health benefit plan; amending s. 641.31, F.S.; requiring health maintenance organizations to provide certain notices to current and prospective subscribers within a certain timeframe before the effective date of any change to a prescription drug formulary during a contract year; specifying requirements for a notice of medical necessity that a subscriber's treating physician may submit to the health maintenance organization within a certain timeframe; specifying

635224

means by which the notice is to be submitted; requiring the commission to adopt a certain rule; specifying a requirement and prohibited acts relating to coverage changes by a health maintenance organization if the treating physician provides certain certification; providing construction and applicability; requiring health maintenance organizations to maintain a record of certain formulary changes; providing a

385052

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2019	.	
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The Committee on Rules (Mayfield) recommended the following:

Senate Amendment to Amendment (635224) (with title amendment)

Delete lines 16 - 166
and insert:
(5)(a) This section does not apply if a drug manufacturer increases the list price of a prescription drug on the health insurer's formulary to the health insurer or the pharmacy benefit manager after November 1 of the year before the health insurer's earliest required rate submission date to applicable state and federal rate review authorities for the succeeding

385052

calendar or policy year.

(b) However, at least 60 days before the effective date of a formulary change as a result of circumstances described in paragraph (a), the health insurer shall provide general notification of the formulary changes to current and prospective insureds in a readily accessible format on the insurer's website; and notify, electronically or by first-class mail, any insured currently receiving coverage for a prescription drug for which the formulary change modifies coverage and the insured's treating physician, including information on the specific drugs involved.

(6) A health insurer shall maintain a record of any change in its formulary during the calendar or plan year and, within 45 days after the end of the plan year, submit an annual report to the office delineating such changes. The commission shall prescribe a form by rule for such reports.

Section 2. Paragraph (e) of subsection (5) of section 627.6699, Florida Statutes, is amended to read:

627.6699 Employee Health Care Access Act.—

(5) AVAILABILITY OF COVERAGE.—

(e) All health benefit plans issued under this section must comply with the following conditions:

1. For employers who have fewer than two employees, a late enrollee may be excluded from coverage for no longer than 24 months if he or she was not covered by creditable coverage continually to a date not more than 63 days before the effective date of his or her new coverage.

2. Any requirement used by a small employer carrier in determining whether to provide coverage to a small employer

group, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employer groups having the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier, except that a small employer carrier that participates in, administers, or issues health benefits pursuant to s. 381.0406 which do not include a preexisting condition exclusion may require as a condition of offering such benefits that the employer has had no health insurance coverage for its employees for a period of at least 6 months. A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

3. In applying minimum participation requirements with respect to a small employer, a small employer carrier shall not consider as an eligible employee employees or dependents who have qualifying existing coverage in an employer-based group insurance plan or an ERISA qualified self-insurance plan in determining whether the applicable percentage of participation is met. However, a small employer carrier may count eligible employees and dependents who have coverage under another health plan that is sponsored by that employer.

4. A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage, unless the employer size has changed, in which case the small employer carrier may apply the requirements

385052

that are applicable to the new group size.

5. If a small employer carrier offers coverage to a small employer, it must offer coverage to all the small employer's eligible employees and their dependents. A small employer carrier may not offer coverage limited to certain persons in a group or to part of a group, except with respect to late enrollees.

6. A small employer carrier may not modify any health benefit plan issued to a small employer with respect to a small employer or any eligible employee or dependent through riders, endorsements, or otherwise to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

7. An initial enrollment period of at least 30 days must be provided. An annual 30-day open enrollment period must be offered to each small employer's eligible employees and their dependents. A small employer carrier must provide special enrollment periods as required by s. 627.65615.

8. A small employer carrier shall comply with s. 627.42393 for any change to a prescription drug formulary.

Section 3. Subsection (36) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(36) Except as provided in paragraphs (a), (b), and (c), a health maintenance organization may increase the copayment for any benefit, or delete, amend, or limit any of the benefits to which a subscriber is entitled under the group contract only, upon written notice to the contract holder at least 45 days in advance of the time of coverage renewal. The health maintenance

385052

organization may amend the contract with the contract holder, with such amendment to be effective immediately at the time of coverage renewal. The written notice to the contract holder must ~~shall~~ specifically identify any deletions, amendments, or limitations to any of the benefits provided in the group contract during the current contract period which will be included in the group contract upon renewal. This subsection does not apply to any increases in benefits. The 45-day notice requirement does ~~shall~~ not apply if benefits are amended, deleted, or limited at the request of the contract holder.

(a) At least 60 days before the effective date of any change to a prescription drug formulary during a contract year, the health maintenance organization shall:

1. Provide general notification of the change in the formulary to current and prospective subscribers in a readily accessible format on the health maintenance organization's website; and

2. Notify, electronically or by first-class mail, any subscriber currently receiving coverage for a prescription drug for which the formulary change modifies coverage and the subscriber's treating physician, including information on the specific drugs involved and a statement that the submission of a notice of medical necessity by the subscriber's treating physician to the health maintenance organization at least 30 days before the effective date of the formulary change will result in continuation of coverage at the existing level.

(b) The notice provided by the treating physician to the insurer must include a completed one-page form in which the treating physician certifies to the health maintenance

organization that coverage of the prescription drug for the subscriber is medically necessary. The treating physician shall submit the notice electronically or by first-class mail. The health maintenance organization may provide the treating physician with access to an electronic portal through which the treating physician may electronically file the notice. The commission shall prescribe a form by rule for the notice.

(c) If the treating physician certifies to the health maintenance organization, in accordance with paragraph (b), that the prescription drug is medically necessary for the subscriber, the health maintenance organization:

1. Must authorize coverage for the prescribed drug based solely on the treating physician's certification that coverage is medically necessary; and

2. May not modify the coverage related to the covered drug by:

a. Increasing the out-of-pocket costs for the covered drug;

b. Moving the covered drug to a more restrictive tier; or

c. Denying a subscriber coverage of the drug for which the subscriber has been previously approved for coverage by the health maintenance organization.

(d) Paragraphs (a), (b), and (c) do not:

1. Prohibit the addition of prescription drugs to the list of drugs covered under the contract during the contract year.

2. Apply to a grandfathered health plan as defined in s. 627.402 or to benefits specified in s. 627.6513(1)-(14).

3. Alter or amend s. 465.025, which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.

385052

4. Alter or amend s. 465.0252, which provides conditions under which a pharmacist may dispense a substitute biological product for the prescribed biological product.

5. Apply to a Medicaid managed care plan under part IV of chapter 409.

(e)1. Paragraphs (a), (b), and (c) do not apply if a drug manufacturer increases the list price of a prescription drug on the health maintenance organization's formulary to the health maintenance organization or the pharmacy benefit manager after November 1 of the year before the health maintenance organization's earliest required rate submission date to applicable state and federal rate review authorities for the succeeding calendar or policy year.

2. However, at least 60 days before the effective date of a formulary change as a result of circumstances described in subparagraph 1., the health maintenance organization shall provide general notification of the formulary changes to current and prospective subscribers in a readily accessible format on the health maintenance organization's website; and notify, electronically or by first-class mail, any subscriber currently receiving coverage for a prescription drug for which the formulary change modifies coverage and the subscriber's treating physician, including information on the specific drugs involved.

(f) A health maintenance organization shall maintain a record of any change in its formulary during the calendar or plan year and, within 45 days after the end of the plan year, submit an annual report to the office delineating such changes. The commission shall prescribe a form by rule for such reports.

385052

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 172 - 194
and insert:
applicability; providing an exception for certain increases in prescription drug prices by the drug manufacturer; specifying notification requirements for insurers under such circumstances; requiring insurers to maintain a record of formulary changes and submit an annual report to the Office of Insurance Regulation delineating such changes within a certain timeframe; requiring the Financial Services Commission to adopt a certain form by rule; amending s. 627.6699, F.S.; requiring small employer carriers to comply with certain requirements for any change to a prescription drug formulary under the health benefit plan; amending s. 641.31, F.S.; requiring health maintenance organizations to provide certain notices to current and prospective subscribers within a certain timeframe before the effective date of any change to a prescription drug formulary during a contract year; specifying requirements for a notice of medical necessity that a subscriber’s treating physician may submit to the health maintenance organization within a certain timeframe; specifying means by which the notice is to be submitted; requiring the commission to adopt a certain rule; specifying a requirement and prohibited acts relating to coverage changes by a health maintenance organization if the treating

385052

physician provides certain certification; providing construction and applicability; providing an exception for certain increases in prescription drug prices by the drug manufacturer; specifying notification requirements for health maintenance organizations under such circumstances; requiring health maintenance organizations to maintain a record of formulary changes and submit an annual report to the office delineating such changes within a certain timeframe; requiring the commission to adopt a certain form by rule; providing a

By the Committees on Health Policy; and Banking and Insurance; and Senators Mayfield and Harrell

A bill to be entitled

An act relating to prescription drug formulary consumer protection; creating s. 627.42393, F.S.; requiring insurers issuing individual or group health insurance policies to provide certain notices to current and prospective insureds within a certain timeframe before the effective date of any change to a prescription drug formulary during a policy year; specifying requirements for a notice of medical necessity that an insured's treating physician may submit to the insurer within a certain timeframe; specifying means by which the notice is to be submitted; requiring the Financial Services Commission to adopt a certain rule; specifying a requirement and prohibited acts relating to coverage changes by an insurer if the treating physician provides certain certification; providing construction and applicability; amending s. 627.6699, F.S.; requiring small employer carriers to comply with certain requirements for any change to a prescription drug formulary under the health benefit plan; amending s. 641.31, F.S.; requiring health maintenance organizations to provide certain notices to current and prospective subscribers within a certain timeframe before the effective date of any change to a prescription drug formulary during a contract year; specifying requirements for a notice of medical necessity that a subscriber's treating physician may submit to the health maintenance organization within a

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

Florida Senate - 2019 CS for CS for SB 1180

588-04046-19 20191180c2

certain timeframe; specifying means by which the notice is to be submitted; requiring the commission to adopt a certain rule; specifying a requirement and prohibited acts relating to coverage changes by a health maintenance organization if the treating physician provides certain certification; providing construction and applicability; providing a declaration of important state interest; providing an effective date.

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

Section 1. Section 627.42393, Florida Statutes, is created to read:

627.42393 Health insurance policies; changes to prescription drug formularies; requirements.—

(1) At least 60 days before the effective date of any change to a prescription drug formulary during a policy year, an insurer issuing individual or group health insurance policies in this state shall:

(a) Provide general notification of the change in the formulary to current and prospective insureds in a readily accessible format on the insurer's website; and

(b) Notify, electronically or by first-class mail, any insured currently receiving coverage for a prescription drug for which the formulary change modifies coverage and the insured's treating physician, including information on the specific drugs involved and a statement that the submission of a notice of medical necessity by the insured's treating physician to the

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

insurer at least 30 days before the effective date of the formulary change will result in continuation of coverage at the existing level.

(2) The notice provided by the treating physician to the insurer must include a completed one-page form in which the treating physician certifies to the insurer that coverage of the prescription drug for the insured is medically necessary. The treating physician shall submit the notice electronically or by first-class mail. The insurer may provide the treating physician with access to an electronic portal through which the treating physician may electronically file the notice. The commission shall prescribe a form by rule for the notice.

(3) If the treating physician certifies to the insurer, in accordance with subsection (2), that the prescription drug is medically necessary for the insured, the insurer:

(a) Must authorize coverage for the prescribed drug based solely on the treating physician's certification that coverage is medically necessary; and

(b) May not modify the coverage related to the covered drug by:

1. Increasing the out-of-pocket costs for the covered drug;

2. Moving the covered drug to a more restrictive tier; or

3. Denying an insured coverage of the drug for which the insured has been previously approved for coverage by the insurer.

(4) This section does not:

(a) Prohibit the addition of prescription drugs to the list of drugs covered under the policy during the policy year.

(b) Apply to a grandfathered health plan as defined in s.

627.402 or to benefits specified in s. 627.6513(1)-(14).

(c) Alter or amend s. 465.025, which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.

(d) Alter or amend s. 465.0252, which provides conditions under which a pharmacist may dispense a substitute biological product for the prescribed biological product.

(e) Apply to a Medicaid managed care plan under part IV of chapter 409.

Section 2. Paragraph (e) of subsection (5) of section 627.6699, Florida Statutes, is amended to read:

627.6699 Employee Health Care Access Act.—

(5) AVAILABILITY OF COVERAGE.—

(e) All health benefit plans issued under this section must comply with the following conditions:

1. For employers who have fewer than two employees, a late enrollee may be excluded from coverage for no longer than 24 months if he or she was not covered by creditable coverage continually to a date not more than 63 days before the effective date of his or her new coverage.

2. Any requirement used by a small employer carrier in determining whether to provide coverage to a small employer group, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employer groups having the same number of eligible employees applying for coverage or receiving coverage from the small employer carrier, except that a small employer carrier that participates in, administers, or issues health benefits pursuant to s. 381.0406 which do not

include a preexisting condition exclusion may require as a condition of offering such benefits that the employer has had no health insurance coverage for its employees for a period of at least 6 months. A small employer carrier may vary application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

3. In applying minimum participation requirements with respect to a small employer, a small employer carrier shall not consider as an eligible employee employees or dependents who have qualifying existing coverage in an employer-based group insurance plan or an ERISA qualified self-insurance plan in determining whether the applicable percentage of participation is met. However, a small employer carrier may count eligible employees and dependents who have coverage under another health plan that is sponsored by that employer.

4. A small employer carrier shall not increase any requirement for minimum employee participation or any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage, unless the employer size has changed, in which case the small employer carrier may apply the requirements that are applicable to the new group size.

5. If a small employer carrier offers coverage to a small employer, it must offer coverage to all the small employer's eligible employees and their dependents. A small employer carrier may not offer coverage limited to certain persons in a group or to part of a group, except with respect to late enrollees.

6. A small employer carrier may not modify any health benefit plan issued to a small employer with respect to a small employer or any eligible employee or dependent through riders, endorsements, or otherwise to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

7. An initial enrollment period of at least 30 days must be provided. An annual 30-day open enrollment period must be offered to each small employer's eligible employees and their dependents. A small employer carrier must provide special enrollment periods as required by s. 627.65615.

8. A small employer carrier shall comply with s. 627.42393 for any change to a prescription drug formulary.

Section 3. Subsection (36) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(36) Except as provided in paragraphs (a), (b), and (c), a health maintenance organization may increase the copayment for any benefit, or delete, amend, or limit any of the benefits to which a subscriber is entitled under the group contract only, upon written notice to the contract holder at least 45 days in advance of the time of coverage renewal. The health maintenance organization may amend the contract with the contract holder, with such amendment to be effective immediately at the time of coverage renewal. The written notice to the contract holder must ~~shall~~ specifically identify any deletions, amendments, or limitations to any of the benefits provided in the group contract during the current contract period which will be included in the group contract upon renewal. This subsection

does not apply to any increases in benefits. The 45-day notice requirement does ~~shall~~ not apply if benefits are amended, deleted, or limited at the request of the contract holder.

(a) At least 60 days before the effective date of any change to a prescription drug formulary during a contract year, the health maintenance organization shall:

1. Provide general notification of the change in the formulary to current and prospective subscribers in a readily accessible format on the health maintenance organization's website; and

2. Notify, electronically or by first-class mail, any subscriber currently receiving coverage for a prescription drug for which the formulary change modifies coverage and the subscriber's treating physician, including information on the specific drugs involved and a statement that the submission of a notice of medical necessity by the subscriber's treating physician to the health maintenance organization at least 30 days before the effective date of the formulary change will result in continuation of coverage at the existing level.

(b) The notice provided by the treating physician to the insurer must include a completed one-page form in which the treating physician certifies to the health maintenance organization that coverage of the prescription drug for the subscriber is medically necessary. The treating physician shall submit the notice electronically or by first-class mail. The health maintenance organization may provide the treating physician with access to an electronic portal through which the treating physician may electronically file the notice. The commission shall prescribe a form by rule for the notice.

(c) If the treating physician certifies to the health maintenance organization, in accordance with paragraph (b), that the prescription drug is medically necessary for the subscriber, the health maintenance organization:

1. Must authorize coverage for the prescribed drug based solely on the treating physician's certification that coverage is medically necessary; and

2. May not modify the coverage related to the covered drug by:

a. Increasing the out-of-pocket costs for the covered drug;

b. Moving the covered drug to a more restrictive tier; or

c. Denying a subscriber coverage of the drug for which the subscriber has been previously approved for coverage by the health maintenance organization.

(d) Paragraphs (a), (b), and (c) do not:

1. Prohibit the addition of prescription drugs to the list of drugs covered under the contract during the contract year.

2. Apply to a grandfathered health plan as defined in s. 627.402 or to benefits specified in s. 627.6513(1)-(14).

3. Alter or amend s. 465.025, which provides conditions under which a pharmacist may substitute a generically equivalent drug product for a brand name drug product.

4. Alter or amend s. 465.0252, which provides conditions under which a pharmacist may dispense a substitute biological product for the prescribed biological product.

5. Apply to a Medicaid managed care plan under part IV of chapter 409.

Section 4. The Legislature finds that this act fulfills an important state interest.

Section 5. This act shall take effect January 1, 2020.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DEBBIE MAYFIELD
17th District

COMMITTEES:
Education, *Vice Chair*
Governmental Oversight and Accountability, *Vice Chair*
Agriculture
Appropriations Subcommittee on the Environment and Natural Resources
Appropriations Subcommittee on General Government
Judiciary

JOINT COMMITTEE:
Joint Legislative Auditing Committee, *Alternating Chair*

April 9, 2019

The Honorable Lizabeth Benacquisto
Chair, Rules
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 1180

Dear Chair Benacquisto,

I am respectfully requesting Senate Bill 1180, a bill relating to Consumer Protection from Nonmedical Changes to Prescription Drug Formularies, be placed on the agenda for your Rules Committee.

I appreciate your consideration of this bill and I look forward to working with you and the Rules Committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017.

Thank you,

Debbie Mayfield
State Senator, District 17

Cc: Matthew Hunter, Timothy Morris, John Phelps, Cynthia Futch

REPLY TO:
☐ 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025 FAX: (888) 263-3815
☐ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1180
Bill Number (if applicable)

635224
Amendment Barcode (if applicable)

Topic Drug Formularies

Name Brewster Bevis

Job Title Senior VP

Address 516 N Adams
Street

Phone 224-7173

TLH
City *State* *Zip*

Email bbevis@ai.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-19
Meeting Date

SB 1180
Bill Number (if applicable)

635224
Amendment Barcode (if applicable)

Topic Rx Drug Formulary

Name Joy Ryan

Job Title

Address 300 S Duval St, # 410
Street

Phone 425-400

City *State* *Zip*

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Amendment

Representing AHIP & Prime Therapeutics

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Jan 23, 19
Meeting Date

1180
Bill Number (if applicable)

Topic non-medical switching

836224
Amendment Barcode (if applicable)

Name DR. Robert Levin

Job Title Physician - Rheumatology

Address 1831 N Belcher Rd, Ste D2
Street

Clearwater FL 33765
City *State* *Zip*

Phone 727-643-5850

Email rwlevin@msn.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Society of Rheumatology

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/03/19
Meeting Date

1180
Bill Number (if applicable)

Topic Drug Formulary

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 516 N Adams
Street

Phone 224-7173

TLH FL 32301
City *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23 — *Meeting Date*

1180 — *Bill Number (if applicable)*

Topic Prescription Drug Formulary Protections — *Amendment Barcode (if applicable)*

Name Jarrod Fowler

Job Title Director of Health Care Policy

Address 1430 Piedmont Dr. E — *Street*

Phone 850-224-6496

Email jfowler@flmedical.org

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

SB 1180
Bill Number (if applicable)

Topic Nonmedical changes to prescription drug formularies

Amendment Barcode (if applicable)

Name Scott Woods

Job Title Senior Director, State Affairs

Address 825 7th St NW, 9th Floor
Street

Phone 423-316-5376

Washington DC 20004
City *State* *Zip*

Email swoods@pcmanet.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Pharmaceutical Care Management Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1400
INTRODUCER:	Judiciary Committee; Community Affairs Committee; and Senator Albritton
SUBJECT:	Private Property Rights
DATE:	April 22, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	**Fav/CS**
2.	Tulloch	Cibula	JU	**Fav/CS**
3.	Peacock	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1400 prohibits a local government from enforcing an ordinance or regulation requiring a permit, application, notice, fee, or fine for the pruning, trimming, or removal of certain trees on residential property during March 1 through June 1 of the calendar year under specified circumstances, and the bill prohibits a local government from authorizing the removal of specified trees during this time frame. A local government may require a property owner to replant a tree that has been removed in accordance with these provisions. The bill does not apply to mangrove trees.

The bill also adds a provision allowing an electric utility to prune trees and maintain vegetation in the right of way at the request of the adjacent property owner without prior approval from the local government.

Additionally, the bill requires each county property appraiser to post a Property Owner Bill of Rights on its website. Such bill of rights does not create a civil cause of action.

II. Present Situation:

Home Rule

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by

general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[2] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[3]

County governments have authority to prepare and enforce comprehensive plans for the development of the county and provide fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.[4] Municipalities are afforded broad home rule powers with the exception of annexation, merger, exercise of extraterritorial power, or subjects prohibited or preempted by the Federal or State Constitutions, county charter, or statute.[5]

Local Tree Pruning, Trimming and Removal Regulations

Currently, in Florida there are 67 counties[6] and 412 municipalities.[7] Local governments often have tree ordinances that specify the species that must be used in a given area depending on the land use. Some local governments require a permit prior to trimming certain trees. Local governments may also afford certain trees protection because they are considered an important community resource.[8] The terms used to describe such trees may include heritage,[9] historic, landmark, legacy, patriarch,[10] special interest, significant, or specimen[11] trees.

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[1] FLA. CONST. art. VIII, s. 1(f).
[2] FLA. CONST. art. VIII, s. 1(g).
[3] FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.
[4] Section 125.01, F.S.
[5] Section 166.021(3), F.S.
[6] *See* ch. 7, F.S.; *The Local Government Formation Manual 2018-2020*, Appx. B, *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf (last visited Apr. 3, 2019).
[7] Florida League of Cities, *Municipal Directory Odering & Advertising Information*, https://www.flcities.com/resources/municipal-directory/municipal-directory-information (last visited Apr. 3, 2019). *See also The Local Government Formation Manual 2018-2020*, Appx. E, *available at* https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf (last visited Apr. 3, 2019).
[8] *See generally*, American Society of Consulting Arborists, *Tree Ordinances*, *available at* https://www.asca-consultants.org/page/TreeOrdinances (last visited Apr. 3, 2019).
[9] A heritage tree is typically a large, individual tree with unique value, which is considered irreplaceable. The major criteria for heritage tree designation are age, rarity, and size, as well as aesthetic, botanical, ecological, and historical value. *See* Peter A. Coates, *American Perceptions of Immigrant and Invasive Species: Strangers on the Land*, 140 (University of Ca. Press 2006).
[10] A patriarch tree refers to "the oldest member or representative of a group." *See* MERRIAM-WEBSTER DICTIONARY (defining patriarch at 1c(1), noting that "the cypress … is the *patriarch* of native trees, going back to the time of the dinosaur"), *available at* https://www.merriam-webster.com/dictionary/patriarch (last visited Apr. 4, 2019). In Tallahassee, for example, patriarch live oaks are protected, s*ee* Tallahassee Land Dev. Cod. s. 5-83; and a live oak on FSU's campus with a trunk diameter of 72 inches, suggesting it is 160 years old, was deemed a patriarch tree in 2010. *See* FSU Plants, *FSU's Patriarch Oaks* (Aug. 18, 2011), *available at* http://fsuplants.blogspot.com/2011/08/fsus-patriarch-oaks.html (last visited Apr. 4, 2019).
[11] A specimen tree is a tree with any individual trunk that has a DBH (diameter at breast height) of 18 inches or greater (or a circumference of 56.5 inches or greater) when measured at point 4 1/2 feet from the ground at natural grade. In the case of multiple-trunked trees, the DBH shall mean the sum of each trunk's diameter measured at the point 4 ½ feet from where the

For example, in Broward County the removal of any historical tree[12] without first obtaining approval from the Board of County Commissioners is prohibited, as is the removal of any tree without first obtaining a tree removal license from the Environmental Protection and Growth Management Department.[13] Furthermore, municipalities within Broward County are authorized to adopt and enforce their own tree preservation regulations in addition to Broward County's regulation of trees.[14]

Mangrove Trimming

In 1996, the Florida Legislature enacted the 1996 Mangrove Trimming and Preservation Act (MTPA).[15] This law regulates the trimming and alteration of mangroves statewide, with the exception of the Delegated Local Governments of Broward, Hillsborough, Miami-Dade, and Pinellas Counties, the City of Sanibel, and the Town of Jupiter Island.[16]

The heights to which a mangrove tree may be trimmed will depend upon the provisions of the MTPA as well as the species and condition of the tree.[17] Projects that involve alterations, and trimming projects that exceed the allowances of the exemptions and general permits, may be authorized through individual permits in s. 403.9328, F.S.[18] Trimming may be authorized in an Environmental Resource Permit (ERP) along with other ERP activities for the same property. Mangrove impacts associated with and located within the footprint of an ERP authorized activity do not require a separate authorization under the MTPA.[19]

Electric Transmission and Distribution Line Right-of-Way Maintenance

Section 163.3209, F.S., provides that after a right-of-way for an electric transmission or distribution line has been established, a local government may not require any permits or other approvals for vegetation maintenance, tree pruning, or trimming within that right-of-way. This section defines the term "vegetation maintenance and tree pruning or trimming" as the "mowing of vegetation within the right-of-way, and selective removal of tree branches that extend within the right-of-way." This section requires a utility to provide five business days advance notice to a

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tree emerges from the ground at natural grade. The following trees are not considered specimen: Non-native fruit trees that are cultivated or grown for the specific purpose of producing edible fruit, including, but not limited to, mangos, avocados or species of citrus; Non-native species of the genus Ficus; and all multi-trunk palms except Paurotis palm/Everglades palm (Acoelorrhaphe wrightii) and Reclinata palm (Phoenix reclinata), which have a minimum overall height of 15 feet. *See* Miami-Dade County, *Tree Removal or Relocation Permits*, *available* at https://www.miamidade.gov/permits/tree-removal.asp (last visited April 3, 2019).

[12] The Broward County Code of Ordinances defines a "historical tree" as "a particular tree or group of trees which has historical value because of its unique relationship to the history of the region, state, nation or world as designated by the Board [of County Commissioners]." *See* Broward County Code of Ord., ch. 27, Art. XIV, s. 404, *available at* https://library.municode.com/fl/broward_county/codes/code_of_ordinances?nodeId=COBRCOFLVOI (last visited Apr. 3, 2019).

[13] *Id*. at s. 405(a), (b).

[14] *Id* at s. 407(a).

[15] Chapter 95-299, s. 1, LAWS OF FLA. *See* ss. 403.9321-403.9333, F.S.

[16] Florida Department of Environmental Protection, *Mangrove Trimming Guidelines for Homeowners*, "Introduction," 4, *available at* https://floridadep.gov/sites/default/files/Mangrove-Homeowner-Guide-sm_0.pdf (last visited Apr. 3, 2019).

[17] *Id*. at 5 ("Before You Trim").

[18] *Id*.

[19] *Id*. (citing s. 403.9328(5), F.S.).

local government official prior to conducting vegetation maintenance activities within a right-of-way. An exception applies for service restoration, avoidance of imminent vegetation caused outage, or when performed at the request of the property owner adjacent to the right-of-way, provided the owner has approval of the local government if required.[20]

Private Property Guarantees in the Federal and State Constitution

Both the Federal Constitution and State Constitution guarantee that a person's private property may not be taken for public use without reimbursement. The Fifth Amendment to the United States Constitution states that no private property shall "be taken for public use without just compensation." Similarly, the Florida Constitution provides that no private property shall be taken except for a public purpose and that each owner must be fully compensated.[21]

The Bert J. Harris, Jr., Private Property Rights Protection Act

The Legislature enacted the "Bert J. Harris, Jr., Private Property Rights Protection Act" in 1995. The act provides relief to a property owner whose property is inordinately burdened by government regulation. The act is limited in scope and applies only to:

- Real, and not personal, property;
- A property owner and not a leaseholder;
- "As-applied" challenges for specific government actions, not to broad, facial challenges of government regulations; and
- Challenges that are not temporary impacts.[22]

The Legislature recognized that some laws, regulations, and ordinances of the state and its entities could inordinately burden, restrict, or limit private property rights without amounting to a taking[23] under either the State Constitution or the United States Constitution. The Legislature declared that there is "an important state interest in protecting the interests of private property owners from those inordinate burdens." Accordingly, the Legislature created a separate and distinct cause of action for governmental actions that might not rise to the level of taking under the State Constitution or United States Constitution. The Legislature provided a process for private landowners to seek relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity, as applied, unfairly affects real property.[24]

The phrases "inordinate burden" and "inordinately burdened" mean that an action by one or more governmental entities has directly restricted or limited the use of real property to the extent that:

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[20] *Id.*
[21] FLA. CONST. art. X, s. 6.
[22] Thomas Hawkins, *Land Use Law with a Florida Focus*, 233, (Aug. 2018) https://www.dropbox.com/s/3ykseigou178vra/2018%207%2022%20Land%20Use%20with%20a%20Florida%20Focus.pdf?dl=0 (last visited Apr. 22, 2019).
[23] A "taking" is generally understood to mean a government action that deprives an owner of the use or enjoyment of his or her property. A regulatory taking occurs when a government regulation seriously restricts a property owner's rights. BLACK'S LAW DICTIONARY (10th ed. 2014).
[24] Section 70.001(1), F.S.

- The property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole; or
- The property owner is left with existing or vested uses that are unreasonable such that the property owner bears a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.[25]

III. Effect of Proposed Changes:

Section 1 amends s. 163.3209, F.S., to allow an electric utility to maintain vegetation in the right of way at the request of the adjacent property owner *without* prior approval from the local government.

Section 2 creates s. 163.3214, F.S., relating to tree pruning, trimming, or removal on residential property. From March 1 through June 1 of the calendar year, a local government is prohibited from doing either of the following:

- If the property owner has obtained documentation from an arborist certified by the International Society of Arboriculture that the tree is a danger to persons or property and the tree is not a listed endangered species, enforce an ordinance or regulation governing the pruning or trimming of specimen, heritage, or patriarch trees, as defined by local ordinances or regulations, or the pruning, trimming, or removal of other trees on residential property which requires a permit, an application, the provision of notice, a fee, or a fine.
- Authorize the removal of specimen, heritage, or patriarch trees, as defined by local ordinances or regulations.

Additionally, the particular wording of the bill appears to ban local governments from authorizing the removal of specimen, heritage, or patriarch trees for any reason from March 1 through June 1 of a calendar year. However, the intent may have been to preserve the authority of local governments to require property owners to obtain permits before these trees are removed.

The bill defers to the definitions of specimen, heritage, and patriarch trees in local ordinances and regulations. If a local ordinance contains an expansive definition of these types of trees, the effect of the bill may be significantly affected.

The bill does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to the Mangrove Trimming and Preservation Act.[26]

Section 3 creates s. 715.015, F.S., establishing a property owner bill of rights to be posted on the website of each county property appraiser. The purpose of the bill of rights is to identify certain existing rights afforded to property owners. The bill provides several disclaimers concerning the bill of rights:

- It is not comprehensive.

[25] Section 70.001(3)(e)1., F.S. The definition further explains in s. 70.001(3)(e)2., F.S., what the terms do not include with regard to other impacts.
[26] Sections 403.9321-403.9333, F.S.

- It does not create a civil cause of action.

In addition to the foregoing disclaimers, the required language to be posted on county appraiser websites also lists the following disclaimers concerning the bill of rights:
- It does not expand or limit rights or remedies.
- It is not intended to replace legal advice.

The websites must further advise that laws relating to property rights are found in the Florida Constitution, Florida Statutes, local ordinances, and court decisions.

Following the above disclaimers, the bill of rights provides that private property owners generally have the following rights and protections:
- The right to acquire, possess, and protect property.
- The right to use and enjoyment of property.
- The right to exclude others from property.
- The right to dispose of property.
- The right to due process.
- The right to just compensation for property taken for a public purpose.
- The right to relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state unfairly affects real property.

Section 4 provides the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Property owners may save costs associated with permit fees to trim or cut down certain trees.

C. Government Sector Impact:

Local governments may temporarily see a decline in revenues from fines or fees associated with various tree ordinances in effect. In addition, local governments may incur costs associated with establishing a property owner bill of rights and posting the information on the property appraiser's website.

VI. Technical Deficiencies:

On line 110, the bill refers to the "replanting" of trees but it is unlikely that a tree that has been removed would be replanted. Thus, it appears "replanting" should be changed to "replacing."

VII. Related Issues:

The bill prohibits a local government from authorizing the removal of specimen, heritage or patriarch trees from March 1 through June 1 even with a permit.

VIII. Statutes Affected:

This bill substantially amends section 163.3209 of the Florida Statutes.
This bill creates the following sections of the Florida Statutes: 163.3214 and 715.015.

IX. Additional Information:

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

CS/CS by Judiciary on April 8, 2019:
The committee substitute adds the Property Owner Bill of Rights back into the bill.

CS by Community Affairs on April 2, 2019:
The committee substitute:

- Amends s. 163.3209, F.S., to allow an electric utility to maintain vegetation in the right of way at the request of the adjacent property owner without prior approval from the local government.
- Prohibits enforcement of local government ordinances requiring a permit for pruning, trimming and removal of certain trees during a specified time period.

- Prohibits a local government from authorizing the removal of certain trees during a specified time period.
- Authorizes a local government to enforce ordinances or regulations requiring the replanting of trees under certain circumstances.
- Exempts mangrove trees from the bill's application.
- Deletes provisions regarding the Private Property Bill of Rights.

B. Amendments:

None.

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

279584

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/23/2019	.	
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The Committee on Rules (Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete lines 96 - 108

and insert:

(1) A local government may not require a notice, an application, an approval, a permit, a fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the property owner obtains documentation from an arborist certified by the International Society of Arboriculture or a landscape architect licensed in this state which demonstrates that the tree presents a danger to a person or property, is

279584

entangled with an electric line, or is intruding into the clearance distance specified in s. 163.3209.

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

And the title is amended as follows:

Delete lines 7 - 13

and insert:

163.3214, F.S.; prohibiting a local government from requiring a notice, an application, an approval, a permit, a fee, or mitigation before a property owner may take certain actions regarding trees on residential property, under certain circumstances; authorizing a local government to enforce

By the Committees on Judiciary; and Community Affairs; and Senator Albritton

590-04031-19 20191400c2

A bill to be entitled

An act relating to private property rights; amending s. 163.3209, F.S.; deleting a provision that authorizes electric utilities to perform certain right-of-way tree maintenance only if a property owner has received local government approval; creating s. 163.3214, F.S.; prohibiting certain local government ordinances or regulations from requiring a permit, application, notice, fee, or fine for certain activities regarding trees on residential property; prohibiting a local government from authorizing the removal of certain trees during a specified time period; authorizing a local government to enforce ordinances or regulations pertaining to the replanting of trees under certain circumstances; providing applicability; creating s. 715.015, F.S.; establishing a property owner bill of rights; requiring each county property appraiser office to provide information regarding the property owner bill of rights on the appraiser's website; providing that such bill of rights does not provide a cause of action; providing an effective date.

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

Section 1. Section 163.3209, Florida Statutes, is amended to read:

163.3209 Electric transmission and distribution line right-of-way maintenance.—After a right-of-way for any electric

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

590-04031-19 20191400c2

transmission or distribution line has been established and constructed, no local government shall require or apply any permits or other approvals or code provisions for or related to vegetation maintenance and tree pruning or trimming within the established right-of-way. The term "vegetation maintenance and tree pruning or trimming" means the mowing of vegetation within the right-of-way, removal of trees or brush within the right-of-way, and selective removal of tree branches that extend within the right-of-way. The provisions of this section do not include the removal of trees outside the right-of-way, which may be allowed in compliance with applicable local ordinances. Prior to conducting scheduled routine vegetation maintenance and tree pruning or trimming activities within an established right-of-way, the utility shall provide the official designated by the local government with a minimum of 5 business days' advance notice. Such advance notice is not required for vegetation maintenance and tree pruning or trimming required to restore electric service or to avoid an imminent vegetation-caused outage or when performed at the request of the property owner adjacent to the right-of-way~~, provided that the owner has approval of the local government, if needed~~. Upon the request of the local government, the electric utility shall meet with the local government to discuss and submit the utility's vegetation maintenance plan, including the utility's trimming specifications and maintenance practices. Vegetation maintenance and tree pruning or trimming conducted by utilities shall conform to ANSI A300 (Part I)—2001 pruning standards and ANSI Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees, and Cutting Brush—Safety Requirements. Vegetation maintenance

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

and tree pruning or trimming conducted by utilities must be supervised by qualified electric utility personnel or licensed contractors trained to conduct vegetation maintenance and tree trimming or pruning consistent with this section or by Certified Arborists certified by the Certification Program of the International Society of Arboriculture. A local government shall not adopt an ordinance or land development regulation that requires the planting of a tree or other vegetation that will achieve a height greater than 14 feet in an established electric utility right-of-way or intrude from the side closer than the clearance distance specified in Table 2 of ANSI Z133.1-2000 for lines affected by the North American Electric Reliability Council Standard, FAC 003.1 requirement R1.2. This section does not supersede or nullify the terms of specific franchise agreements between an electric utility and a local government and shall not be construed to limit a local government's franchising authority. This section does not supersede local government ordinances or regulations governing planting, pruning, trimming, or removal of specimen trees or historical trees, as defined in a local government's ordinances or regulations, or trees within designated canopied protection areas. This section shall not apply if a local government develops, with input from the utility, and the local government adopts, a written plan specifically for vegetation maintenance, tree pruning, tree removal, and tree trimming by the utility within the local government's established rights-of-way and the plan is not inconsistent with the minimum requirements of the National Electrical Safety Code as adopted by the Public Service Commission; provided, however, such a plan shall not require the

planting of a tree or other vegetation that will achieve a height greater than 14 feet in an established electric right-of-way. Vegetation maintenance costs shall be considered recoverable costs.

Section 2. Section 163.3214, Florida Statutes, is created to read:

163.3214 Tree pruning, trimming, or removal on residential property.—

(1) From March 1 through June 1 of the calendar year, a local government may not do either of the following:

(a) If the property owner has obtained documentation from an arborist certified by the International Society of Arboriculture that the tree is a danger to persons or property and the tree is not a listed endangered species, enforce an ordinance or regulation governing the pruning or trimming of specimen, heritage, or patriarch trees, as defined by local ordinances or regulations, or the pruning, trimming, or removal of other trees on residential property which requires a permit, an application, the provision of notice, a fee, or a fine.

(b) Authorize the removal of specimen, heritage, or patriarch trees, as defined by local ordinances or regulations.

(2) A local government may enforce ordinances or regulations pertaining to the replanting of trees that have been removed in accordance with this section.

(3) This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. 403.9321-403.9333.

Section 3. Section 715.015, Florida Statutes, is created to read:

715.015 Property owner bill of rights.—Each property appraiser office shall provide on its website a property owner bill of rights. The purpose of the bill of rights is to identify certain existing rights afforded to property owners. The bill of rights is not a comprehensive listing. The property owner bill of rights does not create a civil cause of action. The property owner bill of rights must state:

PROPERTY OWNER
BILL OF RIGHTS

This Bill of Rights does not represent all of your rights under Florida law regarding your property and should not be viewed as a comprehensive guide to property rights. This document does not create a civil cause of action and neither expands nor limits any rights or remedies provided under any other law. This document is not intended to replace the need to seek legal advice in matters relating to property law. Laws relating to your rights are found in the Florida Constitution, the Florida Statutes, local ordinances, and court decisions.

As a property owner, you have the following rights and protections:

1. The right to acquire, possess, and protect property.

2. The right to use and enjoyment of property.

3. The right to exclude others from property.

4. The right to dispose of property.

5. The right to due process.

6. The right to just compensation for property taken for a public purpose.

7. The right to relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state unfairly affects real property.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23
Meeting Date

1400
Bill Number (if applicable)

Topic Private Property Rights

Amendment Barcode (if applicable)

Name Dan Peterson

Job Title President

Address PO Box 1875
Street

Phone 407-758-2491

Minneola FL 34755
City *State* *Zip*

Email danpeterson@cpr-fl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Coalition for Property Rights

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1432
INTRODUCER:	Rules Committee; Children, Families, and Elder Affairs Committee; and Senator Baxley
SUBJECT:	Foster Parents
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Fav/CS**
2.	Preston	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1432 creates a new section in the Florida Statutes to establish specified rights for foster parents. The bill provides Legislative intent that foster parents play an integral, indispensable, and vital role of the state's child welfare system and acknowledges the need for foster parents to be active and participating members of this system. As such, the bill requires the Department of Children and Families (DCF or department) and community-based care lead agencies (CBCs) to implement the following policies related to foster parents:

- Providing an explanation of the role of the department and the child's biological family as it relates to the services provided to the child.
- Providing training and support to foster parents.
- Disclosing all relevant information regarding a child and the child's family's background.
- Providing a means for the caregiver to contact the department at all times for the purposes of receiving assistance.
- Allowing a foster parent to refuse a placement or request, with reasonable notice to the department, removal of a child.
- Providing the foster parent with an explanation of any plan concerning the placement of a child in the caregiver's home.
- Allowing the caregiver to communicate with professionals who work with the child.
- Considering the caregiver as a placement option if a child who was formerly placed with the caregiver re-enters out-of-home care.
- Providing the caregiver with a period of respite after reasonable notice to the department.
- Allowing a foster parent to submit factually based written statements to the court as provided by law.

The bill requires the department to provide its mediation policy to foster parents and permits the foster parent to file a petition for mediation if not so informed. The bill requires the department to adopt rules as necessary to implement the Foster Parent Bill of Rights.

The bill has no fiscal impact on the state and has an effective date of July 1, 2019.

II. Present Situation:

The Child Welfare System

The child welfare system is typically defined as a group of services designed to promote the well-being of children by ensuring safety, achieving permanency, and strengthening families to be able to care for their children successfully.[1]The primary responsibility for child welfare services rests with the States. Child welfare systems are complex, vary from state to state and generally:

- Receive and investigate reports of known or suspected child abuse, abandonment, and neglect;
- Provide services to families that need assistance in the protection and care of their children;
- Arrange for children to live with relatives or with foster families when they are not safe at home; and
- Arrange for reunification, adoption, or other permanent family connections in order for children to safely leave foster care.[2]

Privatization of Child Welfare

The Florida Legislature first began the initiative to outsource or privatize the administration of child welfare services in 1996.[3] At that time the legislature required the department to contract with established community-based care (CBC) organizations to establish pilot projects for the provision of foster care and "related services." [4,5]The stated intent of this legislation was to strengthen the support and commitment of communities to their local children; to promote the reunification of families and the care of children and their families; and to realize efficiencies and increased accountability in delivering services to abused, neglected, or abandoned children. In 1998[6], the legislature required the department to privatize the provision of all foster care and related services statewide. The transition was completed in the 2004-20005, fiscal year..

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[1] Child Welfare Information Gateway, *How the Child System Works*, *Available at*: https://www.childwelfare.gov/pubPDFs/cpswork.pdf#page=1&view=Introduction (Last visited April 3, 2019).
[2] *Id*.
[3] Chapter 96-402, L.O.F.
[4] *Id*.
[5] The term "related services" includes, but is not limited to, family preservation, independent living, emergency shelter, residential group care, foster care, therapeutic foster care, intensive residential treatment, foster care supervision, case management, coordination of mental health services, postplacement supervision, permanent foster care, and family reunification.
[6] Chapter 98-180, L.O.F. The department was also required to submit a plan by July 1, 1999, to the Governor and Legislature, explaining how they would implement privatization statewide by January 1, 2003. This implementation date was subsequently extended, then deleted from statute.

As the result of this privatization, responsibilities that are traditionally placed with the state child welfare agency now belong to the community-based lead agencies (CBCs).

Foster Parents and Family Foster Homes

Foster care is care provided to a child in a foster family or boarding home, group home, agency boarding home, or child care institution.[7] A family foster home is defined as a licensed private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs.[8] Foster homes are licensed and inspected regularly.[9]

The department contracts with CBC partner agencies. The community-based lead agencies are responsible for recruiting and training foster families.[10]

To qualify as a potential foster parent, applicants must go through a rigorous interview process, complete a training program, and participate in a home inspection and background check.[11]Foster parents are expected to:

- Provide parenting that consists of a loving commitment to the child and the child's safety
- and wellbeing;
- Provide opportunities to develop the child's interests and skills;
- Care for the child in light of the child's culture, religion, ethnicity, special physical or psychological needs and unique situations;
- Assist the biological parents in improving their ability to care for and protect their children and to provide continuity for the child;
- Assist the child in visitation and other forms of communication with his or her biological family;
- Obtain and maintain records that are important to the child's wellbeing, such as medical records and records of achievements;
- Advocate for children in their care with the child welfare system, the court, and community agencies, such as schools, child care, and health providers;
- Participate fully in the child's medical, psychological, and dental care as they would for their biological child; and
- Support the child's school success by participating in school activities and meetings.[12]

When Florida codified the principles of the Quality Parenting Initiative in 2013, current law now contains requirements for caregivers, the department, the CBCs, and other agency staff.[13]These responsibilities are the same as those required in the bill.

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[7] Section. 39.01(3), F.S

[8] The Department of Children and Families, Community-Based Care, Available at: http://www.myflfamilies.com/service-programs/community-basedcare (last visited April 3, 2019).

[9] *Id*.

[10] Florida Department of Children and Families, Fostering Definitions, Available at: http://www.dcf.state.fl.us/service-programs/fostercare/definitions.shtml (Last visited April 3, 2019).

[11] Section 409.175, F.S.

[12] Florida Department of Children and Families, *Partnership Plan for Children in Out-of-Home Care¸ Available at*: http://centerforchildwelfare.fmhi.usf.edu/kb/OOHPublications/PartnershipPlan.pdf (Last visited April 3, 2019).

[13] Section 409.145, F.S.

Quality Parenting Initiative

The Quality Parenting Initiative (QPI), is an approach to strengthening foster care by focusing on excellent parenting for all children in the child welfare system. It was started in 2008 in Florida, and as of 2018, over 75 jurisdictions in 10 states have adopted the QPI approach.[14]Florida codified the basic tenets of the program in 2013.[15]

In order to achieve well-being, all children need excellent parenting. When parents can't care for their children, the foster parent or relative caregiver must be able to provide the loving, committed, skilled care that the child needs, working with the child welfare system, to ensure children in out-of-home thrive. Both the caregiver's parenting skills and the system's policies and practices should be based on child development research, information and tools. QPI is based on five core principles:

- Excellent parenting is the most important service we can provide to children in out-of-home care. Children need families;
- Child development and trauma research indicates that children need constant, consistent, effective parenting to grow and reach their full potential;
- Each community must define excellent parenting for itself;
- Policy and practice must be changed to align with that definition; and
- Participants in the system are in the best position to recommend and implement that change.[16]

When QPI is successfully implemented it gives caregivers a voice in the child welfare system. They become a part of a team to support children in their care. Caregivers receive the support and training they need to work with children and families, understand what is expected of them, and know what to expect from the system. Systems are then better able to select and retain enough excellent caregivers to meet the needs of each child for a home and family. When these changes are accomplished, outcomes for children, youth and families will improve.[17]

III. Effect of Proposed Changes:

Section 1 creates s. 39.4087, F.S., relating to rights of foster parents, department requirements and background screenings during an emergency, to create a new section in the Florida Statutes to establish specified rights for foster parents. The bill also provides roles and responsibilities required of the department and CBCs related to foster parents. Those requirements include, but are not limited to:

- Providing an explanation of the role of the department and the child's biological family as it relates to the services provided to the child.
- Providing training and support to foster parents.
- Disclosing all relevant information regarding a child and the child's family's background.

[14] Youth Law Center, *What is QPI*" *Available at*: http://www.qpi4kids.org/pages/whatIsQPI.html (Last visited April 4, 2019).
[15] Chapter 2013-178, L.O.F.
[16] Youth Law Center, What is QPI" Available at: http://www.qpi4kids.org/pages/whatIsQPI.html (Last visited April 4, 2019).
[17] *Id*.

- Providing a means for the caregiver to contact the department at all times for the purposes of receiving assistance.
- Allowing a foster parent to refuse a placement or request, with reasonable notice to the department, removal of a child.
- Providing the foster parent with an explanation of any plan concerning the placement of a child in the caregiver's home.
- Considering the caregiver as a placement option if a child who was formerly placed with the caregiver re-enters out-of-home care.
- Providing the caregiver with a period of respite after reasonable notice to the department.
- Allowing a foster parent to submit factually based written statements to the court as provided by law.

The bill requires the department to provide its mediation policy to foster parents. The bill requires the department to adopt rules as necessary to implement the Foster Parent Bill of Rights.

Section 2 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates s. 39.4087 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on April 23, 2019:

- Removes the right that requires giving at least seven days' notice of any meeting or court hearings related to a child in the caregiver's care and allowing the caregiver to attend at the discretion of the court.
- Removes the right that requires providing information regarding the child's progress after a child leaves foster care to the extent the department has the information.

CS by Children, Families, and Elder Affairs on April 8, 2019:

- Clarifies that the responsibilities for implementing the rights of foster parents are the responsibility of both the department and the CBCs.
- Removes provisions in some of the rights of foster parents to conform with current laws and practice.
- Removes the requirement that all child abuse, abandonment and neglect investigations involving a foster parent be conducted pursuant to part III of chapter 39, F.S., relating to child protective investigations.
- Removes the provision that requires a Level 2 background screening for adults in foster home during an emergency.
- Requires the department to provide a foster parent with information regarding the department's mediation policy and permits a foster parent to file for mediation if not so informed.
- Requires the department to establish rules to implement the Foster Parent Bill of Rights.

B. Amendments:

None.

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

315452

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2019	.	
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The Committee on Rules (Baxley) recommended the following:

Senate Amendment

Delete lines 94 - 102.

By the Committee on Children, Families, and Elder Affairs; and Senator Baxley

586-04038-19 20191432c1

A bill to be entitled

An act relating to foster parents; creating s. 39.4087, F.S.; providing a short title; providing legislative intent; creating a bill of rights for foster parents; providing for mediation; requiring the Department of Children and Families to adopt rules; providing an effective date.

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

Section 1. Section 39.4087, Florida Statutes, is created to read:

39.4087 Bill of rights for foster parents.—

(1) SHORT TITLE.—This act may be cited as the "Foster Parent Bill of Rights."

(2) LEGISLATIVE INTENT.—The Legislature finds that foster parents providing care for children who are in the custody of the department play an integral, indispensable, and vital role in the state's effort to care for dependent children displaced from their homes. The Legislature further finds that it is in the best interest of the state's child welfare system to acknowledge foster parents as active and participating members of this system and to support them through a bill of rights for foster parents who care for children in the custody of the department through direct approval and placement by the department.

(3) BILL OF RIGHTS.—To the extent not otherwise prohibited by general law, the department shall implement each of the following policies. With respect to the placement of any foster

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

586-04038-19 20191432c1

child with a foster parent that is contracted directly with the department, or through an agency that contracts with the department to place children in foster care:

(a) The department shall treat a foster parent with dignity, respect, and trust, and shall consider a foster parent as a member of the professional team caring for foster children.

(b) The department shall provide a foster parent with a clear explanation and understanding of the role of the department and the role of the members of the child's birth family.

(c) A foster parent may continue his or her own family values and routines.

(d) A foster parent shall be provided training and support for the purposes of improving skills in providing daily care, meeting the special needs of the child in foster care, and having a better understanding of the rights and responsibilities of the foster parent.

(e) Before the placement of a child in foster care, the department shall inform the foster parent of issues relative to the child that may jeopardize the health and safety of the foster family or alter the manner in which foster care should be administered.

(f) The department shall fully disclose to the foster parent any information regarding past or pending charges of delinquency as a juvenile; criminal charges, if charged as an adult; and previous hospitalizations, whether due to mental or physical issues, of the foster child.

(g) The department shall provide a means by which the foster parent can contact the department 24 hours a day, 7 days

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

a week for the purpose of receiving assistance.

(h) The department shall provide the foster parent timely and adequate financial reimbursement.

(i) The department shall provide a clear, written explanation of the plan concerning the placement of a child in the foster parent's home. For emergency placements, the department shall provide such explanation as soon as reasonably possible.

(j) Before placement in a foster home, unless there is the need for an emergency placement, the department shall allow the foster parent to review written information concerning the child and allow the foster parent to assist in determining if the prospective foster family is the proper placement for the child.

(k) The department shall allow the foster parent to refuse placement in his or her home, or to request, upon reasonable notice to the department, the removal of a child from his or her home for good reason, without threat of reprisal, unless otherwise stipulated by contract or policy.

(l) The department shall inform a foster parent of decisions made by the court or the licensed child-placing agency concerning the child.

(m) The department shall allow the foster parent to communicate with any person who works directly with the foster child, such as therapists, physicians, and teachers, with written consent of the person.

(n) Unless otherwise prohibited by law, a foster parent has the right to full disclosure of all medical, psychological, and behavioral issues of the child in his or her care. The department shall provide all information regarding the child and

the child's family background and health history in a timely manner to the foster parent.

(o) The department shall provide timely written notification of changes to the case plan or termination of the placement, and the reasons for the changes or termination of placement.

(p) The department shall notify the foster parent of all court hearings and any meeting pertaining to the child in his or her care at least 7 days before such hearing or meeting. The foster parent is permitted to attend such hearings or meetings at the discretion of the court.

(q) The department shall provide, upon request by the foster parent, information regarding the child's progress after a child leaves foster care, to the extent the department is in possession of such information at the time of the request.

(r) The department shall take into consideration whether a foster family is an appropriate permanent placement for the child, if the child has been in the foster family's care for 12 months or longer.

(s) The department shall consider a former foster family as a placement option when a foster child reenters foster care.

(t) A foster parent may take a period of respite where the department may not place foster children within the home upon reasonable notice to the department.

(u) A foster parent may submit factually based written statements relevant to the case to the court, as provided by law.

(4) MEDIATION.—The department shall provide a foster parent with information regarding the department's mediation policy. A

foster parent may file for mediation upon a violation of this section.

(5) RULES.—The department shall adopt rules to implement this section.

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

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

THE FLORIDA SENATE

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Education
Education
Finance and Tax
Health Policy
Judiciary

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR DENNIS BAXLEY
12th District

April 10, 2019

The Honorable Senator Lizbeth Benacquisto
400 Senate Office Building
Tallahassee, FL 32399

Dear Senator Benacquisto,

I would like to request CS/SB 1432 Foster Parents be heard in the next Rules Committee meeting.

This bill provides rights to foster parents, giving them that legal voice needed in order to advocate for the child's best interest. As the caregivers who have firsthand knowledge of the child due to taking care of their needs 24/7 with things such as doctor appointments, dental appointments, therapy, school/daycare, supervising visitations, and co-parenting.

Currently there are no laws in place that allow a judge to receive documentation and recommendations from foster parents to utilize in making the best informed decision for permanency of the child, this bill would allow them to submit factually based written statements to court, as provided by law.

This bill is a foster parent's bill of rights, giving them access to a child's information, participating in what is best for that child and making sure that they receive the best care possible.

I appreciate your favorable consideration.

Onward & Upward,

Senator Dennis Baxley
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1616
INTRODUCER:	Senator Baxley
SUBJECT:	Local Government Financial Reporting
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Yeatman	CA	**Favorable**
2.	Ponder	McVaney	GO	**Favorable**
3.	Toman	Phelps	RC	**Favorable**

I. Summary:

SB 1616 specifies periods for which budget documents must appear on county and municipal websites and requires annual reporting of final budget and economic status information to the Office Economic and Demographic Research. Information to report includes government spending and debt per resident, median income, average local government employee salaries, percentage of budget spent on employee salaries and benefits, and the number of taxing districts within the local government's jurisdiction. Annual reporting of information must begin on October 15, 2019.

The bill takes effect upon becoming a law.

II. Present Situation:

County Budget Systems and Information

Chapter 129, F.S., establishes a budget system that controls the finances of the boards of county commissioners of Florida counties. Pursuant to s. 129.01, F.S., each county is required to prepare, approve, adopt, and execute an annual budget each fiscal year. The budget must show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit.[1] The budget is approved by the board of county commissioners and must be balanced so that the total of the estimated receipts, including balances brought forward, equals the total of the appropriations and reserves.[2] Notwithstanding other provisions of law, the budgets of all county officers must be in sufficient detail and contain

[1] Section 129.01(1), F.S. The level of detail for the budget must meet level of detail requirements for annual financial reports under s. 218.32, F.S.

[2] Section 129.01(2), F.S.

such information as the board of county commissioners may require in furtherance of their powers and responsibilities.[3]

Preparation and Adoption of County Budgets

On or before June 1 of each year, the sheriff, the clerk of the circuit court and county comptroller, the tax collector, and the supervisor of elections each submit to the board of county commissioners a tentative budget for their respective offices for the ensuing fiscal year.[4] Upon receipt of the tentative budgets and any revisions, the board prepares a summary of the adopted tentative budgets.[5] Public hearings are held to explain tentative and final budgets and to entertain community requests and complaints prior to budget adoption.[6] The tentative budget must be posted on the county's official website at least two days before a public hearing. The final budget must be posted on the website within 30 days after adoption. The tentative budgets, adopted tentative budgets, and final budgets are filed in the office of the county auditor as a public record.

Municipal Budget Requirements

The preparation, adoption, and website posting of municipal budgets follows a similar process to that of counties. Section 166.241(2), F.S., provides that each municipality must annually adopt a budget by ordinance or resolution unless the municipality has a charter that specifies another method for adoption. The funds available from taxation and other sources must equal the total appropriations for expenditures and reserves.[7] Officers of a municipal government may not expend funds except according to the budgeted appropriations. The tentative budget must be posted on the municipality's official website at least two days before a public hearing.[8] The final budget must be posted on the website within 30 days after adoption.[9]

Local Government Financial Reporting

Florida Statutes provide a number of local government financial reporting requirements including:

- Section 29.0085, F.S., requires each county to annually submit to the State Chief Financial Officer (CFO) a statement of revenues and expenditures in the form and manner prescribed by the CFO. By January 31 of each year, each county must submit to the CFO a statement of compliance from its independent certified public accountant engaged to conduct its annual financial audit indicating that the certified statement of expenditures was in accordance with state law.

[3] Section 129.021, F.S. *See* ss. 125.01(1)(q), (r), and (v), and (6) and 129.01(2)(b), F.S., for more on these county powers and responsibilities.
[4] Section 129.03(2), F.S. Section 195.087(1) F.S., outlines the budget process for property appraisers in the state.
[5] Section 129.03(3)(b), F.S.
[6] Section 129.03(3)(c), F.S., also outlines public hearing practices and subsequent budget website posting and public record requirements.
[7] Section 166.241(2), F.S.
[8] Section 166.241 (3), F.S.
[9] *Id.* 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.

- Section 218.32(1), F.S., requires local governmental entities to submit to the Department of Financial Services (DFS) an annual financial report (AFR) and, if the local governmental entities meet the audit threshold specified in state law, a copy of their audit report. Each local governmental entity's website must provide a link to the DFS website to view the entity's submitted AFRs.[10]
- Section 218.32(2), F.S., requires the DFS to annually file, by December 1, a verified report with certain statutorily specified entities[11] showing the total revenues, expenditures, and outstanding long-term debt of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation entity that is required to submit an AFR.
- Section 218.39, F.S., requires an annual financial audit of accounts and records be completed within nine months after the end of the fiscal year[12] for counties, district school boards, charter schools and charter technical career centers, and certain municipalities and special districts.

III. Effect of Proposed Changes:

Section 1 amends s. 129.03, F.S., to require that a county's tentative budget must remain posted on the county's website for 45 days and the final budget must remain posted on the website for two years.

In addition, by October 15, 2019, and annually thereafter, the county budget officer must electronically submit the following final budget and economic status information to the Office of Economic and Demographic Research (EDR):
- Government spending per resident for at least the previous five years;
- Government debt per resident for at least the previous five years;
- Median income within the county;
- Average county employee salary;
- Percent of budget spent on salaries and benefits for county employees; and
- Number of special taxing districts within the county.

Section 2 amends s. 166.241, F.S., to require that a municipality's tentative budget must remain posted on the municipality's website for 45 days and the final budget must remain posted on the website for two years.

In addition, by October 15, 2019, and annually thereafter, the municipal budget officer must electronically submit the following final budget and economic status information to the EDR:
- Government spending per resident for at least the previous five years;
- Government debt per resident for at least the previous five years;
- Median income within the municipality;

[10] Section 218.32(g), F.S. If the local governmental entity does not have an official website, the county government's website must provide the required link for the local governmental entity.
[11] These entities are the Governor, the Legislature, the Auditor General, and the Special District Accountability Program of the Department of Economic Opportunity.
[12] Section 218.33, F.S., provides that each local governmental entity shall begin its fiscal year on October 1 of each year and end it on September 30.

- Average municipal employee salary;
- Percent of budget spent on salaries and benefits for municipal employees; and
- Number of special taxing districts within the municipality.

If the municipality amends the budget, the bill requires that the adopted amendment remain posed on the municipality's website for at least 2 years.

Section 3 creates an undesignated section of law requiring the EDR, by July 15, 2019, to establish the format and forms for use by counties and municipalities to submit information required by the bill.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Subsection (a) of section 18 of the Florida Constitution, provides that cities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

The bill requires cities and counties to incur costs related to the collection, reporting and submission of information to EDR. 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. [13,14,15]

If such costs were determined to exceed $2 million, paragraph (a) of section 18 would require the bill to contain a finding of important state interest and meet one of the exceptions specified in that paragraph (e.g., provision of funding or a funding mechanism, or enactment by vote of two-thirds of the membership of each house).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[13] FLA. CONST. art. VII, s. 18(d).

[14] 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).

[15] 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).

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:

Counties, municipalities, and the EDR may incur costs related to the collection, reporting, and formatting of the bill's required information gathering.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 129.03 and 166.241.

This bill creates an undesignated section of law.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Baxley

12-01393-19 20191616__

A bill to be entitled

An act relating to local government financial reporting; amending ss. 129.03 and 166.241, F.S.; requiring county and municipal budget officers, respectively, to submit certain information to the Office of Economic and Demographic Research within a specified timeframe; requiring adopted budget amendments and final budgets to remain posted on each entity's official website for a specified period of time; requiring the Office of Economic and Demographic Research to create a form for certain purposes by a specified date; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 129.03, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

129.03 Preparation and adoption of budget.—

(3) The county budget officer, after tentatively ascertaining the proposed fiscal policies of the board for the next fiscal year, shall prepare and present to the board a tentative budget for the next fiscal year for each of the funds provided in this chapter, including all estimated receipts, taxes to be levied, and balances expected to be brought forward and all estimated expenditures, reserves, and balances to be carried over at the end of the year.

(c) The board shall hold public hearings to adopt tentative and final budgets pursuant to s. 200.065. The hearings shall be

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12-01393-19 20191616__

primarily for the purpose of hearing requests and complaints from the public regarding the budgets and the proposed tax levies and for explaining the budget and any proposed or adopted amendments. The tentative budget must be posted on the county's official website at least 2 days before the public hearing to consider such budget and must remain on the website for at least 45 days. The final budget must be posted on the website within 30 days after adoption and must remain on the website for at least 2 years. The tentative budgets, adopted tentative budgets, and final budgets shall be filed in the office of the county auditor as a public record. Sufficient reference in words and figures to identify the particular transactions must ~~shall~~ be made in the minutes of the board to record its actions with reference to the budgets.

(d) By October 15, 2019, and each October 15 annually thereafter, the county budget officer shall electronically submit the following information regarding the final budget and the county's economic status to the Office of Economic and Demographic Research in the format specified by the office:

1. Government spending per resident, including, at a minimum, the spending per resident for the previous 5 fiscal years.

2. Government debt per resident, including, at a minimum, the debt per resident for the previous 5 fiscal years.

3. Median income within the county.

4. The average county employee salary.

5. Percent of budget spent on salaries and benefits for county employees.

6. Number of special taxing districts, wholly or partially,

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

within the county.

Section 2. Present subsections (4) and (5) of section 166.241, Florida Statutes, are redesignated as subsections (5) and (6), respectively, subsection (3) and present subsection (5) are amended, and a new subsection (4) is added to that section, 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.

(4) Beginning October 15, 2019, and each October 15 thereafter, the municipal budget officer shall electronically submit the following information regarding the final budget and the municipality's economic status to the Office of Economic and Demographic Research in the format specified by the office:

(a) Government spending per resident, including, at a minimum, the spending per resident for the previous 5 fiscal years.

(b) Government debt per resident, including, at a minimum,

the debt per resident for the previous 5 fiscal years.

(c) Average municipal employee salary.

(d) Median income within the municipality.

(e) Number of special taxing districts, wholly or partially, within the municipality.

(f) Percent of budget spent on salaries and benefits for municipal employees.

(6) ~~(5)~~ If the governing body of a municipality amends the budget pursuant to paragraph (5)(c) ~~(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.

Section 3. By July 15, 2019, the Office of Economic and Demographic Research shall establish the format and forms for use by counties and municipalities for purposes of submitting the information required by this act.

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

THE FLORIDA SENATE

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Education
Education
Finance and Tax
Health Policy
Judiciary

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR DENNIS BAXLEY
12th District

April 10, 2019

The Honorable Senator Lizbeth Benacquisto
400 Senate Office Building
Tallahassee, FL 32399

Dear Senator Benacquisto,

I would like to request SB 1616 Local Government Financial Reporting be heard in the next Rules Committee meeting.

This bill requires counties and municipalities to post their annual budgets to their respective websites for at least two years and tentative budgets to their websites for at least 45 days.

The bill also requires each county and municipal budget officer beginning October 15, 2019, to file an annual report to the Office of Economic and Demographic Research (EDR), in a format and on forms prescribed by EDR, including information concerning:

> Government spending per resident, including the rate for the five preceding fiscal years;
> Government debt per resident, including the rate for the five preceding fiscal years;
> Median income within the county or municipality;
> Average county or municipal employee salary;
> Percent of the entity's budget spent on salaries and benefits for the entity's employees; and
> Number of special taxing districts that are located wholly or partially within the county or municipality.

The bill requires EDR to develop the format and forms for reporting the information by July 15, 2019.

I appreciate your favorable consideration.

Onward & Upward,

Dennis K Baxley

Senator Dennis Baxley
Senate District 12

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

SB 1616
Bill Number (if applicable)

Topic Local Government Financial Reporting

Amendment Barcode (if applicable)

Name Demetrius Minor

Job Title Director of Coalitions

Address _____ Phone 727-270-1407
Street

_____ Email dminor@afphq.org
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 7066
INTRODUCER:	Rules Committee and Ethics and Elections Committee
SUBJECT:	Election Administration
DATE:	April 23, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	**EE Submitted as Committee Bill**
2.	Fox	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7066 is an omnibus election administration measure that makes extensive substantive changes to the Florida Election Code:

- **Voting Systems/disability voting[1]:** Incorporates CS/CS/SB 268: mandating that voters with disabilities cast a ballot on voting systems that produce a voter verifiable paper output (VVPO) for canvassing and recount purposes; and, authorizing the general use of such VVPO touchscreen systems by all voters, not just those with disabilities.
- **Voting Systems/sorting and counting ballots:** Prohibits voting systems that cannot simultaneously count and sort ballot overvotes and undervotes in multiple races (Palm Beach County's system).
- **Primary Election Day[2]:** Moves the primary election back from 10 to 11 weeks before the general election, to allow more time for overseas general election ballots.
- **Vote-by-Mail (VBM) Ballots/deadlines & cure[3]:** Extends the cure deadline for defective VBM ballot signatures from 5 p.m. on the day *before* the election to 5 p.m. on the 2nd day *after* the election; modifies the ballot-envelope voter's certificate to request additional contact information; creates additional phone and electronic notice requirements, to conform.
- **Provisional Ballots/deadlines & cure:** Creates a provisional ballot signature cure process that mirrors the revised VBM signature cure process; provides for cure through 5 p.m. on the

[1] Florida State Association of Supervisors of Elections 2019 Legislative Package, #1 TOP PRIORITY, available at https://www.myfloridaelections.com/portals/fsase/Documents/Public%20Policy/2019_Session_Priorities.pdf (last accessed April 1, 2019)[hereinafter, FSASE Priorities].
[2] *Id.* at #9 (partial).
[3] *Id.* at #16 (similar; extend deadline for curing defective VBM issues to *5pm on Election Night*).

2nd day *after* an election; modifies the ballot-envelope voter's certificate to request additional contact information; creates additional phone and electronic notice requirements, to conform.

- **VBM Ballots/request and mail-out deadlines[4]:** Moves the last day for voters to request VBM ballots from six to 10 days before an election, and prohibits supervisors of elections (supervisors) from mailing out such ballots less than eight days prior to the election (currently four days); allows voter designees to physically pick-up VBM ballots for electors beginning 9 days before an election instead of the current five days, to conform.[5]
- **VBM Ballots/domestic mailing deadlines[6]:** Allows supervisors to mail domestic VBM ballots between 40 and 33 days before an election (currently 35 to 28 days prior).
- **VBM Ballots/drop-off locations[7]:** Allows a voter to drop off his or her VBM ballot at a secure drop box located solely at each early voting location and the supervisor's main or branch office.
- **VBM Ballots/start of canvassing period[8]:** Allows canvassing of VBM ballots to start one week earlier, at 22 days before an election rather than 15 days before the election.
- **VBM Ballots/duplication:** Permits physically-present candidate and political party/political committee officials, and/or their designees, to observe duplication of VBM ballots.
- **Voter Signature Updates/deadline[9]:** Moves the deadline for a voter to update his or her signature for purposes of validating a VBM ballot from the beginning of the VBM canvassing period to when the VBM ballot is received.
- **Voter Signature Updates/cure affidavits[10]:** Creates a process to use valid provisional and VBM ballot cure affidavits to update voter signatures immediately; provides for post-election notice to electors whose ballots are invalidated due to a signature discrepancy.
- **Polls/no-solicitation zone:** Expands the no-solicitation zone around polling places/rooms and early voting sites from 100 feet to 150 feet.
- **Polls/photographs:** Allows a voter to photograph his or her ballot in a polling place.
- **Election Results/precinct-level reporting[11]:** Prohibits precinct-level results by ballot type if 30 or fewer votes are cast rather than 10, to ensure voter anonymity.
- **Ballot Design/uniformity:** Provides ballot uniformity, requiring ballot instructions either be centered across the top of the ballot or in the leftmost column as long as there are no individual races below the column instructions, in most cases; requiring all vote targets to be ovals.
- **Ballot Design/Lt. Gov. designation[12]:** Removes "not yet designated" language on primary ballot for the joint Gov./Lt. Gov. ticket if a running mate has not been selected.

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[4] *Id.* at #13 (move last day to request VBM ballots to 10 days before an election, and prohibit mailing VBM ballots after the 8th day before an election).
[5] Conforming change supported by FSASE.
[6] FSASE Priorities #10 (similar; allow flexibility to mail domestic VBM ballots not later than 28 days before an election).
[7] Though not formally adopted as an FSASE Legislative Priority, Senate staff is aware of individual supervisors who currently employ VBM drop boxes, notwithstanding a binding directive from the Secretary of State prohibiting the practice. Secretary of State, Directive 2013-01—Return of Absentee Ballots (Nov. 25, 2013), available at https://dos.myflorida.com/media/693333/sos_directive_2013-01.pdf (last accessed Apr. 1, 2019). A number of Senate bills have been filed in recent years to authorize VBM drop boxes at early voting sites. See SB 810 (2018); SB 726 (2017).
[8] FSASE Priorities #11 (allow canvassing of VBM ballots 22 days prior to the election).
[9] *Id.* at #15 (similar; remove deadline to update signature prior to start of canvassing board).
[10] *Id.* at #14 (use signatures on cure affidavits to update voter signatures of record).
[11] Though not formally adopted as an FSASE Legislative Priority, individual supervisors contacted Senate Ethics and Elections staff last year to discuss this issue, resulting, for example, in the filing of SB 1582 (2018).
[12] FSASE Legislative Priorities #5.

- **Ballots/security:** Requires the Department of State (DOS) rule regarding minimum security standards to address in detail chain of custody of ballots, transport of ballots, and ballot security.
- **Ballots/ballot-on-demand technology:** Allows supervisors to use ballot-on-demand printing systems at polling places on election day, not just at early voting sites.
- **Ballots/sample ballot publication[13]:** Allows a supervisor to forego publication of a sample ballot in a newspaper of general circulation if the supervisor e-mails or mails every registered voter a sample ballot at least seven days before an election.
- **County Canvassing Boards (CCBs):** Mandates a number of meeting notice content and publication requirements, along with measures to make CCB personnel more easily identifiable by requiring I.D. badges.
- **Election Code Violations/supervisors:** Prohibits a supervisor from receiving a special qualification salary for a period of 24 months after being found to have willfully violated the Florida Election Code.
- **Election Contests:** Authorizes courts reviewing the validity of voter signatures in election contests to consider the signature on VBM/provisional ballot voter certificates and cure affidavits, along with voter ID submitted therewith, to conform.

Except for some of the voting systems disability provisions incorporated from CS/CS/SB 268 (2019), which take effect on January 1, 2020, the bill takes effect July 1, 2019.

II. Present Situation:

The 2018 General Election was, to put it mildly, ***extraordinary***: three (3) simultaneous, statewide election recounts with razor-thin margins, two requiring a manual recount. The state had never even seen *one* statewide recount before. Not to mention that certain counties had other legislative and local recounts to sort out, too. By most objective measures, however, Florida's post-2000 recount reforms performed admirably.

A November 2018 *FloridaToday* article, published while the manual recount was still in progress, provides some meaningful context for a discussion of the bill's proposed clean-up measures:

> New state laws written after 2000 set uniform statewide standards for how and when to conduct recounts. That remedied most of the issues that 2000's court battles focused on. …
>
> *In the end, the process worked largely as it was supposed to*, though with some notable glitches. … [And] a manual review of ballots showing no or too many votes was *proceeding without drama*. …
>
> Susan MacManus, a professor at the University of South Florida who became "the world's most quoted political scientist" *during the 2000 recount, said the difference between the two was "night and day," despite what casual observers might think*. …

[13] FSASE Priorities #7 (eliminate duplicate publication requirement for sample ballots).

> But she also said the drama of the last week and a half still exposed some weaknesses in how we conduct elections. *She also notes similar or worse problems could have easily happened in just about any other state, but came to light here because Florida is the one state in the union that regularly has whisker-thin margins in statewide elections. …*
>
> "We fixed things and other states followed," MacManus said of the changes made following the 2000 election. "And this time around we will probably fix things and other states will follow."[14]

(emphasis added).

Given the extensive number of issues in the bill, a further discussion of the *Present Situation* is included within each specific issue contained in Section **III., Effect of Proposed Changes**, below.

III. Effect of Proposed Changes:

Voting Systems/disability voting

Present Situation

The Department of State's Division of Elections (Division)[15] provides administrative support to the Secretary of State,[16] Florida's Chief Election Officer,[17] to ensure that Florida has fair and accurate elections.[18] 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,[19] 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.[20] A "voter

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[14] John McCarthy, FloridaToday, "Florida Recount: Things Smoother Than in 2000, But Fixes Needed; Gillum Ends Campaign" (November 17, 2018), available at https://www.floridatoday.com/story/news/politics/elections/2018/11/17/florida-recount-some-fixes-still-needed-florida-elections/2024542002/ (last accessed Apr. 1, 2019).
[15] Section 20.10(2)(a), F.S.
[16] 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.
[17] Section 97.012, F.S. *See also* s. 97.035, F.S.
[18] *See* Department of State, Division of Elections, About Us, *available at* https://dos.myflorida.com/elections/about-us/ (last visited on Feb. 14, 2019).
[19] *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.
[20] Section 97.021(45), F.S.

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.[21]

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.[22] 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.[23] At least one piece of accessible voting equipment must be available at each precinct,[24] 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,[25] 2016,[26] and 2020[27]), to allow election 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.[28,29] 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.[30]

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

- ES&S AutoMARK[31] (22 counties);
- Dominion ImageCast Evolution[32] (16 counties); and

[21] Section 97.021(41), F.S.
[22] Section 101.56075(1), F.S.
[23] Section 101.56075(2), F.S.
[24] Section 101.56062(2), F.S.
[25] Ch. 2007-30, s.6, LAWS OF FLA. (codified at s. 101.56075(3), F.S. [2007]).
[26] Ch. 2010-167, s.5, LAWS OF FLA. (codified at s. 101.56075(3), F.S.[2010]).
[27] Ch. 2013-57, s.9, LAWS OF FLA. (codified at s. 101.56075(3), F.S. (current).
[28] *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).
[29] 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).
[30] DOS, *2019 Voting Systems*.
[31] 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).
[32] 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

- ES&S ExpressVote[33] (25 counties).

Generally, these systems "mark" a scannable paper ballot — a voter-verifiable paper trail that can be used for canvassing and recount purposes.[34] 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.[35] 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 scanner; the ImageCast Evolution system automatically deposits the optical-scan ballot into the ballot box for the voter.

Effect of the Bill

The bill revises 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.

The bill 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.

This change effectively puts the ExpressVote ballot card on a par with the more familiar optical scan ballot for purposes of canvassing and recounts. It will potentially 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.

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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).

[33] 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).

[34] 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.

[35] Voters can return to a contest selection *for any reason*, not just because they left a race blank, or undervoted, and change a selection.

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.

Finally, the bill revises 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.

Voting Systems/sorting and counting ballots

Present Situation

The Florida Election Reform Act of 2001, enacted in direct response to the 2000 U.S. presidential recount, completely revamped Florida's voting systems. Among other major changes (i.e., the elimination of hand-count, lever machine, and punch card ballot systems), the requirements with respect to manual recounts included:

> …(a) Any hardware or software used to identify and sort overvotes and undervotes for a given race or ballot measure must be certified by the Department of State as part of the voting system pursuant to s. 101.015. Any such hardware or software must be capable of simultaneously counting votes.
> …
> (c) Overvotes and undervotes shall be identified and sorted while recounting ballots pursuant to s. 102.141, if the hardware or software for this purpose has been certified or the department's rules so provide.[36]

Note that there is NO requirement that the system be able to count and sort *multiple races* simultaneously, thereby allowing the processing of multiple recounts at the same time. Notwithstanding, by the 2018 election cycle every county had voluntarily upgraded its' voting system to provide for this capability — except for Palm Beach County.

Effect of the Bill

The bill updates legacy language from the 2001 Election Reform Act to prohibit voting systems that cannot *simultaneously* count and sort overvotes and undervotes in *multiple races*. This change effectively de-certifies Palm Beach County's legacy voting system used in the 2018 elections, notwithstanding that the County is already in the process of replacing that system for the 2020 election cycle.[37]

[36] Chapter 2001-40, s. 42, LAWS OF FLA. (currently codified at s. 102.166, F.S.[2018]).
[37] 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 Feb. 6, 2019).

Vote-by-Mail (VBM) Ballots[38]

Present Situation

Florida allows any voter to vote by requesting a vote-by-mail (VBM) ballot from his or her supervisor of elections (supervisor), completing it and returning it to his or her supervisor. A voter can request and vote a VBM ballot without offering any excuse or reason for doing so.[39] A supervisor must accept a request made by the voter for a VBM ballot in person or in writing[40] and may accept a telephonic request from the voter.[41] A member of the voter's immediate family[42] or his or her legal guardian can also request a VBM ballot on behalf of the voter.[43] Once a voter has requested a VBM ballot, the supervisor must notify the voter of the free access system for determining the status of his or her VBM ballot.[44]

The supervisor must, for each VBM request received, record the date the request was made, the date the VBM ballot was delivered to the voter, the date the VBM ballot was received by the supervisor, and the absence of the voter's signature on the voter's certificate, if applicable.[45] The supervisor must provide the information to the Division of Elections each day beginning 60 days before the primary election until 15 days after the general election.[46] The information is confidential and exempt from public records requirements except it must be provided to the voter requesting the VBM ballot, a CCB, an election official, a political party or official thereof, a candidate, and registered political committees for political purposes.[47]

If the supervisor receives the request for a VBM ballot from a domestic voter prior to 35 days before the election, the supervisor must mail the VBM ballot to the voter between 35 days and 28 days before the election.[48] The last day to request a VBM ballot is six days prior to the election and the last day a supervisor may send out VBM ballots is on the fourth day preceding the election.[49] If a supervisor receives a request for a VBM ballot between the 28th day prior to the

[38] Includes all or part of FSASE Priorities #10 (similar; allow flexibility to mail domestic VBM ballots not later than 28 days before an election), #11 (allow canvassing of VBM ballots 22 days prior to the election), #13 (move last day to request VBM ballots to 10 days before an election, and prohibit mailing VBM ballots after the 8th day before an election), #14 (use signatures on cure affidavits to update voter's signature of record), #15 (remove deadline to update signature prior to start of canvassing board), #16 (similar; extend deadline for curing defective VBM issues to 5 p.m. on Election Night). In addition, Senate Ethics and Elections staff is aware of individual supervisors who currently employ VBM drop boxes, notwithstanding a binding directive from the Secretary of State prohibiting the practice. Secretary of State, Directive 2013-01—Return of Absentee Ballots (Nov. 25, 2013), available at https://dos.myflorida.com/media/693333/sos_directive_2013-01.pdf (last accessed Apr. 1, 2019). A number of Senate bills have been filed in recent years to authorize VBM drop boxes at early voting sites. See SB 810 (2018); SB 726 (2017).

[39] Prior to 2001, a voter was required to show cause to vote using an absentee ballot, the previous statutory term for what is now a VBM ballot. The Election Reform Act of 2001 eliminated the requirement, allowing any voter to vote using an absentee ballot. *See* Ch. 2001-40, s. 53, L.O.F.

[40] Section 101.62(1)(a), F.S.

[41] Section 101.62(1)(b), F.S.

[42] The term "immediate family" is defined to mean the voter's spouse or the parent, child, grandparent, or sibling of the voter. Section 101.62(4)(c)3., F.S.

[43] Section 101.62(1)(b), F.S.

[44] Section 101.62(1)(c), F.S.

[45] Section 101.62(3), F.S.

[46] *Id.*

[47] *Id.*

[48] Section 101.62(4)(b), F.S.

[49] Section 101.62(2), F.S.

election and the sixth day prior to the election, the supervisor must send the requested VBM ballot to the voter within two days of receiving the request.[50]

After receiving the request, the supervisor must mail the elector a letter containing a ballot, instructions for completing the ballot,[51] a secrecy envelope, and a mailing envelope for returning the ballot.[52] Once the elector has completed the ballot and placed it in the secrecy envelope, the elector must complete a voter's certificate affixed to the back of the mailing envelope.[53]

A voter may also physically pick-up a VBM ballot from the supervisor's office in-person through election day, and may designate someone to do so on his or her behalf beginning on the fifth day before an election.[54]

The voter's certificate reads as follows:

> VOTER'S CERTIFICATE
>
> I, _____, do solemnly swear or affirm that I am a qualified and registered voter of _____ County, Florida, and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt to commit any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to $5,000 and/or imprisoned for up to 5 years. I also understand that failure to sign this certificate will invalidate my ballot.
>
> (Date) (Voters Signature)[55]

VBM ballots must be received by the supervisor no later than 7 p.m. on election day to be counted.[56] Upon timely receipt of the VBM ballot, the supervisor, or if the supervisor has not done so, the county canvassing board (CCB), compares the signature on the voter's certificate to the signature of the elector in the registration books or the precinct register "to determine whether the elector is duly registered in the county."[57] A supervisor is prohibited from opening the VBM ballots and must safely keep the VBM ballots in his or her office until the CCB canvasses VBM ballots.[58]

In order for a VBM ballot to be valid, the signature on the voter's certificate must match the signature on the registration books or the precinct register.[59] A voter's VBM ballot may be invalidated based upon two deficiencies in signing the voter's certificate: signature omission and

[50] Section 101.62(4)(b), F.S.
[51] Section 101.65, F.S.
[52] Section 101.64(1), F.S.
[53] *Id*.
[54] Section 101.62(4)(c), F.S.
[55] The supervisor must create the mailing envelope so that the voter's signature portion of the certificate crosses the seal of the envelope. Section 101.64(2), F.S.
[56] Section 101.67(2), F.S.
[57] Section 101.68(1), F.S.
[58] Section 101.68(1), F.S.
[59] Section 101.68(2)(c)1., F.S.

signature mismatch. If an elector's signature is omitted from the certificate, or if the signature on the certificate does not match the signature on file, the voter may cure the ballot using a cure affidavit.[60] Once a signature deficiency is discovered, the supervisor is required to immediately notify the voter of the defect.[61] The voter then has until 5 p.m. on the day *before* the election to complete a cure affidavit[62] and provide identification confirming the voter's identify[63] to the supervisor.[64] If the cure affidavit and identification meet the statutory requirements, the ballot will be counted.[65]

The Florida Election Code allows a voter voting by mail to update his or her signature for verification purposes at any time before the CCB begins canvassing the VBM ballots.[66] After canvassing begins, a voter voting a VBM ballot may not update his or her signature for this purpose.[67] CCBs *may* begin canvassing VBM ballots 15 days before the election but *must* begin canvassing those ballots by noon the day after the election.[68]

If a VBM ballot is physically damaged so that it cannot be placed in the automatic tabulating machine, a duplicate ballot must be made of the damaged ballot.[69] The duplication must be done in the presence of witnesses.[70] Similarly, if a VBM ballot contains an overvoted race or is marked but every race is undervoted, the ballot must be duplicated but the duplication will be based on the CCB's determination of what on the ballot constitutes a valid vote.[71] All duplicate ballots must be clearly labeled "duplicate" and bear a serial number that must also be recorded on the defective ballot.[72] After the duplication process has been completed, the defective ballot must be placed in a special envelope and the duplicate ballot will be counted as a valid ballot thereafter.[73]

After the election, the supervisor must notify each elector whose ballot was rejected and provide the reasons for the rejection.[74] If the reason for the rejection was a discrepancy between the signature on the VBM ballot cure affidavit or voter's certificate and the signature on file, the supervisor must send the voter registration application to the voter so the voter may update his or her signature on file.[75]

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[60] Section 101.68(4), F.S.
[61] Section 101.68(4)(a), F.S.
[62] Each supervisor, as well as DOS, are required to include the cure affidavit and instructions on their websites. Section 101.68(4)(d), F.S.
[63] Section 101.68(4)(c)3., F.S., provides the specified list of acceptable forms of identification in two tiers.
[64] *Id.*
[65] Section 101.68(2)(c)1., F.S.
[66] Section 98.077(4), F.S.
[67] Section 98.077(4), F.S.; *see also* s. 97.055(1)(b), F.S.
[68] Section 101.68(2)(a), F.S.; *see also* s. 98.077, F.S., requiring each supervisor to publish a notice in each year in which a general election occurs specifying how an elector can update his or her voter registration signature in a newspaper in the county.
[69] Section 101.5614(4)(a), F.S.
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] Section 101.68(4)(f), F.S.
[75] *Id.*

Recent Litigation

In 2016, the Florida Election Code provided a method of curing a VBM ballot voter's certificate that did not contain a signature but did not provide a method of curing a signature on the certificate that did not match the signature on file.[76] The United States District Court for the Northern District of Florida struck down Florida's statutory scheme as it relates to mismatched-signatures unconstitutional, and ordered "mismatched-signature ballots to be cured in precisely the same fashion as currently provided for non-signature ballots."[77] In response, the Florida Legislature passed CS/HB 105 (2017), which created a statutory process to cure VBM ballots with a signature mismatch.

In 2018, despite adopting a statute to address the Court's concerns, the same U.S. District Court held that the cure deadline for VBM ballots prior to Election Day and the absence of similar cure provisions for provisional ballots was illusory and "unconstitutionally burdens the fundamental right of Florida citizens to vote and have their votes counted."[78] The court specifically noted that the inability of voters casting VBM ballots that were notified of a signature deficiency after the cure deadline had passed, and the inability of voters casting VBM ballots that were canvassed after the cure deadline to cure their ballot, presented an unconstitutional burden on the right to vote.[79] The court also noted that the absence of uniform standards for comparing signatures was problematic as it could lead to differing comparison standards from county to county.[80] The court granted a preliminary injunction and ordered each supervisor to allow voters who were belatedly notified they had submitted a mismatched signature VBM or provisional ballot to cure their ballots within two days of the order.[81] The National Republican Senatorial Committee, an intervenor in the case, filed a motion with the U.S. Court of Appeals for the 11th Circuit to stay the U.S District Court's order. The U.S. Court of Appeals denied the motion to stay and largely agreed with the rationale of the U.S. District Court order.[82]

Effect of the Bill

The bill makes the following changes to the VBM ballot process:

- Allows supervisors to mail domestic VBM ballots between 40 days and 33 days before an election, instead of the current one-week window of the 35th to the 28th day.
- Moves the earliest start date for canvassing VBM ballots from 15 to 22 days before an election.
- Extends the deadline for curing defective VBM ballot signatures from 5 p.m. on the day *before* the election to 5 p.m. on the second day *after* a primary or general election.
- Moves the deadline for a voter to update his or her signature for purposes of validating a VBM ballot from the beginning of the VBM canvassing period to when the supervisor receives the VBM ballot.

[76] Section 101.68(4)(b), F.S. (2016).
[77] *Fla. Democratic Party v. Detzner*, 4:16-CV-607 (N.D. Fla. 2016).
[78] *Democratic Exec. Comm. of Fla. v. Detzner*, 347 F.Supp.3d 1017 (N.D. Fla 2018)(temporary injunction order).
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *Democratic Exec. Comm. of Fla. v. Detzner*, 915 F. 3d 1312 (11th Cir. 2018).

- For canvassing purposes, requires CCBs to find, by majority vote and beyond a reasonable doubt, that a signature on a voter's certificate or cure affidavit *does not match* the signature in the registration records.
- Alters the VBM ballot voter's certificate, requesting additional voter contact information (e-mail address, home phone number, mobile phone number) for the limited purpose of correcting signature deficiencies.
- Creates a new signature-deficiency notification process for timely received VBM ballots, requiring notification by first-class mail as well as phone, email, or text. However, beginning the day before the election, the supervisor is not required to provide notice by first-class mail — though he or she must continue trying to contact the voter by phone, email, or text.
- Creates a process to update immediately voter registration signatures with the signature on a valid VBM ballot cure affidavit, and makes conforming changes to the post-election voter notification/signature update request for voters whose ballots were rejected due to defective signatures.
- Upon request, permits a physically present candidate, political party official, or political committee official, or authorized designees, to observe any statutorily authorized duplication of VBM ballots.
- Allows a voter to drop off his or her VBM ballot at a secure drop box located solely at a supervisor's main and branch offices, and at each early voting location; requires that the total number of VBM ballots dropped off at an early voting location be made publicly available each day.
- Mandates that the instructions accompanying a VBM ballot notify voters that they may drop off their ballot at the supervisor's office or a secure drop box at an early voting location.
- Requires DOS to provide formal signature matching training to supervisors and CCB members.

VBM Request and Mailing Deadlines

Present Situation

The supervisors stop accepting mail-out requests for VBM ballots at 5 p.m. on the sixth day before an election.[83] (Correspondingly, an elector's written designee may pick-up a VBM ballot for an elector beginning on the *fifth day* before an election.[84]) Supervisors are required to mail out VBM ballots for valid requests no later than the fourth day before an election.[85] Every election cycle, thousands of ballots arrive after the close of the polls on election day and are not counted.[86]

The Florida State Association of Supervisors of Elections ("FSASE") has advised committee staff that in the past few years, the United States Postal Service has been systematically closing numerous regional processing centers due to budgetary constraints. This has resulted in delays of

[83] Section 101.62(2), F.S.
[84] Section 101.62(4), F.S.
[85] *Id.*
[86] *See e.g.*, Gary Fineout, AP News, "Thousands of Mailed Ballots in Florida Were Not Counted" (Dec. 10, 2018) (6,670 ballots mailed ahead of the Nov. 6 election were not counted because they were not received by Election Day [excluding ballots in Palm Beach and Polk counties]), available at https://www.apnews.com/8488a401807045fcb642ea2cdf81fc29 (last visited Feb. 8, 2019).

several days, in some cases, in moving VBM ballots from Point A to Point B.[87] Discontinuing the mailing of VBM ballots a few days earlier may result in some inconvenience to voters, but will help reduce the number of ballots that arrive late and are not counted. It will give voters an opportunity to vote early or on Election Day, to *ensure* that their ballots count.

Effect of the Bill

Moves the last day for voters to request VBM ballots from 8 to 10 days before an election, and prohibits supervisors from mailing out such ballots less than 8 days prior to the election (currently 4 days), to reflect new postal timelines resulting from the closing of numerous regional processing centers. Also, the bill allows an elector's written designee to physically pick-up an elector's VBM ballot beginning on the 9th day before an election, to conform.

Provisional Ballots

Present Situation

The Help America Vote Act of 2002 (HAVA) requires states to allow a voter whose eligibility to vote at a polling place cannot be immediately established to vote using a provisional ballot for elections for federal office.[88] Florida allows any voter claiming to be properly registered in the state and eligible to vote at the precinct in the election, but whose eligibility cannot be determined, or a person whom an election official asserts is not eligible, be allowed to vote a provisional ballot.[89] A provisional ballot, like a VBM ballot, is inserted into a secrecy envelope, which is then sealed in a provisional ballot envelope.[90] On the back of the provisional envelope is a provisional ballot voter's certificate and affirmation.[91] The provisional ballot voter's certificate and affirmation reads as follows:

> STATE OF FLORIDA
> COUNTY OF _____
> I do solemnly swear that my name is_____; that my date of birth is _____; that I am registered and qualified to vote in _____ County, Florida; that I am registered in the _____ Party; that I am qualified voter of the county; and that I have not voted in this election. I understand that if I commit any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to $5,000 and/or imprisoned for up to 5 years.
>
> _(Signature of Voter)_
> _(Current Residence Address)_
> _(Current Mailing Address)_
> _(City, State, Zip Code)_

[87] Bruce Alpert, New Orleans Times Picayune, "New Orleans Mail Processing Center Is One of 223 Being Closed by U.S. Postal Service" (Feb 23, 2012), reprinted at https://www.nola.com/politics/index.ssf/2012/02/new_orleans_mail_processing_ce.html (last visited Feb 8, 2019).
[88] 52 U.S.C. s. 21082.
[89] Section 101.048(1), F.S.
[90] *Id.*
[91] Section 101.048(3), F.S.

_(Driver License Number or Last Four Digits of Social Security Number)[92]

All provisional ballots remain sealed in their envelopes for return to the supervisor.[93] Each voter voting a provisional ballot is entitled to present written evidence supporting his or her eligibility to vote to the supervisor no later than 5 p.m. on the second day following the election.[94] The CCB must examine each provisional ballot voter's certificate and affirmation to determine if the person voting the ballot was entitled to vote at the precinct where the person cast his or her vote and that the person had not already cast a ballot in the election.[95] In making this determination, the CCB must consider the following:

- The information provided in the provisional ballot voter's certificate and affirmation;
- Written evidence presented by the person; and
- Any other evidence presented by the supervisor.[96]

If the CCB determines that the person was not registered or entitled to vote at the precinct where the person cast his or her vote, then the provisional ballot is not opened and not counted.[97] If the CCB determines the person was registered and entitled to vote at the precinct, then the board compares the signature on the provisional ballot voter's certificate and affirmation with the signature on file and, if it matches, the ballot is counted.[98] If the signatures do not match, then the ballot is not opened and not counted.[99]

Each supervisor is required to establish a free access system that allows each person who voted a provisional ballot to determine whether his or her ballot was counted.[100] If the voter's ballot was not counted, the system must inform the voter of the reason why the ballot was rejected.[101]

Effect of the Bill

The bill makes the following changes to the provisional ballot process:

- Creates a provisional ballot signature cure and canvassing process that mirrors the revised VBM ballot signature cure process by creating a signature cure affidavit and instructions, providing for voter submission of supporting identification, and creating standards for CCBs to process ballots using the cure affidavit and supporting information. The cure provides that the provisional ballot signature defect may be cured until 5 p.m. two days *after* the election.
- For canvassing purposes, requires CCBs to find, by majority vote and beyond a reasonable doubt, that a signature on a voter's certificate or cure affidavit *does not match* the signature in the registration records.
- Modifies the Provisional Ballot Voter's Certificate and Affirmation to include requests for additional phone and electronic contact information.

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[92] *Id.*
[93] Section 101.048(1), F.S.
[94] *Id.* Each voter voting a provisional ballot is given instructions concerning his or her right to present additional written evidence to the supervisor. Section 101.048(5), F.S.
[95] Section 101.048(2)(a), F.S.
[96] *Id.* The CCB can, in the case of a challenge, consider any evidence presented by a challenger.
[97] Section 101.048(2)(b)2., F.S.
[98] Section 101.048(2)(b)1., F.S.
[99] *Id.*
[100] Section 101.048(6), F.S.
[101] *Id.*

- Creates a new signature-deficiency notification process for provisional ballots, requiring notification by first-class mail as well as phone, email, or text. However, beginning the day before the election, the supervisor is not required to provide notice by first-class mail — though he or she must continue trying to contact the voter by phone, email, or text.
- Creates a process to immediately update voter registration signatures with the signature on a valid provisional ballot cure affidavit.
- Incorporates the current VBM requirement that supervisors provide voters with a post-election notice and voter registration card to update signatures for voters whose ballots were rejected due to defective signatures.

County Canvassing Board

Present Situation

The County Canvassing Board is the body that tabulates and canvasses the vote for an election in that county. The CCB is composed of the supervisor, the chair of the board of county commissioners, and a county court judge, who serves as chair.[102] If a member of the CCB is unable to serve, he or she can be replaced in one of two ways, either permanently, through the appointment of a substitute member, or temporarily, through the appointment and selection of an alternate member.[103] In the event a member of the CCB is absent for a temporary period, an alternate member is chosen to assume his or her position as a member of the CCB until the permanent member returns. The chair of the CCB decides which alternate member will serve as a member of the CCB.[104] Alternate members are appointed as follows:

- The chief judge of the judicial circuit in which the county is located must appoint a county court judge as an alternate member unless each judge is unable to serve or is disqualified,[105] then the chief judge must appoint a qualified elector of the county who is not a candidate and who is not an active participant in a campaign; or
- The chair of the board of county commissioners must appoint a member of the board of county commissioners unless each member of the board is unable to serve or is disqualified, the chief judge of the judicial circuit in which the county is located must appoint a qualified elector of the county who is not a candidate and who is not an active participant in a campaign.

When not serving as one of the three members of the CCB, an alternate member may be present, observe, and communicate with the CCB but may not vote in the CCB's determinations.[106]

Prior to canvassing ballots, the supervisor designates a time for the CCB to meet for that purpose.[107] The CCB, or the supervisor on the CCB's behalf, must give public notice of the time and place at which the CCB will meet.[108] The notice must be given at least 48 hours prior to the

[102] Section 102.141(1), F.S.
[103] Section 102.141(1)(e), F.S.
[104] Section 102.141(1)(e)3., F.S.
[105] A disqualifying event occurs when the member of the CCB is a candidate who has opposition in the election being canvassed, or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed. Section 102.141(1), F.S.
[106] Section 102.141(1)(e)4., F.S.
[107] Section 102.141(2), F.S.
[108] Section 102.141(2), F.S.

time of meeting and must be posted on the supervisor's website and published in one or more newspapers of general circulation in the county.[109] However, if there are no newspapers of general circulation in the county, then the notice must be posted in at least four conspicuous places in the county.[110] The CCB must meet in a building accessible to the public in the county where the election occurred to canvass VBM ballots and provisional ballots.[111] Once the VBM ballots and provisional ballots are canvassed, the CCB then begins to publicly canvass the vote given to each candidate, nominee, constitutional amendment, or other measure as shown by the returns sent from the election board at each polling place.[112]

Effect of the Bill

The bill requires that if a CCB meeting is recessed or suspended for a period longer than 60 minutes, the CCB must post on the supervisor's website the anticipated time the board expects to reconvene. If the CCB does not reconvene at the specified time, the board must provide at least two hours' notice on the supervisor's website before reconvening. The bill also requires a physical notice detailing the names of the individuals officially serving as the CCB, the names of any alternate members, the time of the meeting, and a brief statement as to the purpose of the meeting to be placed in a conspicuous area near the public entrance to the building in which the CCB meeting is taking place.

The bill also requires that each CCB member, substitute member, alternate member, and all CCB staff to wear an identification badge during any period in which the CCB is canvassing votes or engaging in other official duties. The identification badge must be displayed in a conspicuous, unobstructed area on their person and include the name of the individual and their official position.

Primary Election[113]

Present Situation

Florida primary election is currently held 10 weeks before the general election. This is NOT a magic date; it has been shuffled around quite a bit in recent years. From 1983 to 2006, the primary election was held 9 weeks before the general election.[114] In 2007, the election was pushed back to 10 weeks before the general, to avoid the Labor Day holiday weekend.[115] In 2011, it was pushed back to 12 weeks before the general election so as not to coincide with the 2012 Republican National Convention in Tampa.[116] In 2013, the primary date was moved back to 10 weeks before the general election.[117]

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[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] FSASE Legislative Priorities #9 (partial).
[114] For most of that time, it was called the "*first* primary election," as Florida held a second primary several weeks after the first primary until the 2002 election cycle.
[115] Ch. 2007-30, s. 22, LAWS OF FLA.; *see*, Florida Senate Transportation and Economic Development Appropriations Committee, *Bill Analysis for CS/CS/SBs 960 and 1010* at p. 22 (April 24, 2007), available at http://archive.flsenate.gov/data/session/2007/Senate/bills/analysis/pdf/2007s0960.ta.pdf (last visited Feb 19, 2019).
[116] Ch. 2011-10, s. 20, LAWS OF FLA.
[117] Ch. 2013-57, s. 3, LAWS OF FLA.

Effect of the Bill

The bill moves the primary election from 10 weeks preceding the general election to 11 weeks preceding the general election. As such, the forthcoming 2020 primary election would be held on August 18.[118]

No-Solicitation Zone

Present Situation

Currently, no person, political committee, or other group or organization may solicit[119] voters inside the polling place or within 100 feet of the entrance to any polling place,[120] polling room[121] where the polling place is also a polling room, early voting site,[122] or an office of the supervisor where VBM ballots are requested and printed on demand.[123] Each supervisor must inform the clerk[124] of the area within which soliciting is unlawful based on the particular characteristics of that polling place.[125] Prior to opening of the polling place or early voting site, the clerk or supervisor must designate the no-solicitation zone and mark the boundaries.[126]

Effect of the Bill

The bill expands the no solicitation zone at polling places and early voting sites from 100 feet to 150 feet.

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[118] The presidential preference primary election occurs on a different date from the primary election and the two are not related. Currently, the presidential preference primary election occurs on the third Tuesday in March of each presidential election year. Section 103.101(1), F.S.

[119] The term "solicitation" includes, but is not limited to, seeking or attempting to seek any vote, fact, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, or handout; conducting a poll except an exit poll; seeking or attempting to seek a signature on any petition; and selling or attempting to sell any item. Section 102.031(4)(b), F.S.

[120] The term "polling place" is defined to mean the building that contains the polling room where ballots are cast. Section 97.021(27), F.S.

[121] The term "polling room" is defined to mean the actual room in which ballots are cast on election day and during early voting. Section 97.021(28), F.S.

[122] The term "early voting site" is defined to mean those locations specified in s. 101.657, F.S., and the building in which early voting occurs. Section 97.021(11), F.S.

[123] Section 102.031(4)(a), F.S.

[124] Each precinct has inspectors and a clerk, each appointed by the supervisor. These poll workers are collectively known as the election board. The clerk is in charge of and responsible for seeing that the election board carries out its duties and responsibilities. Section 102.012(1)(a), F.S.

[125] Section 102.031(4)(c), F.S.

[126] Section 102.031(4)(a), F.S.

Polling Room Photography

Present Situation

Photography is currently prohibited in the polling room or early voting area.[127] The prohibition can be enforced by the election board.[128]

Effect of the Bill

The bill allows a voter to photograph his or her own ballot but otherwise maintains the prohibition.

Precinct-Level Election Results[129]

Present Situation

Supervisors are required to, within 30 days following the certification of the election results by the Elections Canvassing Commission,[130] collect and submit to DOS precinct-level election results.[131] The results must be in a uniform electronic format and include the total number of all ballots cast in each precinct for each candidate or nominee to fill a national, state, county, or district office, or proposed constitutional amendment.[132] The results must also contain subtotals for each candidate and ballot type, unless fewer than 10 voters voted a certain type of ballot, in which case that ballot type will be omitted from the results to ensure that the votes for those voters remain secret.[133] After DOS has received the results, it must make the information available, through its website, on a searchable, sortable, and downloadable database.[134]

Effect of the Bill

The bill increases the amount of voters voting a specific ballot at a particular precinct that must be withheld from the results, from 10 voters to 30 voters.

Ballot Design

Present Situation

DOS is required to adopt rules prescribing a uniform primary and general election ballot for each certified voting system.[135] The rules are required to incorporate clear and unambiguous ballot

[127] Section 102.031(5), F.S.
[128] The election board consists of the clerk and inspectors appointed to conduct an election. Section 97.021(13), F.S. Each election board possesses full authority to maintain order at the polls and enforce obedience to its lawful commands during an election and the canvassing of votes. Section 102.031(1), F.S.
[129] Though not formally adopted as an FSASE Legislative Priority, individual supervisors contacted Senate Ethics and Elections staff last year to discuss this issue, resulting, for example, in the filing of SB 1582 (2018).
[130] The Elections Canvassing Commission is a body that certifies election results for federal, state, and multicounty offices. The commission consists of the Governor and two members of the Cabinet selected by the Governor. The commission meets at 9 a.m. on the 14th day following a general election to certify the returns. Section 102.111, F.S.
[131] Section 98.0981(2)(a), F.S.
[132] *Id.*
[133] *Id.*
[134] Section 98.0981(2)(b), F.S.
[135] Section 101.151(9)(a), F.S.

instructions, individual race layout, and overall ballot layout.[136] Additionally, the rules are required to graphically depict a sample uniform primary and general election ballot form for each certified voting system.[137] DOS rule 1S-2.032, F.A.C., states that ballot instructions may appear "immediately below the ballot title either across the page or in the first column." The graphic depictions of sample ballots, incorporate by reference into the rule, display the ballot instructions placed horizontally across the top of the ballot in some[138] and placed in the first column in others.[139]

Rule 1S-2.032, F.A.C., allows each supervisor to choose between four types of vote targets:[140] ovals, squares, rectangles, or broken arrows.[141] Different vote target types are subject to slightly different provisions of the rule. For instance, an oval, square, or rectangle vote target must appear after the candidate's name, while, for a broken arrow vote target, the name is in front of the party designation, if applicable, and before the broken arrow.[142]

Effect of the Bill

The bill requires that the uniform ballot rule require the ballot instructions to either be centered across the top of the ballot or included in the leftmost column so long as no individual races are included below the instructions in the leftmost column. If there is only one column on the entire ballot, the bill allows the individual races to appear beneath that leftmost column. The bill also requires that all vote targets be ovals.

Ballot Security/chain of custody

Present Situation

The Florida Election Code contains multiple provisions concerning the chain of custody of ballots, the documentation thereof, and ballot security. The following is a list of those provisions:

- The supervisor must safely keep in his or her office any envelopes containing marked VBM ballots and must, before the canvassing of the election returns, deliver the envelopes to the CCB.[143]
- During the canvassing of VBM ballots, the supervisor or the chair of the CCB has custody of the VBM ballots until a final proclamation is made as to the total vote received by each candidate.[144]
- Prior to the opening of the polls, the supervisor, after securely sealing the ballot box or ballot transfer container, must send the ballot box or ballot transfer container to the clerk or inspector of the precinct in which it is to be used.[145]

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[136] *Id.*
[137] Section 101.151(9)(b), F.S.
[138] *See* DS-DE-205, incorporated by reference into r. 1S-2.032, F.A.C.
[139] *See* DS-DE-202, incorporated by reference into r. 1S-2.032, F.A.C.
[140] A "vote target" is defined to mean an area on the ballot where the voter indicates his or her vote. Rule 1S-2.032(1)(l), F.A.C.
[141] *Id.*
[142] Rule 1S-2.032(9)(a)4., F.S.
[143] Section 101.67(1), F.S.
[144] Section 101.68(3), F.S.
[145] Section 101.24, F.S.

- Provisional ballots are required to be deposited in a ballot box and must remain sealed in their envelopes for return to the supervisor.[146]
- After the results are tabulated at each precinct, a certificate of the results is drawn up by the inspectors and clerk at each precinct. The certificate must be signed by the inspectors and clerk and must be delivered without delay by one of the inspectors, securely sealed, to the supervisor for immediate publication. All the ballot boxes, ballots, ballot stubs, memoranda, and papers of all kinds used in the election also must be transmitted, after being sealed by the inspectors, to the supervisor's office. Registration books and the poll lists may not be placed in the ballot boxes but must be returned to the supervisor.[147]

DOS is required to adopt rules to establish minimum-security standards for voting systems.[148] Rule 1S-2.015, F.A.C., sets standards for chain of custody of ballots, ballot distribution, transport of ballots, and receiving and preparing voted ballots.[149] Supervisors must establish written procedures based on these minimum security standards to assure accuracy and security in his or her county.[150] The procedures must be reviewed by DOS every odd-numbered year.[151] If a supervisor revises his or her security procedures, he or she must submit those revisions to DOS at least 45 days prior to the commencement of early voting.[152]

Effect of the Bill

The bill specifies the elements that must be included in DOS' rule regarding minimum security standards. The rule must address chain of custody of ballots, including a detailed written record of the ballot from the moment the supervisor takes possession of the ballot to the time it is destroyed. The bill also requires the rule to address the transport of ballots, including a description of the method and equipment used and a detailed list of the names of all individuals involved in such transport. Finally, the bill requires the rule to address ballot security, including a requirement that all ballots be kept in a locked room when not being canvassed.

Ballot-on-Demand Technology

Present Situation

A ballot-on-demand (BOD) system is a system in which ballots may be printed quickly and to the specifications required for the individual voter. For instance, during early voting, which occurs at centralized locations where voters of different precincts all vote together, a BOD system can print a precinct-specific ballot for each voter. Currently, BOD systems are permitted to be used, at the supervisor's discretion, for early voting but the Florida Election Code is silent as to the use of BOD systems on Election Day.[153]

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[146] Section 101.048(1), F.S.
[147] Section 102.071, F.S.
[148] Section 101.015(4), F.S. The term "voting system" is defined to mean 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. Section 97.012(45), F.S.
[149] Rule 1S-2.015, F.A.C.
[150] Section 101.015(4)(b), F.S.
[151] *Id.*
[152] Section 101.015(4)(c), F.S.
[153] See section 101.151(1)(b), F.S. (specifically addressing early voting only).

Effect of the Bill

The bill specifically authorizes supervisors to use BOD systems at polling places on Election Day.

Sample Ballot Distribution[154]

Present Situation

Once the list of qualified candidates is completed, the law requires that a sample ballot be published by each supervisor in a newspaper of general circulation in the county before Election Day.[155] A supervisor may, but is not required to, send a sample ballot to each registered voter by e-mail at least seven days before an election — if the voter has opted in and provided an e-mail address.[156] If a voter has opted-out or has not provided an e-mail address, the sample ballot may be mailed to the voter at least seven days before an election.[157]

Effect of the Bill

The bill allows a supervisor to forego publication of a sample ballot in a newspaper of general circulation if the supervisor e-mails or mails a sample ballot at least seven days before an election to every registered voter or household with a registered voter.

Supervisors' of Elections Qualifications Salary

Present Situation

Each supervisor is eligible to receive a special qualification salary of $2,000 per year if he or she has met certain certification requirements established by DOS within six years after first taking office.[158] DOS has promulgated a rule establishing stringent requirements for a supervisor seeking the certification.[159] To maintain his or her certification, a supervisor must annually complete a course of continuing education.[160]

Effect of the Bill

The bill prohibits a supervisor from collecting a special qualification salary for a period of 24 months after being found by a court to have willfully violated a provision of the Florida Election Code.

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[154] FSASE Priority #7 (eliminate duplicate publication requirement for sample ballots).
[155] Section 101.20(2), F.S.
[156] *Id.*
[157] *Id.*
[158] Section 145.09(3), F.S.
[159] Rule 1S-2.0115, F.A.C.
[160] Section 145.09(3)(c), F.S.

Election Contests; VBM and provisional ballot signature validity

Present Situation

Except for legislative contests, an unsuccessful candidate, a qualified elector, or a taxpayer may contest an election in circuit court within 10 days after certification.[161] In 2011, the Legislature changed the law to limit the court's review of a CCB's decision on the legality of a VBM signature in an election contest to looking *solely* at the voter's signature of record and the signature on the VBM Voter's certificate.[162] The Legislature subsequently authorized the "curing" of VBM ballots by affidavit and submission of additional identification,[163] but never amended this contest limitation to conform. In 2018, the U.S. District Court for the Northern District of Florida noted this shortcoming in its decision extending the time for VBM and provisional ballot voters to cure signature deficiencies.[164]

Effect of the Bill

In addition to what the law currently provides, the bill allows courts reviewing the validity of voter signatures in election contests to consider the signature on VBM/provisional ballot voter certificates and cure affidavits, along with voter ID submitted therewith.

Governor/Lt. Governor Joint Candidacy[165]

Present Situation

Each gubernatorial candidate must designate a Lieutenant Governor.[166] While a gubernatorial candidate can make the designation at any time, he or she must designate a Lieutenant Governor by 5 p.m. on the ninth day following the primary election.[167] If a gubernatorial candidate designates a Lieutenant Governor by the end of the qualifying period prior to the primary election, the candidate for Lieutenant Governor will appear on the primary ballot with the gubernatorial candidate.[168] However, if the gubernatorial candidate does not designate a Lieutenant Governor by the end of the qualifying period, the primary ballot will list the name of the candidate for Governor and below the name, the phrase "Not Yet Designated" will appear in lieu of the name of Lieutenant Governor.[169]

[161] Section 102.168(1), F.S.
[162] Ch. 2011-40, s. 44, LAWS OF FLA.
[163] Ch. 3013-57, s. 15, LAWS OF FLA.
[164] *Democratic Exec. Comm. of Fla.* at 1031 (N.D. Fla 2018)(voter's opportunity to contest the certification of election results under Florida Statutes § 102.168 will not prevent irreparable harm due to signature review limitations).
[165] FSASE Legislative Priorities #5 (remove "not-yet-designated" primary ballot language where Lt. Gov. has not been chosen).
[166] Section 99.063(1), F.S.; *see also* art. IV, s. 2, FLA. CONST.
[167] Section 99.063(1), F.S.
[168] Section 99.063(4), F.S. The qualification period for candidates for Governor and Lieutenant Governor is noon on the 71st day prior to the primary election until noon on the 67th day prior to the primary election. Section 99.061(1), F.S.
[169] Section 99.063(4), F.S.

Effect of the Bill

The bill removes the requirement that the phrase "Not Yet Designated" appear below the name of the gubernatorial candidate on the primary ballot if a Lieutenant Governor has not been designated.

Effective Date

Except for some of the voting systems disability provisions incorporated from CS/CS/SB 268 (2019), which take effect on January 1, 2020, the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill could have a minimal fiscal impact on state expenditures. DOS will be required to modify current rules to comply with the provisions regarding specifications for ballots, chain of custody, and ballot security. The costs of such rulemaking, however, should be absorbed in DOS' current budget as part of its day-to-day operations.

The bill could also have a minimal negative fiscal impact on local government expenditures. The bill requires supervisors to comply with new procedures and use new forms for the VBM and provisional ballot cure process. The bill also requires supervisors to train their staff to comply with these new provisions. The bill revises the VBM ballot instructions and envelope. The bill also requires supervisors to notify voters of a signature defect on their VBM and provisional ballot certificates by first-class mail in some instances. However, the removal of the requirement to publish sample ballots in a newspaper of general circulation, and mail or email those ballots instead, should result in a cost savings.

Finally, with respect to disability voting systems, 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.

As discussed herein, adopting the disability voting provisions in this bill will potentially save millions of local dollars in necessary equipment upgrades in 25 counties currently using ExpressVote for voters with disabilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 97.012, 97.021, 98.077, 98.0981, 99.063, 100.061, 101.015, 101.048, 101.151, 101.20, 101.56075, 101.5614, 101.62, 101.64, 101.65, 101.657, 101.68, 101.69, 101.6923, 102.031, 102.141, 102.166, 102.168, and 104.051.

IX. Additional Information:

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

CS by Rules on April 23, 2019:
The CS makes changes to provisions in the original bill by:

- **VBM and Provisional Ballot Signature Deficiencies; notice and cure:** Shortening the cure period for correcting signature deficiencies from 5 p.m. on the 11th to the 2nd day after an election; providing for first-class mail notice of signature deficiencies to all applicable voters, along with phone, e-mail, or text; and, stopping first-class mail notice on the Monday before an election (though attempted notice by phone, e-mail, or text will continue), to conform; requiring CCBs to find, by majority vote and beyond a reasonable doubt, that a signature on a voter's certificate or cure affidavit *does not match* the signature in the registration records for canvassing purposes.

- **Election Certification/Timelines:** Eliminating a provision providing an extra week for certifying general election recount races, and an extra 5 days for certifying ALL primary races; removing conforming modifications for interim reporting deadlines.
- **VBM Ballots; designee pick-up (conforming):** Allowing an elector's designee to physically pick-up a VBM ballot for an elector up to *9 days* before an election (currently 5 days), to conform to the 10 day cut-off date for electors to request a VBM ballot be sent by mail.
- **VBM Ballots; domestic mailing dates:** Changing the supervisors' mailing window for domestic ballots to the 40th through the 33rd day before an election, instead of allowing open-ended mailing anytime through the 28th day.
- **Election Contests (conforming):** Allowing courts reviewing the validity of voter signatures in election contests to consider the signature on VBM/provisional ballot voter certificates and cure affidavits, along with voter ID submitted therewith, to conform.
- **Effective Date:** Changing the effective date from January 1, 2020 to July 1, 2019 (for all but some of the voting system disability provisions added to the bill).

The CS also adds a number of substantial issues not addressed in the original bill:

- **Voting Systems/disability voting:** Incorporates CS/CS/SB 268: mandating that voters with disabilities cast a ballot on voting systems that produce a voter verifiable paper output (VVPO) for canvassing and recount purposes; and, authorizing the general use of such VVPO touchscreen systems by all voters, not just those with disabilities.
- **Ballot Design; targets:** Mandates that all ballot vote targets be ovals, as opposed to squares, rectangles, and broken arrows.
- **Ballot Design; Lt. Gov. designation:** Removes "not yet designated" language on primary ballot for the joint Gov./Lt. Gov. ticket if a running mate has not been selected.
- **Voter Signature Updates:** Moves the voter signature update deadline for purposes of validating a VBM ballot from the beginning of the VBM canvassing period to when the VBM ballot is received.
- **VBM Ballots; drop-off locations:** Allows a voter to drop off his or her VBM ballot at a secure drop box located at each early voting location, or at a supervisor's main or branch office.
- **VBM Ballots/duplication:** Permits physically-present candidate and political party/political committee officials, and/or their designees, to observe duplication of VBM ballots.
- **VBM Ballots; signature training:** Requires the DOS to provide formal signature matching training to supervisors and CCB members.
- **County Canvassing Boards:** Mandates a number of meeting notice content and publication requirements, along with measures to make CCB personnel more easily identifiable by requiring I.D. badges.
- **Polls; no-solicitation zones:** Expands the no-solicitation zone around polling places and early voting sites from 100 feet to 150 feet.
- **Polls; ballot photos:** Allows a voter to photograph his or her ballot in a polling room or early voting site.

- **Election Results/precinct-level reporting:** Prohibits reporting precinct-level results by ballot type if 30 or fewer votes are cast rather than 10, to ensure voter anonymity.
- **Ballots; security:** Requires the DOS rule regarding minimum-security standards to address, in detail, chain of custody of ballots, transport of ballots, and ballot security.
- **Ballots; ballot-on-demand:** Specifically authorizes supervisors to use ballot-on-demand printing systems at polling places on Election Day, not just at early voting sites.
- **Ballots; sample ballot publication:** Allows a supervisor to forego publication of a sample ballot in a newspaper of general circulation, if the supervisor e-mails or mails every registered voter a sample ballot at least seven days before an election.
- **Election Code Violations; special supervisor penalties:** Prohibits a supervisor from receiving a special qualification salary for a period of 24 months after a court finds the supervisor has willfully violated the Florida Election Code.

B. Amendments:

None.

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

834194

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/23/2019	.	
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	.	
	.	

The Committee on Rules (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (17) is added to section 97.012, Florida Statutes, to read:

97.012 Secretary of State as chief election officer.—The Secretary of State is the chief election officer of the state, and it is his or her responsibility to:

(17) Provide formal signature matching training to supervisors of elections and county canvassing board members.

834194

Section 2. Effective January 1, 2020, 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 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 3. Subsection (4) of section 98.077, Florida Statutes, is amended to read:

98.077 Update of voter signature.—

(4) Except as authorized in ss. 101.048 and 101.68:

(a) All signature updates for use in verifying vote-by-mail and provisional ballots must be received by the appropriate supervisor before the elector's ballot is received by the supervisor or, in the case of provisional ballots, before the elector's ballot is cast ~~of elections no later than the start of the canvassing of vote-by-mail ballots by the canvassing board~~.

(b) The signature on file at the time the vote-by-mail ballot is received or at the time the provisional ballot is cast ~~start of the canvass of the vote-by-mail ballots~~ is the signature that shall be used in verifying the signature on the vote-by-mail and provisional ballot certificates, respectively.

Section 4. Paragraph (a) of subsection (2) of section 98.0981, Florida Statutes, is amended to read:

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

(2) PRECINCT-LEVEL ELECTION RESULTS.—

(a) Within 30 days after certification by the Elections Canvassing Commission of a presidential preference primary election, special election, primary election, or general election, the supervisors of elections shall collect and submit to the department precinct-level election results for the election in a uniform electronic format specified by paragraph (c). The precinct-level election results shall be compiled separately for the primary or special primary election that preceded the general or special general election, respectively. The results shall specifically include for each precinct the total of all ballots cast for each candidate or nominee to fill a national, state, county, or district office or proposed constitutional amendment, with subtotals for each candidate and ballot type, unless fewer than 30 ~~10~~ voters voted a ballot type. "All ballots cast" means ballots cast by voters who cast a ballot whether at a precinct location, by vote-by-mail ballot including overseas vote-by-mail ballots, during the early voting period, or by provisional ballot.

Section 5. Subsection (4) of section 99.063, Florida Statutes, is amended to read:

99.063 Candidates for Governor and Lieutenant Governor.—

(4) In order to have the name of the candidate for Lieutenant Governor printed on the primary election ballot, a candidate for Governor participating in the primary must designate the candidate for Lieutenant Governor, and the

834194

designated candidate must qualify no later than the end of the qualifying period specified in s. 99.061. ~~If the candidate for Lieutenant Governor has not been designated and has not qualified by the end of the qualifying period specified in s. 99.061, the phrase "Not Yet Designated" must be included in lieu of the candidate's name on the primary election ballot.~~

Section 6. Section 100.061, Florida Statutes, is amended to read:

100.061 Primary election.—In each year in which a general election is held, a primary election for nomination of candidates of political parties shall be held on the Tuesday 11 ~~10~~ weeks prior to the general election. The candidate receiving the highest number of votes cast in each contest in the primary election shall be declared nominated for such office. If two or more candidates receive an equal and highest number of votes for the same office, such candidates shall draw lots to determine which candidate is nominated.

Section 7. Subsection (4) of section 101.015, Florida Statutes, is amended to read:

101.015 Standards for voting systems.—

(4)(a) The Department of State shall adopt rules establishing minimum security standards for voting systems. The standards, at a minimum, must address the following:

1. Chain of custody of ballots, including a detailed description of procedures to create a complete written record of the chain of custody of ballots and paper outputs beginning with their receipt from a printer or manufacturer until such time as they are destroyed.

2. Transport of ballots, including a description of the

834194

method and equipment used and a detailed list of the names of all individuals involved in such transport.

3. Ballot security, including a requirement that all ballots be kept in a locked room in the supervisor's office, a facility controlled by the supervisor or county canvassing board, or a public place in which the county canvassing board is canvassing votes until needed for canvassing and returned thereafter.

(b)1. Each supervisor ~~of elections~~ shall establish written procedures to assure accuracy and security in his or her county, including procedures related to early voting pursuant to s. 101.657. Such procedures shall be reviewed in each odd-numbered year by the department ~~of State~~.

2.~~(c)~~ Each supervisor ~~of elections~~ shall submit any revisions to the security procedures to the department ~~of State~~ at least 45 days before early voting commences pursuant to s. 101.657 in an election in which they are to take effect.

Section 8. Present subsection (6) of section 101.048, Florida Statutes, is renumbered as subsection (7), subsections (2), (3), and (5) and present subsection (6) of that section are amended, and a new subsection (6) is added to that section, to read:

101.048 Provisional ballots.—

(2)(a) The county canvassing board shall examine each Provisional Ballot Voter's Certificate and Affirmation to determine if the person voting that ballot was entitled to vote at the precinct where the person cast a vote in the election and that the person had not already cast a ballot in the election. In determining whether a person casting a provisional ballot is

834194

entitled to vote, the county canvassing board shall review the information provided in the Voter's Certificate and Affirmation, written evidence provided by the person pursuant to subsection (1), information provided in any cure affidavit and accompanying supporting documentation pursuant to subsection (6), any other evidence presented by the supervisor ~~of elections~~, and, in the case of a challenge, any evidence presented by the challenger. A ballot of a person casting a provisional ballot shall be canvassed pursuant to paragraph (b) ~~counted~~ unless the canvassing board determines by a preponderance of the evidence that the person was not entitled to vote.

(b)~~1.~~ If it is determined that the person was registered and entitled to vote at the precinct where the person cast a vote in the election, the canvassing board must ~~shall~~ compare the signature on the Provisional Ballot Voter's Certificate and Affirmation or the provisional ballot cure affidavit with the signature on the voter's registration or precinct register ~~and, if it matches, shall count the ballot~~. A provisional ballot may be counted only if:

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

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

834194

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

~~2. If it is determined that the person voting the provisional ballot was not registered or entitled to vote at the precinct where the person cast a vote in the election, the~~

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

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

(3) The Provisional Ballot Voter's Certificate and Affirmation shall be in substantially the following form:

STATE OF FLORIDA

COUNTY OF ....

I do solemnly swear (or affirm) that my name is ....; that my date of birth is ....; that I am registered and qualified to vote in .... County, Florida; that I am registered in the .... Party; that I am a qualified voter of the county; and that I have not voted in this election. I understand that if I commit any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to $5,000 and/or imprisoned for up to 5 years. Further, by providing my

834194

information below, I authorize the use of e-mail, text message, and telephone call for the limited purpose of signature and ballot validation.

...(Printed Name of Voter)...

...(Signature of Voter)...

...(Current Residence Address)...

...(Current Mailing Address)...

...(City, State, Zip Code)...

...(Driver License Number or Last Four Digits of Social Security Number)...

...(E-Mail Address)...

...(Home Telephone Number)...

...(Mobile Telephone Number)...

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

...(Election Official)...

Precinct # .... Ballot Style/Party Issued: ....

(5) Each person casting a provisional ballot shall be given written instructions regarding the person's right to provide the supervisor ~~of elections~~ with written evidence of his or her eligibility to vote and regarding the free access system established pursuant to subsection (7) ~~(6)~~. The instructions must ~~shall~~ contain the supervisor's contact information along with information on how to access the system and the information the voter will need to provide to obtain information on his or her particular ballot. The instructions shall also include the following statement: "If this is a primary election, you should contact the supervisor of elections' office immediately to confirm that you are registered and can vote in the general

834194

election.”

(6)(a) As soon as practicable, the supervisor shall, on behalf of the county canvassing board, attempt to notify an elector who has submitted a provisional ballot that does not include the elector’s signature or contains a signature that does not match the elector’s signature in the registration books or precinct register by:

1. Notifying the elector of the signature deficiency by e-mail and directing the elector to the cure affidavit and instructions on the supervisor’s website;

2. Notifying the elector of the signature deficiency by text message and directing the elector to the cure affidavit and instructions on the supervisor’s website; or

3. Notifying the elector of the signature deficiency by telephone and directing the elector to the cure affidavit and instructions on the supervisor’s website.

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

(b) Until 5 p.m. on the 2nd day after an election, the supervisor shall allow an elector who has submitted a provisional ballot with a signature deficiency to complete and

834194

submit a cure affidavit.

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

PROVISIONAL BALLOT CURE AFFIDAVIT

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

...(Voter’s Signature)...

...(Address)...

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

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

1. In order to cure the missing signature or the signature discrepancy on your Provisional Ballot Voter’s Certificate and

834194

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

2. You must sign your name on the line above (Voter's Signature).

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

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

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

4. Place the envelope bearing the affidavit into a mailing envelope addressed to the supervisor. Insert a copy of your identification in the mailing envelope. Mail (if time permits), deliver, or have delivered the completed affidavit along with

834194

the copy of your identification to your county supervisor of elections. Be sure there is sufficient postage if mailed and that the supervisor's address is correct. Remember, your information MUST reach your county supervisor of elections no later than 5 p.m. on the 2nd day following the election or your ballot will not count.

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

6. Submitting a provisional ballot affidavit does not establish your eligibility to vote in this election or guarantee that your ballot will be counted. The county canvassing board determines your eligibility to vote through information provided on the Provisional Ballot Voter's Certificate and Affirmation, written evidence provided by you, including information in your cure affidavit along with any supporting identification, and any other evidence presented by the supervisor of elections or a challenger. You may still be required to present additional written evidence to support your eligibility to vote.

(e) The department and each supervisor shall include the affidavit and instructions on their respective websites. The supervisor shall include his or her office mailing address, e-mail address, and fax number on the page containing the affidavit instructions, and the department's instruction page shall include the office mailing addresses, e-mail addresses, and fax numbers of all supervisors or provide a conspicuous link to such addresses.

(f) The supervisor shall attach each affidavit received to

834194

the appropriate provisional ballot envelope containing the Provisional Ballot Voter's Certificate and Affirmation.

(7)(a) ~~(6)~~ Each supervisor ~~of elections~~ shall establish a free access system that allows each person who casts a provisional ballot to determine whether his or her provisional ballot was counted in the final canvass of votes and, if not, the reasons why. Information regarding provisional ballots shall be available no later than 30 days following the election. The system established must restrict information regarding an individual ballot to the person who cast the ballot.

(b) Unless processed as a signature update pursuant to subsection (2), the supervisor shall mail a voter registration application to the elector to be completed indicating the elector's current signature if the signature on the voter's certificate or cure affidavit did not match the elector's signature in the registration books or precinct register.

Section 9. Paragraph (b) of subsection (1) and subsection (9) of section 101.151, Florida Statutes, are amended to read:

101.151 Specifications for ballots.—

(1)

(b) Polling places and early voting sites may employ a ballot-on-demand production system to print individual marksense ballots, including provisional ballots, for eligible electors ~~pursuant to s. 101.657~~. Ballot-on-demand technology may be used to produce marksense vote-by-mail and election-day ballots.

(9)(a) The Department of State shall adopt rules prescribing a uniform primary and general election ballot for each certified voting system. The rules shall incorporate the requirements set forth in this section and shall prescribe

834194

additional matters and forms that include, without limitation:

1. The ballot title followed by clear and unambiguous ballot instructions and directions limited to a single location on the ballot, either:

a. Centered across the top of the ballot; or

b. In the leftmost column, with no individual races in that column unless it is the only column on the ballot;

2. Individual race layout; ~~and~~

3. Overall ballot layout; and~~.~~

4. Oval vote targets as the only permissible type of vote target.

(b) The ~~department~~ rules must ~~shall~~ graphically depict a sample uniform primary and general election ballot form for each certified voting system.

Section 10. Subsection (2) of section 101.20, Florida Statutes, is amended to read:

101.20 Publication of ballot form; sample ballots.—

(2)(a) Upon completion of the list of qualified candidates, a sample ballot shall be published by the supervisor ~~of elections~~ in a newspaper of general circulation in the county, before the day of election.

(b) In lieu of the publication required under paragraph (a), a supervisor may send a sample ballot to each registered elector by e-mail at least 7 days before an election if an e-mail address has been provided and the elector has opted to receive a sample ballot by electronic delivery. If an e-mail address has not been provided, or if the elector has not opted for electronic delivery, a sample ballot may be mailed to each registered elector or to each household in which there is a

834194

registered elector at least 7 days before an election.

Section 11. Effective January 1, 2020, 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 12. Paragraph (a) of subsection (4) of section 101.5614, Florida Statutes, is amended to read:

101.5614 Canvass of returns.—

(4)(a) If any vote-by-mail ballot is physically damaged so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a vote-by-mail ballot containing an overvoted race or a marked vote-by-mail ballot in which every race is undervoted which

834194

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

Section 13. Subsection (2) and paragraphs (b) and (c) of subsection (4) of section 101.62, Florida Statutes, are amended to read:

101.62 Request for vote-by-mail ballots.—

(2) A request for a vote-by-mail ballot to be mailed to a voter must be received no later than 5 p.m. on the 10th ~~sixth~~ day before the election by the supervisor ~~of elections~~. The supervisor ~~of elections~~ shall mail vote-by-mail ballots to voters requesting ballots by such deadline no later than 8 ~~4~~ days before the election.

(4)

(b) The supervisor ~~of elections~~ shall mail a vote-by-mail ballot to each absent qualified voter, other than those listed in paragraph (a), who has requested such a ballot, between the 40th ~~35th~~ and 33rd ~~28th~~ days before the presidential preference primary election, primary election, and general election. Except as otherwise provided in subsection (2) and after the period

834194

described in this paragraph, the supervisor shall mail vote-by-mail ballots within 2 business days after receiving a request for such a ballot.

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

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

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

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

4. By delivery to a designee on election day or up to 9 ~~5~~ days prior to the day of an election. Any elector may designate in writing a person to pick up the ballot for the elector; however, the person designated may not pick up more than two vote-by-mail ballots per election, other than the designee's own ballot, except that additional ballots may be picked up for members of the designee's immediate family. For purposes of this section, "immediate family" means the designee's spouse or the parent, child, grandparent, or sibling of the designee or of the designee's spouse. The designee shall provide to the supervisor the written authorization by the elector and a picture

834194

identification of the designee and must complete an affidavit. The designee shall state in the affidavit that the designee is authorized by the elector to pick up that ballot and shall indicate if the elector is a member of the designee's immediate family and, if so, the relationship. The department shall prescribe the form of the affidavit. If the supervisor is satisfied that the designee is authorized to pick up the ballot and that the signature of the elector on the written authorization matches the signature of the elector on file, the supervisor shall give the ballot to that designee for delivery to the elector.

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

Section 14. Subsection (1) of section 101.64, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

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

(1) The supervisor shall enclose with each vote-by-mail ballot two envelopes: a secrecy envelope, into which the absent elector shall enclose his or her marked ballot; and a mailing envelope, into which the absent elector shall then place the secrecy envelope, which shall be addressed to the supervisor and

834194

also bear on the back side a certificate in substantially the following form:

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

VOTER'S CERTIFICATE

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

...(Date)... ...(Voter's Signature)...

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

...(Mobile Telephone Number)...

(5) The secrecy envelope must include, in bold font, substantially the following message:

IN ORDER FOR YOUR VOTE-BY-MAIL BALLOT TO COUNT, YOUR SUPERVISOR OF ELECTIONS MUST RECEIVE YOUR BALLOT BY 7 P.M. ON ELECTION DAY. IF YOU WAIT TO MAIL YOUR BALLOT, YOUR VOTE MIGHT NOT COUNT. TO PREVENT THIS FROM OCCURRING, PLEASE MAIL OR TURN IN YOUR BALLOT AS SOON AS POSSIBLE.

Section 15. Section 101.65, Florida Statutes, is amended to read:

101.65 Instructions to absent electors.—The supervisor

834194

shall enclose with each vote-by-mail ballot separate printed instructions in substantially the following form; however, where the instructions appear in capitalized text, the text of the printed instructions must be in bold font:

READ THESE INSTRUCTIONS CAREFULLY
BEFORE MARKING BALLOT.

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

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

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

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

834194

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

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

7. VERY IMPORTANT. In order for your vote-by-mail ballot to be counted, you must sign your name on the line above (Voter's Signature). A vote-by-mail ballot will be considered illegal and not be counted if the signature on the voter's certificate does not match the signature on record. The signature on file at the time the supervisor of elections in the county in which your precinct is located receives your vote-by-mail ballot ~~start of the canvass of the vote-by-mail ballots~~ is the signature that will be used to verify your signature on the voter's certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that it is received before your vote-by-mail ballot is received ~~no later than the start of the canvassing of vote-by-mail ballots, which occurs no earlier than the 15th day before election day~~.

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

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

10. FELONY NOTICE. It is a felony under Florida law to

834194

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

Section 16. Subsection (2) of section 101.657, Florida Statutes, is amended to read:

101.657 Early voting.—

(2) During any early voting period, each supervisor ~~of elections~~ shall make available the total number of voters casting a ballot at each early voting location and the total number of vote-by-mail ballots received under s. 101.69(2) during the previous day. Each supervisor shall prepare an electronic data file listing the individual voters who cast a ballot during the early voting period. This information shall be provided in electronic format as provided by rule adopted by the division. The information shall be updated and made available no later than noon of each day and shall be contemporaneously provided to the division.

Section 17. Paragraphs (a) and (c) of subsection (2) and subsection (4) of section 101.68, Florida Statutes, are amended to read:

101.68 Canvassing of vote-by-mail ballot.—

(2)(a) The county canvassing board may begin the canvassing of vote-by-mail ballots at 7 a.m. on the 22nd ~~15th~~ day before the election, but not later than noon on the day following the election. In addition, for any county using electronic tabulating equipment, the processing of vote-by-mail ballots through such tabulating equipment may begin at 7 a.m. on the 22nd ~~15th~~ day before the election. However, notwithstanding any

834194

such authorization to begin canvassing or otherwise processing vote-by-mail ballots early, no result shall be released until after the closing of the polls in that county on election day. Any supervisor ~~of elections~~, deputy supervisor ~~of elections~~, canvassing board member, election board member, or election employee who releases the results of a canvassing or processing of vote-by-mail ballots prior to the closing of the polls in that county on election day commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

834194

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

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

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

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

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

(4)(a) As soon as practicable, the supervisor shall, on

834194

behalf of the county canvassing board, attempt to ~~immediately~~ notify an elector who has returned a vote-by-mail ballot that does not include the elector's signature or contains a signature that does not match the elector's signature in the registration books or precinct register by: ~~.~~

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

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

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

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

(b) The supervisor shall allow such an elector to complete and submit an affidavit in order to cure the vote-by-mail ballot until 5 p.m. on the 2nd day after ~~before~~ the election.

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

834194

VOTE-BY-MAIL BALLOT CURE AFFIDAVIT

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

...(Voter's Signature)...

...(Address)...

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

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

1. In order to ensure that your vote-by-mail ballot will be counted, your affidavit should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 5 p.m. on the 2nd day after ~~before~~ the election.

2. You must sign your name on the line above (Voter's Signature).

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

a. Tier 1 identification.—Current and valid identification that includes your name and photograph: Florida driver license;

834194

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

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

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

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

834194

(e) ~~(d)~~ The department and each supervisor shall include the affidavit and instructions on their respective websites. The supervisor must include his or her office's mailing address, e-mail address, and fax number on the page containing the affidavit instructions, and~~;~~ the department's instruction page must include the office mailing addresses, e-mail addresses, and fax numbers of all supervisors of elections or provide a conspicuous link to such addresses.

(f) ~~(e)~~ The supervisor shall attach each affidavit received to the appropriate vote-by-mail ballot mailing envelope.

(g) ~~(f)~~ If a vote-by-mail ballot is validated following the submission of a cure affidavit, the supervisor shall make a copy of the affidavit, affix it to a voter registration application, and immediately process it as a valid request for a signature update pursuant to s. 98.077.

(h) After all election results on the ballot have been certified, the supervisor shall, on behalf of the county canvassing board, notify each elector whose ballot has been rejected as illegal and provide the specific reason the ballot was rejected. In addition, unless processed as a signature update pursuant to paragraph (g), the supervisor shall mail a voter registration application to the elector to be completed indicating the elector's current signature if the signature on the voter's certificate or cure affidavit did not match the elector's signature in the registration books or precinct register. ~~This section does not prohibit the supervisor from providing additional methods for updating an elector's signature.~~

Section 18. Section 101.69, Florida Statutes, is amended to

read:

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

(1) The provisions of this code shall not be construed to prohibit any elector from voting in person at the elector's precinct on the day of an election or at an early voting site, notwithstanding that the elector has requested a vote-by-mail ballot for that election. An elector who has returned a voted vote-by-mail ballot to the supervisor, however, is deemed to have cast his or her ballot and is not entitled to vote another ballot or to have a provisional ballot counted by the county canvassing board. An elector who has received a vote-by-mail ballot and has not returned the voted ballot to the supervisor, but desires to vote in person, shall return the ballot, whether voted or not, to the election board in the elector's precinct or to an early voting site. The returned ballot shall be marked "canceled" by the board and placed with other canceled ballots. However, if the elector does not return the ballot and the election official:

(a) ~~(1)~~ Confirms that the supervisor has received the elector's vote-by-mail ballot, the elector shall not be allowed to vote in person. If the elector maintains that he or she has not returned the vote-by-mail ballot or remains eligible to vote, the elector shall be provided a provisional ballot as provided in s. 101.048.

(b) ~~(2)~~ Confirms that the supervisor has not received the elector's vote-by-mail ballot, the elector shall be allowed to vote in person as provided in this code. The elector's vote-by-mail ballot, if subsequently received, shall not be counted and shall remain in the mailing envelope, and the envelope shall be

834194

marked "Rejected as Illegal."

(c) ~~(3)~~ Cannot determine whether the supervisor has received the elector's vote-by-mail ballot, the elector may vote a provisional ballot as provided in s. 101.048.

(2) The supervisor shall allow an elector who has received a vote-by-mail ballot to physically return a voted vote-by-mail ballot to the supervisor by placing the envelope containing his or her marked ballot in a secure drop box. Secure drop boxes shall only be placed at the main office of the supervisor, at each branch office of the supervisor, and at each early voting site.

Section 19. Subsection (2) of section 101.6923, Florida Statutes, is amended to read:

101.6923 Special vote-by-mail ballot instructions for certain first-time voters.—

(2) A voter covered by this section shall be provided with printed instructions with his or her vote-by-mail ballot in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING YOUR BALLOT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR BALLOT NOT TO COUNT.

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

834194

supervisor of elections of the county in which you are registered to vote no later than 10 days after the date of the election.

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

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

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

5. Insert the secrecy envelope into the enclosed envelope bearing the Voter's Certificate. Seal the envelope and completely fill out the Voter's Certificate on the back of the envelope.

a. You must sign your name on the line above (Voter's Signature).

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

c. A vote-by-mail ballot will be considered illegal and will not be counted if the signature on the Voter's Certificate does not match the signature on record. The signature on file at the start of the canvass of the vote-by-mail ballots is the signature that will be used to verify your signature on the Voter's Certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that

834194

it is received before your vote-by-mail ballot is received ~~no later than the start of canvassing of vote-by-mail ballots, which occurs no earlier than the 15th day before election day~~.

6. Unless you meet one of the exemptions in Item 7., you must make a copy of one of the following forms of identification:

a. Identification which must include your name and photograph: United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; a Florida license to carry a concealed weapon or firearm; or an employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality; or

b. Identification which shows your name and current residence address: current utility bill, bank statement, government check, paycheck, or government document (excluding voter information ~~identification~~ card).

7. The identification requirements of Item 6. do not apply if you meet one of the following requirements:

a. You are 65 years of age or older.

b. You have a temporary or permanent physical disability.

c. You are a member of a uniformed service on active duty who, by reason of such active duty, will be absent from the county on election day.

d. You are a member of the Merchant Marine who, by reason of service in the Merchant Marine, will be absent from the

834194

county on election day.

e. You are the spouse or dependent of a member referred to in paragraph c. or paragraph d. who, by reason of the active duty or service of the member, will be absent from the county on election day.

f. You are currently residing outside the United States.

8. Place the envelope bearing the Voter's Certificate into the mailing envelope addressed to the supervisor. Insert a copy of your identification in the mailing envelope. DO NOT PUT YOUR IDENTIFICATION INSIDE THE SECRECY ENVELOPE WITH THE BALLOT OR INSIDE THE ENVELOPE WHICH BEARS THE VOTER'S CERTIFICATE OR YOUR BALLOT WILL NOT COUNT.

9. Mail, deliver, or have delivered the completed mailing envelope. Be sure there is sufficient postage if mailed.

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

Section 20. Paragraph (a) of subsection (4) and subsection (5) of section 102.031, Florida Statutes, are amended to read:

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

(4)(a) No person, political committee, or other group or organization may solicit voters inside the polling place or within <u>150</u> ~~100~~ feet of the entrance to any polling place, a polling room where the polling place is also a polling room, an early voting site, or an office of the supervisor ~~of elections~~

834194

where vote-by-mail ballots are requested and printed on demand for the convenience of electors who appear in person to request them. Before the opening of the polling place or early voting site, the clerk or supervisor shall designate the no-solicitation zone and mark the boundaries.

(5) No photography is permitted in the polling room or early voting area, except an elector may photograph his or her own ballot.

Section 21. Present subsections (9) and (10) of section 102.141, Florida Statutes, are renumbered as subsections (10) and (11), respectively, subsection (2) of that section is amended, and a new subsection (9) is added to that section, to read:

102.141 County canvassing board; duties.—

(2)(a) The county canvassing board shall meet in a building accessible to the public in the county where the election occurred at a time and place to be designated by the supervisor ~~of elections~~ to publicly canvass the absent electors' ballots as provided for in s. 101.68 and provisional ballots as provided by ss. 101.048, 101.049, and 101.6925. Provisional ballots cast pursuant to s. 101.049 shall be canvassed in a manner that votes for candidates and issues on those ballots can be segregated from other votes. ~~Public notice of the time and place at which the county canvassing board shall meet to canvass the absent electors' ballots and provisional ballots shall be given at least 48 hours prior thereto by publication on the supervisor of elections' website and once in one or more newspapers of general circulation in the county or, if there is no newspaper of general circulation in the county, by posting such notice in at~~

834194

~~least four conspicuous places in the county.~~ As soon as the absent electors' ballots and the provisional ballots are canvassed, the board shall proceed to publicly canvass the vote given each candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, as shown by the returns then on file in the office of the supervisor ~~of elections~~.

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

(c) If the county canvassing board suspends or recesses a meeting publicly noticed pursuant to paragraph (b) for a period lasting more than 60 minutes, the board must post on the supervisor's website the anticipated time at which the board expects to reconvene. If the county canvassing board does not reconvene at the specified time, the board must provide at least 2 hours' notice, which must be posted on the supervisor's website, before reconvening.

(d) During any meeting of the county canvassing board, a physical notice must be placed in a conspicuous area near the public entrance to the building in which the meeting is taking

834194

place. The physical notice must include the names of the individuals officially serving as the county canvassing board, the names of any alternate members, the time of the meeting, and a brief statement as to the anticipated activities of the county canvassing board.

(9) Each member, substitute member, and alternate member of the county canvassing board and all clerical help must wear identification badges during any period in which the county canvassing board is canvassing votes or engaging in other official duties. The identification badges should be worn in a conspicuous and unobstructed area, and include the name of the individual and his or her official position.

Section 22. Subsection (2) and paragraph (b) of subsection (4) of section 102.166, Florida Statutes, are amended to read:

102.166 Manual recounts of overvotes and undervotes.—

(2)~~(a)~~ Any hardware or software used to identify and sort overvotes and undervotes for a given race or ballot measure must be certified by the Department of State as part of the voting system pursuant to s. 101.015. Any such hardware or software must be capable of simultaneously identifying and sorting overvotes and undervotes in multiple races while simultaneously counting votes.

~~(b)~~ Overvotes and undervotes must ~~shall~~ be identified and sorted while recounting ballots pursuant to s. 102.141~~, if the hardware or software for this purpose has been certified or the department's rules so provide~~.

(4)

(b) The Department of State shall adopt specific rules for the federal write-in absentee ballot and for each certified

834194

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 23. Subsection (8) of section 102.168, Florida Statutes, is amended to read:

102.168 Contest of election.—

(8) In any contest that requires a review of the canvassing board's decision on the legality of a provisional or vote-by-mail ballot pursuant to s. 101.048 or s. 101.68 based upon a comparison of the signature of the elector in the registration records with the signature on the provisional or vote-by-mail voter's certificate or the provisional or vote-by-mail cure affidavit ~~and the signature of the elector in the registration records~~, the circuit court may not review or consider any evidence other than the signature of the elector in the registration records, the signature on the respective voter's certificate or cure affidavit, and any supporting identification

834194

that the elector submitted with the cure affidavit ~~and the signature of the elector in the registration records~~. The court's review of such issue shall be to determine only if the canvassing board abused its discretion in making its decision.

Section 24. Subsection (5) is added to section 104.051, Florida Statutes, to read:

104.051 Violations; neglect of duty; corrupt practices.—

(5) Any supervisor who willfully violates any provision of the Florida Election Code is, upon a finding of such violation by a court of competent jurisdiction, prohibited from receiving the special qualification salary pursuant to s. 145.09(3) for a period of 24 months, dating from the time of the violation.

Section 25. Except as otherwise expressly provided in this act, 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 election administration; amending s. 97.012, F.S.; requiring the Secretary of State to provide signature matching training to certain persons; amending s. 97.021, F.S.; revising the definition of the term "voter interface device"; amending s. 98.077, F.S.; revising deadlines for voter signature updates for purposes of vote-by-mail and provisional ballots; providing an exception; amending s. 98.0981, F.S.; revising the voter threshold

834194

necessary to require the reporting of certain precinct-level results by ballot; amending s. 99.063, F.S.; removing a provision requiring certain language to follow the name of gubernatorial candidates in specified circumstances; amending s. 100.061, F.S.; revising the date of the primary election; amending s. 101.015, F.S.; requiring the Department of State to establish minimum security standards to address chain of custody of ballots, transport of ballots, and ballot security; amending s. 101.048, F.S.; requiring a county canvassing board to review certain information; providing requirements for the canvassing and counting of provisional ballots; requiring the supervisor of elections to process a valid provisional ballot cure affidavit as a voter signature update; revising the Provisional Ballot Voter’s Certificate and Affirmation form; providing a process to cure a provisional ballot with a signature deficiency; requiring a supervisor to mail a voter registration application to an elector in certain circumstances; amending s. 101.151, F.S.; revising requirements for department rules governing ballot design; amending s. 101.20, F.S.; authorizing the distribution of sample ballots by e-mail or mail in lieu of newspaper publication; 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. 101.5614, F.S.; authorizing certain individuals to serve as witnesses during the ballot

834194

duplication process; amending s. 101.62, F.S.; revising the deadlines by which requests for vote-by-mail ballots must be received and by which vote-by-mail ballots shall be mailed by the supervisor; expanding the period during which a designee may physically collect a vote-by-mail ballot; amending s. 101.64, F.S.; requiring the secrecy envelope included with a vote-by-mail ballot to include a specified statement; amending s. 101.65, F.S.; revising requirements for vote-by-mail ballot instructions; amending s. 101.657, F.S.; requiring a supervisor to report the total number of vote-by-mail ballots received at each early voting location; amending s. 101.68, F.S.; revising the date that canvassing of vote-by-mail ballots may begin; revising requirements related to the canvassing and counting of vote-by-mail ballots; revising the deadline by which vote-by-mail ballot cure affidavits must be submitted; requiring the supervisor to process a valid vote-by-mail ballot cure affidavit as a voter signature update; amending s. 101.69, F.S.; requiring a supervisor to provide secure drop boxes in specified locations for an elector to place his or her vote-by-mail ballot; amending s. 101.6923, F.S.; revising vote-by-mail ballot instructions for certain first-time voters; amending s. 102.031, F.S.; expanding the area in which voter solicitation is prohibited; authorizing an elector to photograph his or her own ballot; amending s. 102.141, F.S.; providing notice requirements for

834194

meetings of a county canvassing board; requiring certain individuals to wear identification badges during certain periods; amending s. 102.166, F.S.; modifying certification requirements for voting systems to require the functionality to simultaneously sort and count ballot overvotes and undervotes; revising requirements for Department of State rules regarding manual recounts of certain ballots; amending s. 102.168, F.S.; modifying provisions governing election contests to authorize judicial review of additional information related to determining validity of provisional and vote-by-mail ballot signatures to conform to changes made by the act; amending s. 104.051, F.S.; providing a penalty for certain supervisors who willfully violate the Florida Election Code; providing effective dates.

640434

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/23/2019	.	
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The Committee on Rules (Rodriguez) recommended the following:

Senate Amendment to Amendment (834194) (with title amendment)

Delete lines 241 - 947

and insert:

(b) Until 5 p.m. on the 11th day after an election, the supervisor shall allow an elector who has submitted a provisional ballot with a signature deficiency to complete and submit a cure affidavit.

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

640434

PROVISIONAL BALLOT CURE AFFIDAVIT

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

...(Voter's Signature)...

...(Address)...

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

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

1. In order to cure the missing signature or the signature discrepancy on your Provisional Ballot Voter's Certificate and Affirmation, your affidavit should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no

640434

later than 5 p.m. on the 11th day after the election.

2. You must sign your name on the line above (Voter's Signature).

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

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

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

4. Place the envelope bearing the affidavit into a mailing envelope addressed to the supervisor. Insert a copy of your identification in the mailing envelope. Mail (if time permits), deliver, or have delivered the completed affidavit along with the copy of your identification to your county supervisor of elections. Be sure there is sufficient postage if mailed and that the supervisor's address is correct. Remember, your

640434

information MUST reach your county supervisor of elections no later than 5 p.m. on the 11th day following the election or your ballot will not count.

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

6. Submitting a provisional ballot affidavit does not establish your eligibility to vote in this election or guarantee that your ballot will be counted. The county canvassing board determines your eligibility to vote through information provided on the Provisional Ballot Voter's Certificate and Affirmation, written evidence provided by you, including information in your cure affidavit along with any supporting identification, and any other evidence presented by the supervisor of elections or a challenger. You may still be required to present additional written evidence to support your eligibility to vote.

(e) The department and each supervisor shall include the affidavit and instructions on their respective websites. The supervisor shall include his or her office mailing address, e-mail address, and fax number on the page containing the affidavit instructions, and the department's instruction page shall include the office mailing addresses, e-mail addresses, and fax numbers of all supervisors or provide a conspicuous link to such addresses.

(f) The supervisor shall attach each affidavit received to the appropriate provisional ballot envelope containing the Provisional Ballot Voter's Certificate and Affirmation.

(7)(a) ~~(6)~~ Each supervisor ~~of elections~~ shall establish a

640434

free access system that allows each person who casts a provisional ballot to determine whether his or her provisional ballot was counted in the final canvass of votes and, if not, the reasons why. Information regarding provisional ballots shall be available no later than 30 days following the election. The system established must restrict information regarding an individual ballot to the person who cast the ballot.

(b) Unless processed as a signature update pursuant to subsection (2), the supervisor shall mail a voter registration application to the elector to be completed indicating the elector's current signature if the signature on the voter's certificate or cure affidavit did not match the elector's signature in the registration books or precinct register.

Section 9. Paragraph (b) of subsection (1) and subsection (9) of section 101.151, Florida Statutes, are amended to read:

101.151 Specifications for ballots.—

(1)

(b) Polling places and early voting sites may employ a ballot-on-demand production system to print individual marksense ballots, including provisional ballots, for eligible electors ~~pursuant to s. 101.657~~. Ballot-on-demand technology may be used to produce marksense vote-by-mail and election-day ballots.

(9)(a) The Department of State shall adopt rules prescribing a uniform primary and general election ballot for each certified voting system. The rules shall incorporate the requirements set forth in this section and shall prescribe additional matters and forms that include, without limitation:

1. The ballot title followed by clear and unambiguous ballot instructions and directions limited to a single location

640434

on the ballot, either:

a. Centered across the top of the ballot; or

b. In the leftmost column, with no individual races in that column unless it is the only column on the ballot;

2. Individual race layout; ~~and~~

3. Overall ballot layout; and~~.~~

4. Oval vote targets as the only permissible type of vote target.

(b) The ~~department~~ rules must ~~shall~~ graphically depict a sample uniform primary and general election ballot form for each certified voting system.

Section 10. Subsection (2) of section 101.20, Florida Statutes, is amended to read:

101.20 Publication of ballot form; sample ballots.—

(2)(a) Upon completion of the list of qualified candidates, a sample ballot shall be published by the supervisor ~~of elections~~ in a newspaper of general circulation in the county, before the day of election.

(b) In lieu of the publication required under paragraph (a), a supervisor may send a sample ballot to each registered elector by e-mail at least 7 days before an election if an e-mail address has been provided and the elector has opted to receive a sample ballot by electronic delivery. If an e-mail address has not been provided, or if the elector has not opted for electronic delivery, a sample ballot may be mailed to each registered elector or to each household in which there is a registered elector at least 7 days before an election.

Section 11. Effective January 1, 2020, section 101.56075, Florida Statutes, is amended to read:

640434

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

101.5614 Canvass of returns.—

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

640434

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

Section 13. Subsection (2) and paragraphs (b) and (c) of subsection (4) of section 101.62, Florida Statutes, are amended to read:

101.62 Request for vote-by-mail ballots.—

(2) A request for a vote-by-mail ballot to be mailed to a voter must be received no later than 5 p.m. on the 10th ~~sixth~~ day before the election by the supervisor ~~of elections~~. The supervisor ~~of elections~~ shall mail vote-by-mail ballots to voters requesting ballots by such deadline no later than 8 ~~4~~ days before the election.

(4)

(b) The supervisor ~~of elections~~ shall mail a vote-by-mail ballot to each absent qualified voter, other than those listed in paragraph (a), who has requested such a ballot, between the 40th ~~35th~~ and 33rd ~~28th~~ days before the presidential preference primary election, primary election, and general election. Except as otherwise provided in subsection (2) and after the period described in this paragraph, the supervisor shall mail vote-by-mail ballots within 2 business days after receiving a request for such a ballot.

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

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

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

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

4. By delivery to a designee on election day or up to 9 ~~5~~ days prior to the day of an election. Any elector may designate in writing a person to pick up the ballot for the elector; however, the person designated may not pick up more than two vote-by-mail ballots per election, other than the designee's own ballot, except that additional ballots may be picked up for members of the designee's immediate family. For purposes of this section, "immediate family" means the designee's spouse or the parent, child, grandparent, or sibling of the designee or of the designee's spouse. The designee shall provide to the supervisor the written authorization by the elector and a picture identification of the designee and must complete an affidavit. The designee shall state in the affidavit that the designee is authorized by the elector to pick up that ballot and shall

640434

indicate if the elector is a member of the designee's immediate family and, if so, the relationship. The department shall prescribe the form of the affidavit. If the supervisor is satisfied that the designee is authorized to pick up the ballot and that the signature of the elector on the written authorization matches the signature of the elector on file, the supervisor shall give the ballot to that designee for delivery to the elector.

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

Section 14. Subsection (1) of section 101.64, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

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

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

Note: Please Read Instructions Carefully Before

640434

Marking Ballot and Completing Voter's Certificate.

VOTER'S CERTIFICATE

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

...(Date)... ...(Voter's Signature)...

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

...(Mobile Telephone Number)...

(5) The secrecy envelope must include, in bold font, substantially the following message:

IN ORDER FOR YOUR VOTE-BY-MAIL BALLOT TO COUNT, YOUR SUPERVISOR OF ELECTIONS MUST RECEIVE YOUR BALLOT BY 7 P.M. ON ELECTION DAY. IF YOU WAIT TO MAIL YOUR BALLOT, YOUR VOTE MIGHT NOT COUNT. TO PREVENT THIS FROM OCCURRING, PLEASE MAIL OR TURN IN YOUR BALLOT AS SOON AS POSSIBLE.

Section 15. Section 101.65, Florida Statutes, is amended to read:

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

640434

printed instructions must be in bold font:

READ THESE INSTRUCTIONS CAREFULLY

BEFORE MARKING BALLOT.

1. VERY IMPORTANT. In order to ensure that your vote-by-mail ballot will be counted, it should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 7 p.m. on the day of the election. However, if you are an overseas voter casting a ballot in a presidential preference primary or general election, your vote-by-mail ballot must be postmarked or dated no later than the date of the election and received by the supervisor of elections of the county in which you are registered to vote no later than 10 days after the date of the election. Note that the later you return your ballot, the less time you will have to cure any signature deficiencies, which is authorized until 5 p.m. on the 11th day after the election.

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

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

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

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

6. Seal the mailing envelope and completely fill out the

640434

Voter's Certificate on the back of the mailing envelope.

7. VERY IMPORTANT. In order for your vote-by-mail ballot to be counted, you must sign your name on the line above (Voter's Signature). A vote-by-mail ballot will be considered illegal and not be counted if the signature on the voter's certificate does not match the signature on record. The signature on file at the time the supervisor of elections in the county in which your precinct is located receives your vote-by-mail ballot ~~start of the canvass of the vote-by-mail ballots~~ is the signature that will be used to verify your signature on the voter's certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that it is received before your vote-by-mail ballot is received ~~no later than the start of the canvassing of vote-by-mail ballots, which occurs no earlier than the 15th day before election day~~.

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

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

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

any other circumstances making your ballot false or fraudulent.

Section 16. Subsection (2) of section 101.657, Florida Statutes, is amended to read:

101.657 Early voting.—

(2) During any early voting period, each supervisor ~~of elections~~ shall make available the total number of voters casting a ballot at each early voting location and the total number of vote-by-mail ballots received under s. 101.69(2) during the previous day. Each supervisor shall prepare an electronic data file listing the individual voters who cast a ballot during the early voting period. This information shall be provided in electronic format as provided by rule adopted by the division. The information shall be updated and made available no later than noon of each day and shall be contemporaneously provided to the division.

Section 17. Paragraphs (a) and (c) of subsection (2) and subsection (4) of section 101.68, Florida Statutes, are amended to read:

101.68 Canvassing of vote-by-mail ballot.—

(2)(a) The county canvassing board may begin the canvassing of vote-by-mail ballots at 7 a.m. on the 22nd ~~15th~~ day before the election, but not later than noon on the day following the election. In addition, for any county using electronic tabulating equipment, the processing of vote-by-mail ballots through such tabulating equipment may begin at 7 a.m. on the 22nd ~~15th~~ day before the election. However, notwithstanding any such authorization to begin canvassing or otherwise processing vote-by-mail ballots early, no result shall be released until after the closing of the polls in that county on election day.

640434

Any supervisor ~~of elections~~, deputy supervisor ~~of elections~~, canvassing board member, election board member, or election employee who releases the results of a canvassing or processing of vote-by-mail ballots prior to the closing of the polls in that county on election day commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

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

640434

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

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

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

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

(4)(a) <u>As soon as practicable,</u> the supervisor shall, on behalf of the county canvassing board, <u>attempt to</u> ~~immediately~~ notify an elector who has returned a vote-by-mail ballot that does not include the elector's signature or contains a signature

640434

that does not match the elector's signature in the registration books or precinct register by: ~~.~~

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

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

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

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

(b) The supervisor shall allow such an elector to complete and submit an affidavit in order to cure the vote-by-mail ballot until 5 p.m. on the 11th day after ~~before~~ the election.

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

VOTE-BY-MAIL BALLOT CURE AFFIDAVIT

I, ..., am a qualified voter in this election and registered voter of .... County, Florida. I do solemnly swear or

640434

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

...(Voter's Signature)...

...(Address)...

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

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

1. In order to ensure that your vote-by-mail ballot will be counted, your affidavit should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 5 p.m. on the 11th day after ~~before~~ the election.

2. You must sign your name on the line above (Voter's Signature).

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

a. Tier 1 identification.—Current and valid identification that includes your name and photograph: Florida driver license; Florida identification card issued by the Department of Highway Safety and Motor Vehicles; United States passport; debit or credit card; military identification; student identification;

640434

retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; a Florida license to carry a concealed weapon or firearm; or an employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality; or

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

4. Place the envelope bearing the affidavit into a mailing envelope addressed to the supervisor. Insert a copy of your identification in the mailing envelope. Mail (if time permits), deliver, or have delivered the completed affidavit along with the copy of your identification to your county supervisor of elections. Be sure there is sufficient postage if mailed and that the supervisor's address is correct. Remember, your information MUST reach your county supervisor of elections no later than 5 p.m. on the 11th day after the election, or your ballot will not count.

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

(e) ~~(d)~~ The department and each supervisor shall include the affidavit and instructions on their respective websites. The supervisor must include his or her office's mailing address, e-

mail address, and fax number on the page containing the affidavit instructions, and~~;~~ the department's instruction page must include the office mailing addresses, e-mail addresses, and fax numbers of all supervisors of elections or provide a conspicuous link to such addresses.

(f)~~(e)~~ The supervisor shall attach each affidavit received to the appropriate vote-by-mail ballot mailing envelope.

(g)~~(f)~~ If a vote-by-mail ballot is validated following the submission of a cure affidavit, the supervisor shall make a copy of the affidavit, affix it to a voter registration application, and immediately process it as a valid request for a signature update pursuant to s. 98.077.

(h) After all election results on the ballot have been certified, the supervisor shall, on behalf of the county canvassing board, notify each elector whose ballot has been rejected as illegal and provide the specific reason the ballot was rejected. In addition, unless processed as a signature update pursuant to paragraph (g), the supervisor shall mail a voter registration application to the elector to be completed indicating the elector's current signature if the signature on the voter's certificate or cure affidavit did not match the elector's signature in the registration books or precinct register. ~~This section does not prohibit the supervisor from providing additional methods for updating an elector's signature.~~

Section 18. Section 101.69, Florida Statutes, is amended to read:

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

(1) The provisions of this code shall not be construed to

prohibit any elector from voting in person at the elector's precinct on the day of an election or at an early voting site, notwithstanding that the elector has requested a vote-by-mail ballot for that election. An elector who has returned a voted vote-by-mail ballot to the supervisor, however, is deemed to have cast his or her ballot and is not entitled to vote another ballot or to have a provisional ballot counted by the county canvassing board. An elector who has received a vote-by-mail ballot and has not returned the voted ballot to the supervisor, but desires to vote in person, shall return the ballot, whether voted or not, to the election board in the elector's precinct or to an early voting site. The returned ballot shall be marked "canceled" by the board and placed with other canceled ballots. However, if the elector does not return the ballot and the election official:

(a) ~~(1)~~ Confirms that the supervisor has received the elector's vote-by-mail ballot, the elector shall not be allowed to vote in person. If the elector maintains that he or she has not returned the vote-by-mail ballot or remains eligible to vote, the elector shall be provided a provisional ballot as provided in s. 101.048.

(b) ~~(2)~~ Confirms that the supervisor has not received the elector's vote-by-mail ballot, the elector shall be allowed to vote in person as provided in this code. The elector's vote-by-mail ballot, if subsequently received, shall not be counted and shall remain in the mailing envelope, and the envelope shall be marked "Rejected as Illegal."

(c) ~~(3)~~ Cannot determine whether the supervisor has received the elector's vote-by-mail ballot, the elector may vote a

640434

provisional ballot as provided in s. 101.048.

(2) The supervisor shall allow an elector who has received a vote-by-mail ballot to physically return a voted vote-by-mail ballot to the supervisor by placing the envelope containing his or her marked ballot in a secure drop box. Secure drop boxes shall only be placed at the main office of the supervisor, at each branch office of the supervisor, and at each early voting site.

Section 19. Subsection (2) of section 101.6923, Florida Statutes, is amended to read:

101.6923 Special vote-by-mail ballot instructions for certain first-time voters.—

(2) A voter covered by this section shall be provided with printed instructions with his or her vote-by-mail ballot in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING YOUR BALLOT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR BALLOT NOT TO COUNT.

1. In order to ensure that your vote-by-mail ballot will be counted, it should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 7 p.m. on the date of the election. However, if you are an overseas voter casting a ballot in a presidential preference primary or general election, your vote-by-mail ballot must be postmarked or dated no later than the date of the election and received by the supervisor of elections of the county in which you are registered to vote no later than 10 days after the date of the election.

640434

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

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

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

5. Insert the secrecy envelope into the enclosed envelope bearing the Voter's Certificate. Seal the envelope and completely fill out the Voter's Certificate on the back of the envelope.

a. You must sign your name on the line above (Voter's Signature).

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

c. A vote-by-mail ballot will be considered illegal and will not be counted if the signature on the Voter's Certificate does not match the signature on record. The signature on file at the start of the canvass of the vote-by-mail ballots is the signature that will be used to verify your signature on the Voter's Certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that it is received <u>before your vote-by-mail ballot is received</u> ~~no later than the start of canvassing of vote-by-mail ballots, which occurs no earlier than the 15th day before election day~~.

6. Unless you meet one of the exemptions in Item 7., you must make a copy of one of the following forms of identification:

a. Identification which must include your name and photograph: United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; a Florida license to carry a concealed weapon or firearm; or an employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality; or

b. Identification which shows your name and current residence address: current utility bill, bank statement, government check, paycheck, or government document (excluding voter information ~~identification~~ card).

7. The identification requirements of Item 6. do not apply if you meet one of the following requirements:

a. You are 65 years of age or older.

b. You have a temporary or permanent physical disability.

c. You are a member of a uniformed service on active duty who, by reason of such active duty, will be absent from the county on election day.

d. You are a member of the Merchant Marine who, by reason of service in the Merchant Marine, will be absent from the county on election day.

e. You are the spouse or dependent of a member referred to in paragraph c. or paragraph d. who, by reason of the active

640434

duty or service of the member, will be absent from the county on election day.

f. You are currently residing outside the United States.

8. Place the envelope bearing the Voter's Certificate into the mailing envelope addressed to the supervisor. Insert a copy of your identification in the mailing envelope. DO NOT PUT YOUR IDENTIFICATION INSIDE THE SECRECY ENVELOPE WITH THE BALLOT OR INSIDE THE ENVELOPE WHICH BEARS THE VOTER'S CERTIFICATE OR YOUR BALLOT WILL NOT COUNT.

9. Mail, deliver, or have delivered the completed mailing envelope. Be sure there is sufficient postage if mailed.

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

Section 20. Paragraph (a) of subsection (4) and subsection (5) of section 102.031, Florida Statutes, are amended to read:

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

(4)(a) No person, political committee, or other group or organization may solicit voters inside the polling place or within <u>150</u> ~~100~~ feet of the entrance to any polling place, a polling room where the polling place is also a polling room, an early voting site, or an office of the supervisor ~~of elections~~ where vote-by-mail ballots are requested and printed on demand for the convenience of electors who appear in person to request them. Before the opening of the polling place or early voting

640434

site, the clerk or supervisor shall designate the no-solicitation zone and mark the boundaries.

(5) No photography is permitted in the polling room or early voting area, except an elector may photograph his or her own ballot.

Section 21. Subsection (2) of section 102.111, Florida Statutes, is amended to read:

102.111 Elections Canvassing Commission.—

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

Section 22. Subsection (2) of section 102.112, Florida Statutes, is amended to read:

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

(2) Returns must be filed by 5 p.m. ~~on the 7th day following a primary election and by noon~~ on the 12th day following the primary election and the general election.

640434

However, the Department of State may correct typographical errors, including the transposition of numbers, in any returns submitted to the Department of State pursuant to s. 102.111(2).

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

And the title is amended as follows:

Between lines 1141 and 1142

insert:

s. 102.111, F.S.; revising the date on which the Elections Canvassing Commission certifies the primary election; amending s. 102.112, F.S.; modifying the deadline for submitting county ballot returns to the Department of State for the primary election to conform to changes made by the act; amending

139958

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/23/2019	.	
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The Committee on Rules (Simmons) recommended the following:

Senate Amendment to Amendment (834194) (with title amendment)

Delete lines 1068 - 1069
and insert:
Section 25. Effective 60 days after the effective date of this act, subsection (3) of section 100.371, Florida Statutes, is amended to read:
100.371 Initiatives; procedure for placement on ballot.—
(3) An initiative petition form circulated for signature may not be bundled with or attached to any other petition. Each

139958

signature shall be dated when made and shall be valid for a period of 2 years following such date, provided all other requirements of law are met. The sponsor shall submit signed and dated forms to the supervisor of elections for the county of residence listed by the person signing the form for verification of the number of valid signatures obtained. If a signature on a petition is from a registered voter in another county, the supervisor shall notify the petition sponsor of the misfiled petition. The petition sponsor must submit each signed petition gathered by a paid or volunteer petition circulator to the appropriate supervisor by the fifth day of the month following the month in which the petition is signed. The supervisor shall promptly verify the signatures within 30 days after receipt of the petition forms and payment of the fee required by s. 99.097. The supervisor shall promptly record, in the manner prescribed by the Secretary of State, the date each form is received by the supervisor, and the date the signature on the form is verified as valid. The supervisor may verify that the signature on a form is valid only if:

(a) The form contains the original signature of the purported elector.

(b) The form contains the disclosures required by s. 100.372(3), which must be legible, if the form was collected by a paid petition circulator.

(c) The purported elector has accurately recorded on the form the date on which he or she signed the form and the form was received by the supervisor by the fifth day of the month in the month after the form was signed.

(d) ~~(c)~~ The form sets forth the purported elector's name,

address, city, county, and voter registration number or date of birth.

(e) ~~(d)~~ The purported elector is, at the time he or she signs the form and at the time the form is verified, a duly qualified and registered elector in the state.

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

Section 26. Effective 60 days after the effective date of this act, section 100.372, Florida Statutes, is created to read:

100.372 Regulation of, and disclosures by, paid petition circulators.—

(1) A person may not collect signatures or initiative petitions for compensation unless the person is registered as a paid petition circulator with the Secretary of State.

(2) An application for registration must be submitted in the format required by the Secretary of State and must include the following:

(a) The information required to be contained on the petition form under s. 101.161, including the ballot summary and title as approved by the Secretary of State.

(b) The applicant’s name, permanent address, and date of birth.

(c) An address in this state at which the applicant will accept service of process related to disputes concerning circulation of that circulator’s petitions, if the circulator is

139958

not a resident of this state.

(d) A statement that the applicant consents to the jurisdiction of the courts of this state in resolving disputes concerning the circulation of petitions by the applicant.

(e) Any information required by the Secretary of State to verify the applicant's identity or address.

(3) All petitions circulated by a paid petition circulator must contain, in a format required by the Secretary of State, a completed Petition Circulator's Affidavit which includes:

(a) The circulator's name and address;

(b) The method by which the circulator is compensated such as compensation on an hourly basis, per signature basis, or other basis described by the circulator; and

(c) The following statement, which must be signed by the circulator:

By my signature below, as petition circulator, I verify that the petition was signed in my presence, that the petition signer had sufficient time to read the petition language, and that I believe the signature on the petition to be the genuine signature of the petition signer. Under penalties of perjury, I declare that I have read the foregoing Petition Circulator's Affidavit and the facts stated in it are true.

Petition Circulator's Signature: ...Signature...

(4) If a registered petition circulator is properly served

139958

with a subpoena to provide evidence in an action regarding the circulation of petitions and fails to appear or produce documents as provided for in the subpoena, all signatures collected by that circulator are deemed invalid. The party serving the subpoena may request an order from the court directing the removal of any petitions collected by the circulator.

(5) A paid petition circulator shall display a badge that states PAID CIRCULATOR in a form and manner specified by rule of the Secretary of State.

(6) A person who violates subsection (1) or subsection (5) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 27. Effective 60 days after the effective date of this act, section 97.026, Florida Statutes, is amended to read:

97.026 Forms to be available in alternative formats and via the Internet.—It is the intent of the Legislature that all forms required to be used in chapters 97-106 shall be made available upon request, in alternative formats. Such forms shall include vote-by-mail ballots as alternative formats for such ballots become available and the Division of Elections is able to certify systems that provide them. Whenever possible, such forms, with the exception of vote-by-mail ballots, shall be made available by the Department of State via the Internet. Sections that contain such forms include, but are not limited to, ss. 97.051, 97.052, 97.053, 97.057, 97.058, 97.0583, 97.071, 97.073, 97.1031, 98.075, 99.021, 100.361, 100.371, 100.372, 101.045, 101.171, 101.20, 101.6103, 101.62, 101.64, 101.65, 101.657, 105.031, 106.023, and 106.087.

Section 28. Effective upon this act becoming a law, the Secretary of State is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of administering the provisions of this act. This section expires July 1, 2020.

Section 29. This act applies to all revisions or amendments to the State Constitution which are proposed by initiative for the 2020 general election. However, this act does not affect the validity of any initiative petition that is gathered and submitted to a supervisor of elections within 60 days after this act becomes a law. This section shall take effect upon becoming a law.

Section 30. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming a law, 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 line 1158

and insert:

Code; amending s. 100.371, F.S.; requiring initiative sponsors to submit signed petition forms to the supervisor of elections within a specified timeframe; modifying the conditions upon which the supervisor may verify the signature on a petition form; creating s. 100.372, F.S.; prohibiting the collection of signatures or initiative petitions for compensation absent registration with the Secretary of State; prescribing requirements for registration as a paid

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petition circulator; requiring circulated petitions to contain certain disclosures; specifying conditions under which petitions may be invalidated; requiring paid petition circulators to display certain identifying credentials; providing a penalty; amending s. 97.026, F.S.; conforming a provision to changes made by the act; authorizing emergency rulemaking for a specified timeframe; providing for applicability; providing effective dates.

By the Committee on Ethics and Elections

582-02713-19 20197066__

A bill to be entitled

An act relating to ballot processes; amending 98.077, F.S.; modifying requirements for updating voter registration signatures, to conform; amending s. 99.063, F.S.; revising dates relating to the selection and qualification of a lieutenant governor running mate, to conform; amending s. 100.061, F.S.; revising the date of the primary election; amending s. 101.048, F.S.; modifying the Provisional Ballot Voter's Certificate and Affirmation; establishing a process to cure a provisional ballot with a signature deficiency; establishing related requirements and deadlines; revising requirements for the canvassing and counting of provisional ballots; creating exemptions; requiring the supervisor to process a signature update following submission of a valid provisional ballot cure affidavit; modifying post-election elector notification processes, to conform; amending 101.151, F.S.; revising requirements for department rules governing ballot design; amending s. 101.62, F.S.; revising deadlines for requests for, and the mailing of, vote-by-mail ballots; removing a limitation as to when the supervisor may begin mailing domestic vote-by-mail ballots before an election; amending s. 101.64, F.S.; modifying the vote-by-mail ballot Voter's Certificate; amending s. 101.65, F.S.; modifying vote-by-mail ballot instructions, to conform; amending 101.68, F.S.; clarifying that supervisors must immediately compare voters'

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Florida Senate - 2019 **SB 7066**

582-02713-19 20197066__

signatures on vote-by-mail ballots upon receipt; revising requirements related to the canvassing and counting of vote-by-mail ballots; providing for earlier canvassing of vote-by-mail ballots; prescribing additional notification requirements for certain vote-by-mail ballots with defective signatures; creating exemptions; revising the deadline by which vote-by-mail ballot cure affidavits must be submitted; requiring the supervisor to process a signature update following submission of a valid vote-by-mail ballot cure affidavit; modifying post-election elector notification processes, to conform; amending 101.6923, F.S.; modifying special vote-by-mail ballot instructions for certain first-time voters, to conform; amending 102.111, F.S.; revising the date on which the Elections Canvassing Commission certifies the primary election; adding an additional meeting of the Elections Canvassing Commission for certification of ballot votes in any general election races with pending recounts; amending s. 102.112, F.S.; modifying deadlines for submitting certain county ballot returns to the Department of State, to conform; amending s. 102.141, F.S.; modifying immediate reporting times for certain types of ballots and deadlines for unofficial results in primary elections and certain general election contests; amending s. 102.166, F.S.; modifying certification requirements for voting systems to require the functionality to simultaneously sort and count ballot overvotes and undervotes;

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providing an effective date.

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

Section 1. Subsection (4) of section 98.077, Florida Statutes, is amended to read:

98.077 Update of voter signature.—

(4) Except as authorized in ss. 101.048 and 101.68:

(a) All signature updates for use in verifying vote-by-mail and provisional ballots must be received by the appropriate supervisor of elections no later than the start of the canvassing of vote-by-mail ballots by the canvassing board.

(b) The signature on file at the start of the canvass of the vote-by-mail ballots is the signature that shall be used in verifying the signature on the vote-by-mail and provisional ballot certificates.

Section 2. Subsections (1) and (2) of section 99.063, Florida Statutes, are amended to read

99.063 Candidates for Governor and Lieutenant Governor.—

(1) No later than 5 p.m. of the 14th ~~9th~~ day following the primary election, each candidate for Governor shall designate a Lieutenant Governor as a running mate. Such designation must be made in writing to the Department of State.

(2) No later than 5 p.m. of the 14th ~~9th~~ day following the primary election, each designated candidate for Lieutenant Governor shall file with the Department of State:

(a) The candidate's oath required by s. 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought; and the signature of the candidate,

which must be verified under oath or affirmation pursuant to s. 92.525(1)(a).

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

(c) The full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution. A public officer who has filed the full and public disclosure with the Commission on Ethics prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

Section 3. Section 100.061, Florida Statutes, is amended to read:

100.061 Primary election.—In each year in which a general election is held, a primary election for nomination of candidates of political parties shall be held on the Tuesday 11 ~~10~~ weeks prior to the general election. The candidate receiving the highest number of votes cast in each contest in the primary election shall be declared nominated for such office. If two or more candidates receive an equal and highest number of votes for the same office, such candidates shall draw lots to determine which candidate is nominated.

Section 4. Section 101.048, Florida Statutes, is amended to read:

101.048 Provisional ballots.—

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

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

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

(b)~~1.~~ If it is determined that the person was registered and entitled to vote at the precinct where the person cast a

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vote in the election, the canvassing board must ~~shall~~ compare the signature on the Provisional Ballot Voter's Certificate and Affirmation or the provisional ballot cure affidavit with the signature on the voter's registration or precinct register ~~and, if it matches, shall count the ballot~~. A provisional ballot may be counted only if:

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

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

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

~~2. If it is determined that the person voting the provisional ballot was not registered or entitled to vote at the precinct where the person cast a vote in the election, the~~

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

(d) If a provisional ballot is validated following the submission of a cure affidavit, the supervisor must make a copy

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of the affidavit, affix it to a voter registration application, and immediately process it as a valid request for a signature update pursuant to s. 98.077.

(3) The Provisional Ballot Voter's Certificate and Affirmation shall be in substantially the following form:

STATE OF FLORIDA
COUNTY OF ....

I do solemnly swear (or affirm) that my name is ....; that my date of birth is ....; that I am registered and qualified to vote in .... County, Florida; that I am registered in the .... Party; that I am a qualified voter of the county; and that I have not voted in this election. I understand that if I commit any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to $5,000 and/or imprisoned for up to 5 years.

Further, by providing my information below, I authorize the use of e-mail, text message, and phone call for the limited purpose of signature and ballot validation.

...(Printed Name of Voter)...
...(Signature of Voter)...
...(Current Residence Address)...
...(Current Mailing Address)...
...(City, State, Zip Code)...
...(Driver License Number or Last Four Digits of Social Security Number)...
...(E-Mail Address)...

...(Home Telephone Number)...
...(Mobile Telephone Number)...

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

...(Election Official)...

Precinct # .... Ballot Style/Party Issued: ....

(4) Notwithstanding the requirements of subsections (1), (2), and (3), the supervisor of elections may, and for persons with disabilities shall, provide the appropriate provisional ballot to the voter by electronic means that meet the requirements of s. 101.56062, as provided for by the certified voting system. Each person casting a provisional ballot by electronic means shall, prior to casting his or her ballot, complete the Provisional Ballot Voter's Certificate and Affirmation as provided in subsection (3).

(5) Each person casting a provisional ballot shall be given written instructions regarding the person's right to provide the supervisor of elections with written evidence of his or her eligibility to vote and regarding the free access system established pursuant to subsection (7) ~~(6)~~. The instructions must ~~shall~~ contain the supervisors' contact information along with information on how to access the system and the information the voter will need to provide to obtain information on his or her particular ballot. The instructions ~~shall~~ also must include the following statement: "If this is a primary election, you

should contact the supervisor of elections' office immediately to confirm that you are registered and can vote in the general election."

(6)(a) As soon as practicable, the supervisor shall, on behalf of the county canvassing board, attempt to notify an elector who has submitted a provisional ballot that does not include the elector's signature or contains a signature that does not match the elector's signature in the registration books or precinct register by:

1. Providing the notice to the elector by e-mail;

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

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

If the voter's certificate or the elector's records do not contain any telephone or electronic contact information, the supervisor must immediately send the notice to the elector by first-class mail. If the elector has provided such information, the supervisor may continue to attempt to contact the elector by telephone or electronic means for up to 48 hours before mailing the physical notice. The supervisor need not provide any notice required by this paragraph if the canvassing board has already determined that the elector is not entitled to vote pursuant to paragraph (2)(a), or if the supervisor has already confirmed the elector's receipt of notice.

(b) Until 5 p.m. on the 11th day after an election, the

supervisor of elections shall allow an elector who has submitted a provisional ballot with a signature deficiency to complete and submit a cure affidavit.

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

PROVISIONAL BALLOT CURE AFFIDAVIT

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

...(Voter's Signature)...

...(Address)...

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

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

1. In order to cure the missing signature or the signature discrepancy on your Provisional Ballot Voter's Certificate and Affirmation, your affidavit should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 5 p.m. on the 11th day after the election.

2. You must sign your name on the line above (Voter's Signature).

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

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

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

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

identification in the mailing envelope. Mail (if time permits), deliver, or have delivered the completed affidavit along with the copy of your identification to your county supervisor of elections. Be sure there is sufficient postage if mailed and that the supervisor's address is correct. Remember, your information MUST reach your county supervisor of elections no later than 5 p.m. on the 11th day following the election or your ballot will not count.

5. Alternatively, you may fax or e-mail your completed affidavit and a copy of your identification to the supervisor of elections. If e-mailing, please provide these documents as attachments. E-mail should be used only as a last resort, as it is not a secure communication method and could result in third parties having access to your personal information.

6. Submitting a provisional ballot affidavit does not establish your eligibility to vote in this election or guarantee that your ballot will be counted. The county canvassing board determines your eligibility to vote through information provided on the Provisional Ballot Voter's Certificate and Affirmation, written evidence provided by you, including information in your cure affidavit along with any supporting identification, and any other evidence presented by the supervisor of elections or a challenger. You may still be required to present additional written evidence to support your eligibility to vote.

(e) The department and each supervisor of elections shall include the affidavit and instructions on their respective websites. The supervisor of elections shall include his or her office mailing address, e-mail address, and fax number on the page containing the affidavit instructions, and the department's

instruction page must include the office mailing addresses, e-mail addresses, and fax numbers of all supervisors of elections or provide a conspicuous link to such addresses.

(f) The supervisor of elections shall attach each affidavit received to the appropriate provisional ballot envelope containing the Provisional Ballot Voter's Certificate and Affirmation.

(7)(a) ~~(6)~~ Each supervisor of elections shall establish a free access system that allows each person who casts a provisional ballot to determine whether his or her provisional ballot was counted in the final canvass of votes and, if not, the reasons why. Information regarding provisional ballots shall be available no later than 30 days following the election. The system established must restrict information regarding an individual ballot to the person who cast the ballot.

(b) In addition, unless processed as a signature update pursuant to subsection (2), the supervisor shall mail a voter registration application to the elector to be completed indicating the elector's current signature if the signature on the voter's certificate or cure affidavit did not match the elector's signature in the registration books or precinct register.

Section 5. Subsection (9) of section 101.151, Florida Statutes, is amended to read:

101.151 Specifications for ballots.—

(9)(a) The Department of State shall adopt rules prescribing a uniform primary and general election ballot for each certified voting system. The rules must ~~shall~~ incorporate the requirements set forth in this section and must ~~shall~~

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prescribe additional matters and forms that include, without limitation:

1. The ballot title followed by clear and unambiguous ballot instructions and directions limited to a single location on the ballot, either:

a. Centered across the top; or

b. In the leftmost column, with no individual races in that column unless it is the only column on the ballot;

2. Individual race layout; and

3. Overall ballot layout.

(b) The ~~department~~ rules must ~~shall~~ graphically depict a sample uniform primary and general election ballot form for each certified voting system.

Section 6. Subsection (2) and paragraph (b) of subsection (4) of section 101.62, Florida Statutes, are amended to read:

101.62 Request for vote-by-mail ballots.—

(2) A request for a vote-by-mail ballot to be mailed to a voter must be received no later than 5 p.m. on the 10th ~~sixth~~ day before the election by the supervisor of elections. The supervisor of elections shall mail vote-by-mail ballots to voters requesting ballots by such deadline no later than 8 ~~4~~ days before the election.

(4)

(b) The supervisor of elections shall mail a vote-by-mail ballot to each absent qualified voter, other than those listed in paragraph (a), who has requested such a ballot, no later than the 28th day ~~between the 35th and 28th days~~ before the presidential preference primary election, primary election, and general election. Except as otherwise provided in subsection (2)

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and after the period described in this paragraph, the supervisor shall mail vote-by-mail ballots within 2 business days after receiving a request for such a ballot.

Section 7. Subsection (1) of section 101.64, Florida Statutes, is amended to read:

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

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

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

VOTER'S CERTIFICATE

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

Further, by providing my information below, I authorize the use of e-mail, text messages, and telephone calls for the

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limited purpose of correcting a missing or nonmatching signature.

...(Date)... ...(Voter's Signature)...

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

...(Mobile Telephone Number)...

Section 8. Section 101.65, Florida Statutes, is amended to read:

101.65 Instructions to absent electors.—The supervisor shall enclose with each vote-by-mail ballot separate printed instructions in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING BALLOT.

1. VERY IMPORTANT. In order to ensure that your vote-by-mail ballot will be counted, it should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 7 p.m. on the day of the election. However, if you are an overseas voter casting a ballot in a presidential preference primary or general election, your vote-by-mail ballot must be postmarked or dated no later than the date of the election and received by the supervisor of elections of the county in which you are registered to vote no later than 10 days after the date of the election. Note that the later you return your ballot, the less time you will have to cure any signature deficiencies, which is authorized until 5 p.m. on the 11th day after the election.

2. Mark your ballot in secret as instructed on the ballot.

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You must mark your own ballot unless you are unable to do so because of blindness, disability, or inability to read or write.

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

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

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

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

7. VERY IMPORTANT. In order for your vote-by-mail ballot to be counted, you must sign your name on the line above (Voter's Signature). A vote-by-mail ballot will be considered illegal and not be counted if the signature on the voter's certificate does not match the signature on record. The signature on file at the start of the canvass of the vote-by-mail ballots is the signature that will be used to verify your signature on the voter's certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that it is received no later than the start of the canvassing of vote-by-mail ballots, which occurs no earlier than the 22nd ~~15th~~ day before election day.

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

9. Mail, deliver, or have delivered the completed mailing

envelope. Be sure there is sufficient postage if mailed.

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

Section 9. Subsection (1), paragraphs (a) and (c) of subsection (2), and subsection (4) of section 101.68, Florida Statutes, are amended to read:

101.68 Canvassing of vote-by-mail ballot.—

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

(2)(a) The county canvassing board may begin the canvassing of vote-by-mail ballots at 7 a.m. on the 22nd ~~15th~~ day before

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

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

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

b. The cure affidavit contains a signature that does not

match the elector's signature in the registration books or precinct register, but the elector has submitted a current and valid Tier 1 identification pursuant to subsection (4) which confirms the identity of the elector.

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

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

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

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

5. If the canvassing board determines that a ballot is illegal, a member of the board must, without opening the

envelope, mark across the face of the envelope: "rejected as illegal." The cure affidavit, if applicable, the envelope, and the ballot therein shall be preserved in the manner that official ballots are preserved.

(4)(a) Except as provided in paragraph (b), the supervisor must ~~shall~~, on behalf of the county canvassing board, immediately notify an elector who has returned a vote-by-mail ballot that does not include the elector's signature or contains a signature that does not match the elector's signature in the registration books or precinct register.

(b) For timely domestic vote-by-mail ballots received beginning on the 4th day before an election, and for timely overseas vote-by-mail ballots received beginning on the 10th day before an election, the supervisor must attempt to:

1. Provide the notice to the elector by e-mail;

2. Notify the elector of the signature deficiency by text message and direct the elector to the cure affidavit and instructions on the supervisor's website; and

3. Notify the elector of the signature deficiency by telephone and direct the elector to the cure affidavit and instructions on the supervisor's website.

If the voter's certificate or the elector's records do not contain any telephone or electronic contact information, the supervisor must immediately send the notice to an in-county elector by first-class mail or to any other elector by expedited delivery. If the elector has provided such information, the supervisor may continue to attempt to contact the elector by telephone or electronic means for up to 48 hours before sending

physical notice, time permitting. The supervisor need not provide any notice required by this subsection which is not expected to reach the elector until after 5 p.m. on the 11th day after the election, or when the supervisor has already confirmed the elector's receipt of notice.

(c) The supervisor shall allow ~~such~~ an elector to complete and submit an affidavit in order to cure the vote-by-mail ballot until 5 p.m. on the 11th day after ~~before~~ the election.

(d)~~(b)~~ The elector must complete a cure affidavit in substantially the following form:

VOTE-BY-MAIL BALLOT CURE AFFIDAVIT

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

...(Voter's Signature)...

...(Address)...

(e)~~(c)~~ Instructions must accompany the cure affidavit in substantially the following form:

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

1. In order to ensure that your vote-by-mail ballot will be counted, your affidavit should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 5 p.m. on the 11th day after ~~before~~ the election.

2. You must sign your name on the line above (Voter's Signature).

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

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

b. Tier 2 identification.—ONLY IF YOU DO NOT HAVE A TIER 1 FORM OF IDENTIFICATION, identification that shows your name and current residence address: current utility bill, bank statement,

government check, paycheck, or government document (excluding voter information ~~identification~~ card).

4. Place the envelope bearing the affidavit into a mailing envelope addressed to the supervisor. Insert a copy of your identification in the mailing envelope. Mail (if time permits), deliver, or have delivered the completed affidavit along with the copy of your identification to your county supervisor of elections. Be sure there is sufficient postage if mailed and that the supervisor's address is correct. Remember, your information MUST reach your county supervisor of elections no later than 5 p.m. on the 11th day following the election, or your ballot will not count.

5. Alternatively, you may fax or e-mail your completed affidavit and a copy of your identification to the supervisor of elections. If e-mailing, please provide these documents as attachments. E-mail should be used only as a last resort, as it is not a secure communication method and could result in third parties having access to your personal information.

(f) ~~(d)~~ The department and each supervisor shall include the affidavit and instructions on their respective websites. The supervisor must include his or her office's mailing address, e-mail address, and fax number on the page containing the affidavit instructions, and~~;~~ the department's instruction page must include the office mailing addresses, e-mail addresses, and fax numbers of all supervisors of elections or provide a conspicuous link to such addresses.

(g) ~~(e)~~ The supervisor shall attach each affidavit received to the appropriate vote-by-mail ballot mailing envelope.

(h) ~~(f)~~ If a vote-by-mail ballot is validated following the

submission of a cure affidavit, the supervisor must make a copy of the affidavit, affix it to a voter registration application, and immediately process it as a valid request for a signature update pursuant to s. 98.077.

(i) After all election results on the ballot have been certified, the supervisor shall, on behalf of the county canvassing board, notify each elector whose ballot has been rejected as illegal and provide the specific reason the ballot was rejected. In addition, unless processed as a signature update pursuant to paragraph (h), the supervisor shall mail a voter registration application to the elector to be completed indicating the elector's current signature if the signature on the voter's certificate or cure affidavit did not match the elector's signature in the registration books or precinct register. ~~This section does not prohibit the supervisor from providing additional methods for updating an elector's signature.~~

Section 10. Section 101.6923, Florida Statutes, is amended to read:

101.6923 Special vote-by-mail ballot instructions for certain first-time voters.—

(1) The provisions of this section apply to voters who are subject to the provisions of s. 97.0535 and who have not provided the identification or information required by s. 97.0535 by the time the vote-by-mail ballot is mailed.

(2) A voter covered by this section shall be provided with printed instructions with his or her vote-by-mail ballot in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING YOUR BALLOT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR BALLOT NOT TO COUNT.

1. In order to ensure that your vote-by-mail ballot will be counted, it should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 7 p.m. on the date of the election. However, if you are an overseas voter casting a ballot in a presidential preference primary or general election, your vote-by-mail ballot must be postmarked or dated no later than the date of the election and received by the supervisor of elections of the county in which you are registered to vote no later than 10 days after the date of the election.

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

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

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

5. Insert the secrecy envelope into the enclosed envelope bearing the Voter's Certificate. Seal the envelope and completely fill out the Voter's Certificate on the back of the envelope.

a. You must sign your name on the line above (Voter's

Signature).

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

c. A vote-by-mail ballot will be considered illegal and will not be counted if the signature on the Voter's Certificate does not match the signature on record. The signature on file at the start of the canvass of the vote-by-mail ballots is the signature that will be used to verify your signature on the Voter's Certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that it is received no later than the start of canvassing of vote-by-mail ballots, which occurs no earlier than the 22nd ~~15th~~ day before election day.

6. Unless you meet one of the exemptions in Item 7., you must make a copy of one of the following forms of identification:

a. Identification which must include your name and photograph: United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; a Florida license to carry a concealed weapon or firearm; or an employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality; or

b. Identification which shows your name and current

residence address: current utility bill, bank statement, government check, paycheck, or government document (excluding voter information ~~identification~~ card).

7. The identification requirements of Item 6. do not apply if you meet one of the following requirements:

a. You are 65 years of age or older.

b. You have a temporary or permanent physical disability.

c. You are a member of a uniformed service on active duty who, by reason of such active duty, will be absent from the county on election day.

d. You are a member of the Merchant Marine who, by reason of service in the Merchant Marine, will be absent from the county on election day.

e. You are the spouse or dependent of a member referred to in paragraph c. or paragraph d. who, by reason of the active duty or service of the member, will be absent from the county on election day.

f. You are currently residing outside the United States.

8. Place the envelope bearing the Voter's Certificate into the mailing envelope addressed to the supervisor. Insert a copy of your identification in the mailing envelope. DO NOT PUT YOUR IDENTIFICATION INSIDE THE SECRECY ENVELOPE WITH THE BALLOT OR INSIDE THE ENVELOPE WHICH BEARS THE VOTER'S CERTIFICATE OR YOUR BALLOT WILL NOT COUNT.

9. Mail, deliver, or have delivered the completed mailing envelope. Be sure there is sufficient postage if mailed.

10. FELONY NOTICE. It is a felony under Florida law to accept any gift, payment, or gratuity in exchange for your vote for a candidate. It is also a felony under Florida law to vote

in an election using a false identity or false address, or under any other circumstances making your ballot false or fraudulent.

Section 11. Subsection (2) of section 102.111, Florida Statutes, is amended to read:

102.111 Elections Canvassing Commission.—

(2)(a) The Elections Canvassing Commission shall meet at 9 a.m. on the ~~9th day after a primary election and at 9 a.m. on the~~ 14th day after a primary election or a general election to certify the returns of the election for each federal, state, and multicounty office, except for those contests with a pending general election recount.

(b) The commission shall meet at 9 a.m. on the 21st day after a general election to certify the returns in the remaining recount contests.

If a member of a county canvassing board that was constituted pursuant to s. 102.141 determines, within 5 days after the certification by the Elections Canvassing Commission, that a typographical error occurred in the official returns of the county, the correction of which could result in a change in the outcome of an election, the county canvassing board must certify corrected returns to the Department of State within 24 hours, and the Elections Canvassing Commission must correct and recertify the election returns as soon as practicable.

Section 12. Subsection (2) of section 102.112, Florida Statutes, is amended to read:

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

(2)(a) Returns must be filed by 5 p.m. ~~on the 7th day following a primary election and by noon~~ on the 12th day following the primary election and the general election for all contests, except those contests with a pending general election recount.

(b) For contests with a pending general election recount, returns must be filed by noon on the 19th day following the general election.

(c) ~~However,~~ The Department of State may correct typographical errors, including the transposition of numbers, in any returns submitted to the Department of State pursuant to s. 102.111(2).

Section 13. Paragraph (b) of subsection (4), subsection (5), and paragraph (c) of subsection (7) of section 102.141, Florida Statutes, are amended to read:

102.141 County canvassing board; duties.—

(4)

(b) The canvassing board shall report all early voting and all tabulated vote-by-mail results to the Department of State within 30 minutes after the polls close. Thereafter, the canvassing board shall report, with the exception of provisional ballot results, updated precinct election results to the department at least every hour ~~45 minutes~~ until 2 a.m. the next day. Thereafter, the canvassing board must report results on an hourly basis from 9 a.m. until 8 p.m. each day until all results are completely reported. The supervisor of elections shall notify the department immediately of any circumstances that do not permit periodic updates as required. Results shall be submitted in a format prescribed by the department.

(5) The canvassing board shall submit on forms or in

formats provided by the division unofficial returns to the Department of State for each federal, statewide, state, or multicounty office or ballot measure no later than noon on the ~~third day after any primary election and no later than noon on the~~ fourth day after any primary, general or other election. Such returns shall include the canvass of all ballots as required by subsection (2).

(7) If the unofficial returns reflect that a candidate for any office was defeated or eliminated by one-half of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-half of a percent or less of the votes cast on the question of retention, or that a measure appearing on the ballot was approved or rejected by one-half of a percent or less of the votes cast on such measure, a recount shall be ordered of the votes cast with respect to such office or measure. The Secretary of State is responsible for ordering recounts in federal, state, and multicounty races. The county canvassing board or the local board responsible for certifying the election is responsible for ordering recounts in all other races. A recount need not be ordered with respect to the returns for any office, however, if the candidate or candidates defeated or eliminated from contention for such office by one-half of a percent or less of the votes cast for such office request in writing that a recount not be made.

(c) The canvassing board shall submit on forms or in formats provided by the division a second set of unofficial returns to the Department of State for each federal, statewide, state, or multicounty office or ballot measure. The returns for

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

all primary election contests and general election contests not subject to a recount shall be filed no later than 3 p.m. on the 9th ~~5th~~ day after the ~~any~~ primary or general election, and no later than 5 p.m. ~~3 p.m.~~ on the 12th ~~9th~~ day after the ~~any~~ general election for any contest in which a recount was ordered by the Secretary of State. If the canvassing board is unable to complete the recount prescribed in this subsection by the deadline, the second set of unofficial returns submitted by the canvassing board shall be identical to the initial unofficial returns and the submission shall also include a detailed explanation of why it was unable to timely complete the recount. However, the canvassing board shall complete the recount prescribed in this subsection, along with any manual recount prescribed in s. 102.166, and certify election returns in accordance with the requirements of this chapter.

Section 14. Subsection (2) of section 102.166, Florida Statutes, is amended to read:

102.166 Manual recounts of overvotes and undervotes.—

(2) ~~(a)~~ Any hardware or software used to identify and sort overvotes and undervotes for a given race or ballot measure must be certified by the Department of State as part of the voting system pursuant to s. 101.015. Any such hardware or software must be capable of simultaneously identifying and sorting overvotes and undervotes in multiple races while simultaneously counting votes.

~~(b)~~ Overvotes and undervotes must ~~shall~~ be identified and sorted while recounting ballots pursuant to s. 102.141~~, if the hardware or software for this purpose has been certified or the department's rules so provide~~.

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

Section 15. This act shall take effect January 1, 2020.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

23 Apr 19
Meeting Date

7066
Bill Number (if applicable)

640434
Amendment Barcode (if applicable)

Topic Election Administration

Name Paul Lux

Job Title Sup. of Elections, President FSASE

Address 302 Wilson St N, *Street*

Phone 850-689-5600

Creston FL 32536
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida State Assoc. of Supervisors of Elections

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

23 Apr 19
Meeting Date

7066
Bill Number (if applicable)

P34194
Amendment Barcode (if applicable)

Topic Elections Administration

Name Paul Lux

Job Title Sup. of Elections, President FSASE

Address 302 Wilson St.
Street

Phone 850-689-5600

Crestview FL 32536
City *State* *Zip*

Email

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

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

Representing Florida State Association of Supervisors of Elections

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

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

7066
Bill Number (if applicable)

Topic Amendments

Amendment Barcode (if applicable)

Name LaShawn Floyd

Job Title Educator

Address 1583 SE Tiffany Club Pl
Street
PSL, FL 34952
City *State* *Zip*

Phone 561-201-1214

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Registered Voters of FL

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

7066
Bill Number (if applicable)

Topic Amendments

Amendment Barcode (if applicable)

Name Dawn Douglas

Job Title Teacher

Address 1200 Country Club Dr #3301
Street

Phone 727-385-3550

Largo FL 33771
City *State* *Zip*

Email mer-bear del@hotmail

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1462
INTRODUCER:	Senator Diaz
SUBJECT:	Education
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Sikes	ED	**Favorable**
2.	Graf	Phelps	RC	**Pre-meeting**

I. Summary:

SB 1462 revises the deadline from November 30 to April 30 for the annual reporting of postsecondary feedback information by the Commissioner of Education to specified entities. Florida law requires the information to be provided to the State Board of Education, the Board of Governors of the State University System of Florida, the Legislature, and the district school boards.

The bill has no impact on state revenues or expenditures.

The bill takes effect July 1, 2019.

II. Present Situation:

The Commissioner of Education (commissioner) is required to report to the State Board of Education (state board), the Board of Governors of the State University System of Florida (BOG), the Legislature, and the district school boards on the performance of each first-time-in-postsecondary education student from each public high school in this state who is enrolled in a public postsecondary institution or public career center.[1] Such reports must be based on information databases maintained by the Department of Education (DOE or department).[2]

The DOE maintains information about high school graduates' performance on entry-level placement assessments at Florida College System institutions and state universities on the department's website.[3] Performance on these assessments is one of many indicators of a student's preparedness for college-level coursework.[4] The Postsecondary Education Readiness Test

[1] Section 1008.37(1), F.S.
[2] *Id*.
[3] Florida Department of Education, *Florida's Public High School Graduates*, https://app2.fldoe.org/publicapps/articulation/perfCPT/default.asp (March 19, 2019).
[4] *Id*.

(PERT), SAT, ACCUPLACER and ACT are the assessments used to place students in English and mathematics courses at colleges and universities in Florida.[5] The reports include performance information for students who graduated from a public high school in Florida and attended a public college or university in Florida during the academic year immediately following high school graduation.[6] Students who did not go to college or who attended private or out-of-state colleges are not included in the reports.[7]

Florida law requires the commissioner to annually report, by high school, to the state board, the BOG, and the Legislature, by November 30, the number of prior year Florida high school graduates who enrolled for the first time in public postsecondary education in this state during the previous summer, fall, or spring term, indicating the number of students whose scores on the common placement test indicated the need for developmental education[8] or for applied academics[9] for adult education.[10]

III. Effect of Proposed Changes:

SB 1462 revises the deadline from November 30 to April 30 for the annual reporting of postsecondary feedback information by the Commissioner of Education to specified entities. Florida law requires the information to be provided to the State Board of Education, the Board of Governors of the State University System of Florida, the Legislature, and the district school boards.

The change in the reporting deadline for the postsecondary feedback information will allow the Department of Education to use the data that are provided by the postsecondary education institutions by March of each year.

The bill takes effect July 1, 2019.

[5] Florida Department of Education, *Florida's Public High School Graduates*, https://app2.fldoe.org/publicapps/articulation/perfCPT/default.asp (March 19, 2019).
[6] *Id*.
[7] *Id*.
[8] Developmental education means instruction through which a high school graduate who applies for any college credit program may attain the communication and computation skills necessary to successfully complete college credit instruction. Developmental education may be delivered through a variety of accelerated and corequisite strategies and includes any of the following: (a) modularized instruction that is customized and targeted to address specific skills gaps, (b) compressed course structures that accelerate student progression from developmental instruction to college-level coursework, (c) contextualized developmental instruction that is related to meta-majors, and (d) corequisite developmental instruction or tutoring that supplements credit instruction while a student is concurrently enrolled in a credit-bearing course. Section 1008.02(1), F.S. Meta-major means a collection of programs of study or academic discipline groupings that share common foundational skills. *Id*., at (3).
[9] Any student found to lack the required level of basic skills for such program must be referred to applied academics instruction or another adult general education program for a structured program of basic skills instruction. Section 1004.91(2), F.S.
[10] Section 1008.37(2), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has no impact on state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1008.37 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

466126

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Before line 11
insert:

Section 1. Paragraph (a) of subsection (1) of section 1003.436, Florida Statutes, is amended to read:

1003.436 Definition of "credit."—

(1)(a) For the purposes of requirements for high school graduation, one full credit means a minimum of 135 hours of bona fide instruction in a designated course of study that contains student performance standards, except as otherwise provided

466126

through the Credit Acceleration Program (CAP) under s. 1003.4295(3). One full credit means a minimum of 120 hours of bona fide instruction in a designated course of study that contains student performance standards for purposes of meeting high school graduation requirements in a district school that has been authorized to implement block scheduling by the district school board. However, district school boards and developmental research schools participating in the Mastery-Based Education Program under s. 1003.4996 may determine and award credit based on a student's mastery of the core content and skills, consistent with s. 1003.41, as approved by the district school board or developmental research school governing authority, as applicable. The State Board of Education shall determine the number of postsecondary credit hours earned through dual enrollment pursuant to s. 1007.271 that satisfy the requirements of a dual enrollment articulation agreement according to s. 1007.271(21) and that equal one full credit of the equivalent high school course identified pursuant to s. 1007.271(9).

Section 2. Section 1003.437, Florida Statutes, is amended to read:

1003.437 Middle and high school grading system.—

(1) The grading system and interpretation of letter grades used to measure student success in grade 6 through grade 12 courses for students in public schools is ~~shall be~~ as follows:

(a)~~(1)~~ Grade "A" equals 90 percent through 100 percent, has a grade point average value of 4, and is defined as "outstanding progress."

(b)~~(2)~~ Grade "B" equals 80 percent through 89 percent, has

466126

a grade point average value of 3, and is defined as "above average progress."

(c) ~~(3)~~ Grade "C" equals 70 percent through 79 percent, has a grade point average value of 2, and is defined as "average progress."

(d) ~~(4)~~ Grade "D" equals 60 percent through 69 percent, has a grade point average value of 1, and is defined as "lowest acceptable progress."

(e) ~~(5)~~ Grade "F" equals zero percent through 59 percent, has a grade point average value of zero, and is defined as "failure."

(f) ~~(6)~~ Grade "I" equals zero percent, has a grade point average value of zero, and is defined as "incomplete."

(2) A district school board and a developmental research school participating in the Mastery-Based Education Program under s. 1003.4996 may use an alternative interpretation of letter grades to measure student success in grade 6 through grade 12; however, the school board and developmental research school must continue to use the 4-point scale established in subsection (1) for calculating a student's grade point average.

For the purposes of class ranking, district school boards may exercise a weighted grading system pursuant to s. 1007.271.

Section 3. Section 1003.4996, Florida Statutes, is amended to read:

1003.4996 Mastery-Based ~~Competency-Based~~ Education ~~Pilot~~ Program.—Beginning with the 2016-2017 school year, the Mastery-Based ~~Competency-Based~~ Education ~~Pilot~~ Program is created within the Department of Education to be administered for a period of 5

466126

years. The purpose of the ~~pilot~~ program is to provide an educational environment that allows students to advance to higher levels of learning upon the mastery of concepts and skills through statutory exemptions relating to student progression and the awarding of credits.

(1) PARTICIPATION.—Developmental research schools established under s. 1002.32, including the P.K. Yonge Developmental Research School, and public school districts, including, but not limited to, the Lake, Palm Beach, Pinellas, and Seminole County School Districts, may submit an application in a format prescribed by the department to participate in the ~~pilot~~ program.

(2) APPLICATION.—The application to participate in the ~~pilot~~ program must, at a minimum, include:

(a) The vision and timelines for the implementation of mastery-based ~~competency-based~~ education within the school district, including a list of the schools that will participate in the ~~pilot~~ program during the first school year and the list of schools that will be integrated into the program in subsequent school years.

(b) The annual goals and performance outcomes for participating schools, including, but not limited to:

1. Student performance as defined in s. 1008.34.

2. Promotion and retention rates.

3. Graduation rates.

4. Indicators of college and career readiness.

(c) A communication plan for parents and other stakeholders, including local businesses and community members.

(d) The scope of and timelines for professional development

for school instructional and administrative personnel.

(e) A plan for student progression based on the mastery of content, including mechanisms that determine and ensure that a student has satisfied the requirements for grade-level promotion and content mastery.

(f) A plan for using technology and digital and blended learning to enhance student achievement and facilitate the mastery-based ~~competency-based~~ education system.

(g) The proposed allocation of resources for the ~~pilot~~ program at the school and district levels.

(h) The recruitment and selection of participating schools.

(i) The rules to be waived for participating schools pursuant to subsection (3) to implement the ~~pilot~~ program.

(3) EXEMPTION FROM RULES.—In addition to the waivers authorized in s. 1001.10(3), the State Board of Education may authorize the commissioner to grant an additional waiver of rules relating to student progression and the awarding of credits.

(4) ALTERNATIVE CREDIT AND LETTER GRADE SYSTEMS.—

(a) Beginning with the 2019-2020 school year, participating school districts and developmental research schools may amend their applications to include alternatives for awarding credit, as authorized under s. 1003.436, and for the interpretation of middle school and high school letter grades, as authorized under s. 1003.437.

1. Alternatives to awarding credit must include verification of the student's mastery of the applicable course content using rigorous scoring rubrics to evaluate the student's work. A participating school district and developmental research

466126

school must amend its student progression plan required by s. 1008.25 to conform to the alternative awarding of credits pursuant to this section.

2. Alternatives to the interpretation of middle school and high school letter grades may substitute the applicable language from the school district's rigorous scoring rubric; however, participating school districts and developmental research schools must continue to use the 4-point scale established in s. 1003.437(1) for calculating a student's grade point average.

(b) An application that is amended pursuant to this subsection must be approved by the district school board or developmental research school governing authority, as applicable.

(5) ~~(4)~~ STUDENT FUNDING.—Students enrolled in a participating school shall be reported for and generate funding pursuant to s. 1011.62.

(6) ~~(5)~~ DEPARTMENT DUTIES.—The department shall:

(a) Compile the student and staff schedules of participating schools before and after implementation of the ~~pilot~~ program.

(b) Provide participating schools with access to statewide, standardized assessments required under s. 1008.22.

(c) Annually, by June 1, provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report summarizing the activities and accomplishments of the ~~pilot~~ program and any recommendations for statutory revisions.

(7) ~~(6)~~ RULES.—The State Board of Education shall adopt rules to administer this section.

Section 4. Subsection (1) of section 1007.23, Florida Statutes, is amended to read:

1007.23 Statewide articulation agreement.—

(1) The State Board of Education and the Board of Governors shall enter into a statewide articulation agreement which the State Board of Education shall adopt by rule. The agreement must preserve Florida's "2+2" system of articulation, facilitate the seamless articulation of student credit across and among Florida's educational entities, and reinforce the provisions of this chapter by governing:

(a) Articulation between secondary and postsecondary education, including fair and equitable access for students who have earned high school credit through a mastery-based education program pursuant to s. 1003.4996 and graduate with a standard high school diploma;

(b) Admission of associate in arts degree graduates from Florida College System institutions and state universities;

(c) Admission of applied technology diploma program graduates from Florida College System institutions or career centers;

(d) Admission of associate in science degree and associate in applied science degree graduates from Florida College System institutions;

(e) The use of acceleration mechanisms, including nationally standardized examinations through which students may earn credit;

(f) General education requirements and statewide course numbers as provided for in ss. 1007.24 and 1007.25; and

(g) Articulation among programs in nursing.

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186
187 ========== T I T L E A M E N D M E N T ==========
188 And the title is amended as follows:
189 Delete line 2
190 and insert:
191 An act relating to education; amending s. 1003.436,
192 F.S.; authorizing a district school board or
193 developmental research school participating in the
194 Mastery-Based Education Program to award credit based
195 on student mastery of certain content and skills;
196 amending s. 1003.437, F.S.; authorizing a district
197 school board or developmental research school
198 participating in the Mastery-Based Education Program
199 to use an alternative interpretation of letter grades
200 for certain students; requiring participating district
201 school boards and developmental research schools to
202 use the current 4-point scale in determining student
203 grade point averages; amending s. 1003.4996, F.S.;
204 renaming the Competency-Based Education Pilot Program
205 as the Mastery-Based Education Program; authorizing
206 public school districts and developmental research
207 schools to submit applications for the program;
208 authorizing participating school districts and
209 developmental research schools to amend their
210 applications to include alternatives for the award of
211 credits and interpretation of letter grades; providing
212 requirements for such alternatives; amending s.
213 1007.23, F.S.; requiring the statewide articulation
214 agreement to ensure fair and equitable access for

students who have earned high school credit through mastery-based education and graduate with a standard high school diploma; amending s. 1008.37,

By Senator Diaz

36-01260A-19 20191462__

A bill to be entitled

An act relating to education; amending s. 1008.37, F.S.; modifying the date on which the Commissioner of Education is required to annually report certain information to the State Board of Education, the Board of Governors, and the Legislature; making a technical change; providing an effective date.

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

Section 1. Subsection (2) of section 1008.37, Florida Statutes, is amended to read:

1008.37 Postsecondary feedback of information to high schools.—

(2) The Commissioner of Education shall report, by high school, to the State Board of Education, the Board of Governors, and the Legislature, no later than April 30 ~~November 30~~ of each year, on the number of prior year Florida high school graduates who enrolled for the first time in public postsecondary education in this state during the ~~previous~~ summer, fall, or spring term of the previous academic year, indicating the number of students whose scores on the common placement test indicated the need for developmental education under s. 1008.30 or for applied academics for adult education under s. 1004.91.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7106
INTRODUCER:	Education Committee
SUBJECT:	Risk Protection Orders
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Olenick	Sikes		**ED Submitted as Comm. Bill/Fav**
1.	Olenick	Phelps	RC	**Pre-meeting**

I. Summary:

SB 7106 expands the definition of a petitioner for purposes of seeking a risk protection order from a court. In addition to law enforcement officers and agencies, the bill specifies that a petitioner may include certain family members of the respondent or a person who is the respondent's legal guardian. The bill provides these persons the ability to file a petition seeking a risk protection order without the assistance of law enforcement.

The bill is effective July 1, 2019.

II. Present Situation:

Background

In 2018, the Florida Legislature passed the Marjory Stoneman Douglas High School Public Safety Act (Act) in response to a tragic school shooting.[1] In addition to other provisions in the Act, the law addresses public safety by restricting firearm and ammunition possession by a person who poses a danger to himself or herself or others.[2]

Risk Protection Orders in Florida

Section 790.401, F.S., contains a process for a law enforcement officer or a law enforcement agency to petition a circuit court for a temporary ex parte risk protection order and a final risk protection order.[3] The intent of the process and court intervention is to temporarily prevent

[1] Chapter 2018-3, s. 16, L.O.F.

[2] *See* s. 790.401, F.S. From March 2018 through January 2019, 1,316 petitions for ex parte risk protection orders were granted and 1,176 petitions for risk protection order petitions were granted. Information provided by individual clerks of court to the Office of the State Courts Administrator. (On file with the Florida Senate Committee on Education).

[3] The law enforcement officer or law enforcement agency petitioning the court for a risk protection order (petitioner) must make a good faith effort to provide notice to a family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for a risk protection

persons from accessing firearms when there is demonstrated evidence that a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior. The process strikes a balance between the rights of the person (respondent) including due process of law, and reducing death or injury as a result of his or her use of firearms during a mental health crisis.[4]

To issue a risk protection order the court must find by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm.[5]

A court, in determining whether grounds for a risk protection order exist may consider any relevant evidence including, but not limited to:

- A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threat of violence involves a firearm;
- An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself or herself or others;
- Evidence of the respondent being seriously mentally ill or having recurring mental health issues;
- A violation by the respondent of a protection order or a no contact order issued under ss. 741.30, 784.046, or 784.0485, F.S.;
- A previous or existing risk protection order issued against the respondent;
- A violation of a previous or existing risk protection order issued against the respondent;
- Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence as defined in s. 741.28, F.S.;
- Whether the respondent has used, or has threatened to use, against himself or herself or others any weapons;
- The unlawful or reckless use, display, or brandishing of a firearm by the respondent;
- The recurring use of, or threat to use, physical force by the respondent against another person, or the respondent stalking another person;
- Whether the respondent, in this state or any other state, has been arrested, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence;
- Corroborated evidence of the abuse of controlled substances or alcohol by the respondent;
- Evidence of recent acquisition of firearms by the respondent;
- Any relevant information from family and household members concerning the respondent; and
- Witness testimony, taken while the witness is under oath, relating to the matter before the court.[6]

order or has already done so and must include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice or must attest to the steps that will be taken to provide such notice. Section 790.401(2)(f), F.S.

[4] Chapter 2018, s. 14, L.O.F.

[5] Section 790.401(3)(b), F.S.

[6] Section 790.401(3)(c)1.-15., F.S.

If the court issues a risk protection order it may do so for a period that it deems appropriate, up to and including but not exceeding 12 months.[7]

Florida law allows the petitioner to request that a court issue a temporary ex parte risk protection order, without notice to the respondent, before the hearing for a final risk protection order has occurred. To issue the ex parte order, the court must find that the respondent poses a significant danger of causing personal injury to himself or herself or to others in the near future by having in his or her custody or control or by purchasing, possessing, or receiving a firearm or ammunition.[8] The court must consider all relevant evidence, including the evidence described above, in determining whether to issue an ex parte risk protection order.[9]

Upon issuance of a risk protection order, including a temporary ex parte risk protection order, the court must order the respondent to surrender to the local law enforcement agency all firearms and ammunition in the respondent's custody, control, or possession, and any license to carry a concealed weapon or firearm issued under s. 790.06, F.S.[10]

The law enforcement officer serving a risk protection order, including a temporary ex parte risk protection order, must request that the respondent immediately surrender all firearms and ammunition in his or her custody, control, or possession and any license to carry a concealed weapon or firearm issued under s. 790.06, F.S. The law enforcement officer must take possession of all firearms and ammunition belonging to the respondent that are surrendered.[11]

Alternatively, if personal service by a law enforcement officer is not possible or is not required because the respondent was present at the risk protection order hearing, the respondent must surrender the firearms and ammunition owned by the respondent and any license to carry a concealed weapon or firearm issued under s. 790.06, F.S., in a safe manner to the control of the local law enforcement agency immediately after being served with the order by service or immediately after the hearing at which the respondent was present.[12]

Notwithstanding ss. 933.02 and 933.018, F.S., a law enforcement officer may seek a search warrant from a court to conduct a search for firearms or ammunition if the officer has probable cause to believe that there are firearms or ammunition in the respondent's custody, control, or possession that have not been surrendered.[13]

At the time of surrender, a law enforcement officer taking possession of a firearm, any ammunition, or a license to carry a concealed weapon or firearm issued under s. 790.06, F.S., must issue a receipt identifying all firearms and the quantity and type of ammunition that have been surrendered and must provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the law enforcement officer serving the order shall file the original receipt with the court and ensure that his or her law enforcement agency retains a copy of the receipt.

[7] Section 790.401(3)(b), F.S.
[8] Section 790.401(4)(a), F.S.
[9] Section 790.401(4)(b), F.S.
[10] Sections 790.401(3)(g), (4)(e), and (7)(a), F.S.
[11] Section 790.401(7)(b), F.S.
[12] *Id*.
[13] *Id*.

All law enforcement agencies must develop policies and procedures by January 1, 2019, regarding the acceptance, storage, and return of firearms or ammunition required to be surrendered.[14]

Upon the sworn statement or testimony of any person alleging that the respondent has failed to comply with the surrender of firearms or ammunition as required by a risk protection order or temporary ex parte risk protection order, the court must determine whether probable cause exists to believe that the respondent has failed to surrender all firearms or ammunition in his or her custody, control, or possession. If the court finds that probable cause exists, the court must issue a warrant authorizing a search of the locations where the firearms or ammunition are reasonably believed to be found and the seizure of any firearms or ammunition discovered pursuant to such search.[15]

A law enforcement agency must provide notice to any family or household members of the respondent before the return of any surrendered firearm and ammunition.[16] A respondent may elect to transfer all firearms and ammunition that have been surrendered to or seized by a local law enforcement agency to another person who is willing to receive the respondent's firearms and ammunition. The law enforcement agency may allow such a transfer only if it is determined that the chosen recipient:

- Currently is eligible to own or possess a firearm and ammunition under federal and state law after confirmation through a background check;
- Attests to storing the firearms and ammunition in a manner such that the respondent does not have access to or control of the firearms and ammunition until the risk protection order against the respondent is vacated or ends without extension; and
- Attests not to transfer the firearms or ammunition back to the respondent until the risk protection order against the respondent is vacated or ends without extension.[17]

Within 24 hours after issuance, the clerk of the court shall enter any risk protection order or temporary ex parte risk protection order issued under this section into the uniform case reporting system.[18]

Also within 24 hours after issuance, the clerk of the court shall forward a copy of an order issued under this section to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the Florida Crime Information Center and National Instant Criminal Background Check System. The order must remain in each system for the period stated in the order, and the law enforcement agency shall only remove orders from the systems that have ended or been vacated. Entry into the Florida Crime Information Center and National Crime Information Center constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in this state.[19]

[14] Section 790.401(7)(c), F.S.
[15] Section 790.401(7)(d), F.S.
[16] Section 790.401(8)(c), F.S.
[17] Sections 790.401(9), F.S.
[18] Section 790.401(10)(a), F.S.
[19] Section 790.401(10)(b), F.S.

The issuing court shall forward, within three business days after issuance of a risk protection order or temporary ex parte risk protection order, all available identifying information concerning the respondent, along with the date of order issuance, to the Department of Agriculture and Consumer Services. Upon receipt of the information, the department shall determine if the respondent has a license to carry a concealed weapon or firearm. If the respondent does have a license to carry a concealed weapon or firearm, the department must immediately suspend the license.[20]

If a risk protection order is vacated before its end date, the clerk of the court shall, on the day of the order to vacate, forward a copy of the order to the Department of Agriculture and Consumer Services and the appropriate law enforcement agency specified in the order to vacate. Upon receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered.[21]

A person who makes a false statement, which he or she does not believe to be true, under oath in a hearing under s. 790.401, F.S., in regard to any material matter commits a felony of the third degree.[22]

A person who has in his or her custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition with knowledge that he or she is prohibited from doing so by a risk protection order commits a felony of the third degree.[23]

Risk Protective Orders in Other States, Federal Legislation

Risk protection order laws, also known as gun violence restraining orders, red flag orders, and extreme risk protection orders have been and are being enacted in other states. Specifically, these risk protection order laws enable law enforcement, and in some states, family and household members, to petition a court to remove a person's access to guns if he or she poses an imminent danger to self or others.[24]

In 1999, Connecticut became the first state to pass a law similar to a risk protection order, providing for a state attorney or two law enforcement officers to file a sworn affidavit seeking court authority to temporarily remove a person's firearms to prevent imminent harm.[25] Currently,

[20] Section 790.401(10(c), F.S.
[21] Section 790.401(10)(d), F.S.
[22] Section 790.401(11)(a), F.S. A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.
[23] Section 790.401(11)(b), F.S.
[24] Giffords Law Center to Prevent Gun Violence, *Gun Violence Protective Orders*, available at http://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/gun-violence-protective-orders/ (last visited April 10, 2019).
[25] Section 29-38C, Conn. Gen. Stat.

fourteen states and the District of Columbia have passed risk protection order laws.[26] In March of 2019, Colorado passed HB 1177, and the bill is awaiting the Governor's signature.[27]

Congress is currently considering several bills related to risk protection orders. On January 3, 2019, Senator Rubio introduced a bill entitled the "Extreme Risk Protection Order and Violence Prevention Act of 2019."[28] The requirements are virtually identical to s. 790.401, F.S., the major difference being that the federal bill includes the ability of family or household members to act as a petitioner, in addition to a law enforcement officer.[29] The bill authorizes appropriations in the amount of $20 million for each fiscal year from 2019 through 2023 to be awarded by the Department of Justice to states and Indian tribes that have enacted qualifying risk protection order laws. The purpose of the grant funds is to provide assistance to law enforcement agencies or the courts in carrying out the provisions of the state or tribal risk protection order law.[30]

III. Effect of Proposed Changes:

The bill expands the definition of "petitioner" to include the following individuals as a petitioner for the purpose of seeking a risk protection order under s. 790.401, F.S.:

- An individual with a biological or legal parent-child relationship with the respondent;
- An individual with a stepparent-stepchild relationship with the respondent;
- An individual with a grandparent-grandchild relationship with the respondent;
- An individual who is the legal guardian of a respondent; or
- A sibling of a respondent.

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[26] These states are: California (Cal. Penal Code s. 18125; Cal. Penal Code s. 18150; Cal. Penal Code s. 18175); Connecticut Conn. Gen. Stat. § 29-38c; Delaware (10 Del. C. 7701, et seq.); District of Columba 17.2017 DC B 1068, Act 629 (effective until April 30, 2019); 2017 DC B22-0588, Act A22-0620 (projected law date June 6, 2019); Florida (Section 790.401, F.S.); Illinois (430 ILCS 67/1, et seq.); Indiana (Section 35-47-14, Ind. Code Ann); Maryland (Md Public Safety Code 5-601, et seq.); Massachusetts (Mass. Gen. Laws ch. 140, s. 121; Mass. Gen. Laws ch. 140, s. 129B(C); Mass. Gen. Laws ch. 140, s. 131(C); Mass. Gen. Laws ch. 140, s. 131R-Z); New Jersey (2018 NJ A 1217); New York (2019 NY SB 2451); Oregon (ORS 166.525, et seq.); Rhode Island (RI Gen Laws 8-8.3-1, et seq.); Vermont (13 VSA 4051, et seq.); Washington (Wash. Rev. Code s. 7.94.030; Wash. Rev. Code s. 7.94.040; Wash. Rev. Code s. 7.94.050; Wash. Rev. Code s. 7.94.080); *See* Giffords Law Center to Prevent Gun Violence, *Gun Law TrendWatch*, April 2, 2019, available at https://lawcenter.giffords.org/wp-content/uploads/2019/04/Giffords-Law-Center-Gun-Law-Trendwatch-4.2.19.pdf (last visited April 10, 2019); Everytown for Gun Safety, *Red Flag Laws, Fact Sheets, Protecting Kids and Communities*, March 25, 2019, available at https://everytownresearch.org/red-flag-laws/#foot_note_2 (last visited April 10, 2019).

[27] Colorado (HB 1177, 2019). *See* Everytown for Gun Safety, *Red Flag Laws, Fact Sheets, Protecting Kids and Communities*, March 25, 2019, available at https://everytownresearch.org/red-flag-laws/#foot_note_2 (last visited April 10, 2019).

[28] Congress.gov, *S. 7 – Extreme Risk Protection Order and Violence Prevention Act of 2019*, 116th Congress (2019-2020), available at https://www.congress.gov/bill/116th-congress/senate-bill/7/text?q=%7B%22search%22%3A%5B%22%5C%22risk+protection+order%5C%22%22%5D%7D (last visited April 10, 2019).

[29] *Id*. The federal bill defines "family or household member" as any: individual related by blood, marriage, or adoption to the respondent; dating partner of the respondent; individual who has a child in common with the respondent, regardless of whether the individual has been married to the respondent; or lived together with the respondent at any time; individual who resides or has resided with the respondent during the past year; spouse or intimate partner of the respondent; individual who has a biological or legal parent-child relationship with the respondent, including a stepparent-stepchild and grandparent-grandchild relationship; and individual who is acting or has acted as the legal guardian of the respondent

[30] *Id*.

The bill allows for a petition for a risk protection order to be filed by any of these listed persons, and specifies that the petition must be filed in the petitioner's county of residence or the respondent's county of residence. If the petition is filed by a law enforcement officer or his or her agency, it must be filed in the county where the office is located.

The bill also clarifies that the address of record, if the petitioner is not a law enforcement officer, is the residence of the petitioner.

The bill is effective 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:

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 790.401 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By the Committee on Education

581-04149-19 20197106__

A bill to be entitled

An act relating to risk protection orders; amending s. 790.401, F.S.; redefining the term "petitioner" to include individuals who have a biological or legal parent-child relationship with, who are a legal guardian of, or who are a sibling of a respondent; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and paragraphs (a), (b), (c), and (g) of subsection (2) of section 790.401, Florida Statutes, are amended to read:

790.401 Risk protection orders.—

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

(a) "Petitioner" means a law enforcement officer, ~~or~~ a law enforcement agency, an individual who has a biological or legal parent-child relationship with the respondent, including a stepparent-stepchild relationship and a grandparent-grandchild relationship, an individual who is the legal guardian of a respondent, or a sibling of a respondent who ~~that~~ petitions a court for a risk protection order under this section.

(2) PETITION FOR A RISK PROTECTION ORDER.—There is created an action known as a petition for a risk protection order.

(a) A petition for a risk protection order may be filed by a petitioner ~~law enforcement officer or law enforcement agency~~.

(b) An action under this section must be filed in the county where:

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

581-04149-19 20197106__

1. The ~~petitioner's~~ law enforcement office is located, if the petitioner is a law enforcement officer or a law enforcement agency;

2. The residence of the petitioner is located, if the petitioner is not a law enforcement officer or a law enforcement agency; or

3. ~~the county where~~ The respondent resides.

(c) Such petition for a risk protection order does not require the petitioner or the respondent ~~either party~~ to be represented by an attorney.

(g) The ~~petitioner must list the~~ address of record on the petition must be ~~as being~~ where the appropriate law enforcement agency is located, if the petitioner is a law enforcement officer or a law enforcement agency, or the residence of the petitioner, if the petitioner is not a law enforcement officer or a law enforcement agency.

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

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

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
03/27/19	SM	Report Submitted
04/01/19	JU	**Fav/CS**
04/09/19	GO	**Favorable**
04/22/19	RC	**Favorable**

March 27, 2019

The Honorable Bill Galvano
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 38** – Judiciary Committee and Senator Thurston
HB 6523 – Representative Rodriguez
Relief of Jane Doe by the School Board of Miami-Dade County

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR THE REMAINING SETTLEMENT AMOUNT OF $1.3 MILLION FROM THE MIAMI-DADE COUNTY SCHOOL BOARD FOR THE RAPE AND ATTEMPTED MURDER OF JANE DOE, A TEACHER, BY A STUDENT.

FINDINGS OF FACT:

On September 19, 2014, Ms. Jane Doe, a teacher at South Dade Senior High School, stayed late to finish some work at the request of her supervisor. While she was working, a student returned to her classroom around 4:30 p.m. As the student began to close the blinds, Ms. Doe attempted to gather her belongings and leave the room. The student then physically attacked Ms. Doe while she tried to fight him off. He slammed Ms. Doe's head to the ground, choked her with his hands until she was unconscious, and then raped her. The student then put Ms. Doe's phone in the trash can, placed the condom he used into her purse, stole her keys, left her unconscious on the floor of her classroom, and stole her car.

When Ms. Doe regained consciousness, her clothing was removed from the lower half of her body and there were

clumps of hair and smears of blood on the floor of her classroom. Ms. Doe was able to find another employee who called emergency personnel.

Approximately five hours after the attack, the student was apprehended while driving Ms. Doe's vehicle. He confessed and was charged with attempted felony murder, sexual battery of a physically incapacitated victim, robbery, and grand theft.

Due to the effects of the attack, Ms. Doe was not able to testify in a criminal trial so the student entered a plea deal. On April 20, 2019, he was sentenced to 25 years in state prison.

In addition to physical injuries, Ms. Doe suffered psychological injuries including depression, post-traumatic stress disorder, gastrointestinal issues, fear of being alone and leaving the house, nightmares, anxiety, mood swings, suicidal thoughts, and panic attacks.

Background Information

At the special master hearing, and in voluminous documentation provided during the claim bill process and hearing, information related to Ms. Doe's teaching background and that student's behavioral history was submitted to the undersigned. The most relevant portions of the information are summarized below.

Ms. Jane Doe

In 2012, Ms. Doe earned a bachelor's degree in Exceptional Student Education. During the 2012 – 2013 school year, Ms. Doe was hired by the School Board of Miami Dade County to teach students who were deaf and hard of hearing, which is the area within which she studied and specialized.

During the 2013 – 2014 school year, while studying for a master's degree in speech and language, Ms. Doe was assigned to a middle school where she taught a class of nine students who were deaf and hearing impaired.

Ms. Doe did not have a contract for the 2014 – 2015 school year but was considered "surplus" and reassigned to South Dade Senior High School. Her new assignment began in August 2014 and she taught history, economics, and

government to high school students with emotional and behavioral disorders. Ms. Doe had no prior experience in any of these content areas, nor was she a behavioral management teacher or trained to teach students with emotional or behavioral disorders.

The student was assigned to Ms. Doe's 2014 – 2015 class. She was unaware of his prior history and she had not received self-defense training or attended security or crisis management training.

Ms. Doe was in her third year of teaching, was 4'11", and weighed 105 pounds.

The Student
The student was an individual with known, escalating emotional and behavioral concerns related to aggression, and defiance of authority figures.

In addition to incidents where the school district had direct knowledge, on June 26, 2013, 15 months before the attack on Ms. Doe, the student was arrested and charged with a second-degree felony under section 836.10, Florida Statutes (2013), for written threats to kill or do bodily injury. He never went to trial because, on May 12, 2014, a juvenile court found him incompetent to stand trial and determined he would not attain competency.

The student was 6'1" and weighed 200 pounds.

LITIGATION HISTORY:

Ms. Doe filed suit in May 2016 and subsequently settled the matter in early 2018 for $3 million. Ms. Doe received $1.7 million from insurance proceeds through Gallagher Bassett and United Educators Insurance and pursues the remaining $1.3 million in this claim bill. As part of the settlement, the school board agreed not to oppose or support the claim bill.

CONCLUSIONS OF LAW:

A *de novo* hearing was held as the Legislature is not bound by settlements or jury verdicts when considering a claim bill, passage of which is an act of legislative grace.

Generally, the underlying tortious cause of action in a claim bill is a negligence claim for which sovereign immunity is waived up to caps identified in section 768.28(5), Florida Statutes. However, in this particular matter, the claimant was

an employee of the school district and received workers' compensation.[1] Workers' compensation is an exclusive remedy[2] unless one of the egregious statutory exceptions is demonstrated by an employee working in furtherance of the employer.[3]

A narrow exception to workers' compensation immunity is provided when the claimant can demonstrate that an intentional tort, as defined by the statute, was committed. The exception relevant to the analysis of this claim bill requires the claimant to demonstrate that an intentional tort causing injury or death was committed.[4]

The statute defines "intentional tort" for the purpose of identifying exceptions to workers' compensation immunity. The relevant definition of "intentional tort" in this matter, which under the statute must be demonstrated by clear and convincing evidence, requires that the:

(1) employer engaged in conduct the employer knew, based on prior similar accidents or explicit warnings specifically identifying a known danger, was virtually certain to result in injury or death to the employee, and
(2) employee was not aware of the risk because the danger was not apparent, and
(3) employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising informed judgment about whether to perform the work.[5]

Regarding the intentional tort exception to workers' compensation immunity, the Florida Supreme Court has applied the standard of "substantial certainty."[6] The Court

[1] Although not argued at the claim bill hearing, claimant submitted information that litigation would have included federal claims alleging violations of 42 U.S.C. §1983 and 20 U.S.C. §§1681 et seq. (Title IX). The settlement agreement forecloses any claims by claimant against the respondent with regard to this matter.
[2] *See* section 440.11(1), Florida Statutes, which provides that "[t]he liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including vicarious liability, of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death" except as provided in certain situations.
[3] *See* Ramsey v. Dewitt Excavating, Inc., 248 So.3d 1270, 1272 (Fla. 2018); Bakerman v. The Bombay Co., Inc., 961 So.2d 259, 261 – 261 (Fla. 2007) (stating, in reference to the comprehensive Florida Workers' Compensation scheme in Chapter 440, that "employers that comply with the provisions of the chapter are given immunity from civil suit by the employee, except in the most egregious circumstances").
[4] Section 440.11(1)(b), Florida Statutes.
[5] *Id*.
[6] *See Bakerman*, 961 So.2d at 262 (citing and quoting Turner v. PCR, Inc., 754 So.2d 683 (Fla. 2000)).

provided that "[u]nder an objective test for the substantial certainty standard, an analysis of the circumstances in a case would be required to determine whether a reasonable person would understand that the employer's conduct was 'substantially certain' to result in injury or death to the employee."[7] Concealment of a danger is not necessarily required, but rather a factor, in determining substantial certainty as a matter of law, and whether a plaintiff has demonstrated substantial certainty would be a question for a jury.[8]

Although the elements of the intentional tort exception may be difficult to demonstrate by clear and convincing evidence, it is possible that a jury would have found for Ms. Doe in the present matter.

Employer's Prior Knowledge of a Known Danger
The record shows that the school district knew of the student's significant behavioral issues, including his violent tendencies and proceeded to assign Ms. Doe (whose experience was with deaf and hearing-impaired students) to a classroom of students with emotional and behavioral disorders – including the student who subsequently attacked Ms. Doe. A jury could find that the student's escalating behavior and violent prior actions provided explicit warning to the employer of the danger he posed to others.

Employee Unaware of Risk
Ms. Doe was unaware of the student's history of defiance, violence, and recent threat to kill or do bodily harm to another. She had just started in her new role in August and she was attacked by the student in September. Ms. Doe provides that she did not receive any warning regarding the student or his history. Additionally, she was not provided the requisite self-defense, safety, and crisis management training which may have also alerted her to the risks associated with her new role.

Concealment by Employer as to Prevent Informed Judgment of Employee about Whether to Perform the Work
A jury may also have found that failure to warn Ms. Doe was concealment or misrepresentation of the risks associated

[7] *Id*.
[8] *Id*. at 263 – 265.

with her new assignment – especially because she had not yet received any training pertaining to her new job working with students who had emotional and behavioral disorders.

Given the information presented by the claimant, it is possible that a jury could have found that the school district's conduct was substantially certain to result in injury to Ms. Doe.

IMPACT OF PAYMENT: The School Board of Miami-Dade County stated that funds for this claim bill would be paid by the school district from the general revenue fund "which funds all aspects" of the school district.

ATTORNEY FEES: The bill provides that attorney fees may not exceed 25 percent of the total amount awarded.

Claimant seeks the remaining $1.3 million of a $3 million settlement agreement with the respondent.

Outstanding costs total $3,084.56.

CONCLUSION: Based upon the information provided by the claimant before, during, and after the special master hearing, the undersigned finds that evidence exists for a jury to have found in favor of Ms. Doe's claim under an exception to workers' compensation immunity.

While it is also possible that a jury may have been able to find for the school district, the details and perspective of that argument is less clear as the school district (pursuant to the settlement agreement not to oppose or support the claim bill) did not present a case at the claim bill hearing.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:
Instead of a limit on the percentage of the proceeds of the claim bill that may be paid as attorney fees, the committee specifies dollar amounts that may be paid for attorney fees, lobbying fees, and costs and similar expenses.

By the Committee on Judiciary; and Senator Thurston

590-03699-19 201938c1

A bill to be entitled

An act for the relief of Jane Doe by the School Board of Miami-Dade County; providing for an appropriation to compensate Jane Doe for injuries and damages sustained as a result of the negligence of the School Board of Miami-Dade County; providing limitations on attorney fees, lobbying fees, and certain costs and expenses; providing an effective date.

WHEREAS, Jane Doe was hired by the School Board of Miami-Dade County during the 2012-2013 school year as an itinerant teacher for students who were deaf and hard of hearing, and entered into a 1-year employment contract under which she traveled and taught at 10 elementary and middle schools during that school year, and

WHEREAS, Jane Doe was transferred during the 2013-2014 school year to Miami Centennial Middle School, where she taught a class of nine middle school students, all of whom were deaf or hard of hearing, and

WHEREAS, Jane Doe was reassigned in August 2014 by the School Board of Miami-Dade County to South Dade Senior High School, where she taught history, economics, and government to high school students with emotional and behavioral disorders, and

WHEREAS, Jane Doe's former position at Miami Centennial Middle School, for which she was qualified, remained unfilled for the 2014-2015 school year, and the School Board of Miami-Dade County knew that Jane Doe was not certified or licensed to teach students with emotional and behavioral disorders or to

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

590-03699-19 201938c1

teach the subjects of history, economics, or government, and

WHEREAS, the School Board of Miami-Dade County is required to provide teachers who teach students with emotional and behavioral disorders with self-defense training and to ensure that they receive instruction in security and crisis management, but Jane Doe did not receive any such training or instruction, or any other training, before assuming her new position at South Dade Senior High School, and

WHEREAS, South Dade Senior High School had at least 3,500 enrolled students, one of the largest student populations in the nation, during the time of Jane Doe's reassignment and during the 2013-2014 and 2014-2015 school years the school had one of the highest rates in the Miami-Dade County Public Schools of student safety incidents reported to the Department of Education, and

WHEREAS, during the 2012-2013 school year, at least 145 fights were reported at South Dade Senior High School, and it was among the top 10 schools in South Florida for reported assaults, batteries, fighting, vandalism, theft, burglaries, and tobacco use, and

WHEREAS, during the 2013-2014 school year, 119 fights were reported at South Dade Senior High School, and it was among the worst in the district for violent and drug-related incidents, and

WHEREAS, in June 2013, before enrolling as a student in South Dade Senior High School, Victor Nash was arrested by the Miami-Dade Police Department and charged with making written threats to kill or do bodily harm, a violation of s. 836.10, Florida Statutes, a felony of the second degree, and he was

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

subsequently charged by petition in that case, and

WHEREAS, following the commencement of the criminal case, Mr. Nash was deemed incompetent to stand trial and began receiving restoration services from the Department of Juvenile Justice pursuant to s. 985.19, Florida Statutes, and, in May 2014, a juvenile court determined that Mr. Nash would never attain competence, and

WHEREAS, the School Board of Miami-Dade County knew or should have known of the court's determination of permanent lack of competency and, despite the determination, 3 months later elected to enroll Mr. Nash in South Dade Senior High School, where he was assigned to Jane Doe's class, and

WHEREAS, the School Board of Miami-Dade County knew that Mr. Nash was a student with emotional and behavioral disorders, and it never notified Jane Doe about the charges filed against him, in violation of s. 985.04(4), Florida Statutes, his dangerous propensities, or that a court had recently deemed him mentally incompetent, and

WHEREAS, on September 19, 2014, Jane Doe was instructed by a superior to stay on campus after regular school hours to call students' parents regarding their individual education plans, and

WHEREAS, Mr. Nash remained on campus for at least 2 hours after the final bell rang and ultimately went to Jane Doe's classroom, where he found her alone, and

WHEREAS, as Jane Doe attempted to leave the classroom after becoming alarmed at Mr. Nash's behavior, Mr. Nash violently grabbed her and slammed her to the ground, causing her to hit her head, and then choked her until she lost consciousness, and

WHEREAS, Mr. Nash proceeded to rape Jane Doe in her classroom and then threw away her cell phone, took her car keys from her purse, and located her vehicle in the school's faculty parking lot and drove it off of school property, and

WHEREAS, Mr. Nash was later apprehended in Jane Doe's vehicle by an officer of the Homestead Police Department, and

WHEREAS, as a result of this incident, in the criminal case *State of Florida v. Victor Marshall Nash*, No. F14021341 (Fla. 11th Cir. Ct. 2014), Mr. Nash was charged with and pled guilty to attempted first degree murder, sexual battery causing great bodily harm, strong-arm robbery, and grand theft auto, and

WHEREAS, the attempted murder and the sexual battery of Jane Doe by Mr. Nash and the grossly negligent, indifferent, and reckless conduct and breach of trust and confidence by the School Board of Miami-Dade County resulted in the loss of her virginity and have caused Jane Doe severe and permanent psychological injuries, severe depression, physical and mental pain and suffering, gastrointestinal distress, constant fear, nightmares, weight gain, anxiety, mood swings, and the loss of capacity for the enjoyment of life, and she has suffered loss of earnings and a loss of ability to earn money in the future, and

WHEREAS, the injuries suffered by Jane Doe are persistent, permanent, and debilitating in nature, and

WHEREAS, in resolving a civil action brought by Jane Doe, *Jane Doe v. the School Board of Miami-Dade County, Florida*, No. 16-011821-CA-01 (Fla. 11th Cir. Ct. 2016), the parties signed a settlement agreement on April 9, 2018, under the terms of which a total amount of $3 million was to be paid to Jane Doe, of which the School Board of Miami-Dade County paid $200,000

pursuant to s. 768.28, Florida Statutes, and its insurer paid $1.5 million, and the payment of the remaining $1.3 million is conditioned upon passage of this claim bill, NOW, THEREFORE,

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

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

Section 2. The School Board of Miami-Dade County is authorized and directed to appropriate from funds of the school board not otherwise encumbered and to draw a warrant in the sum of $1.3 million payable to Jane Doe as compensation for injuries and damages sustained.

Section 3. The amount paid by the School Board of Miami-Dade County pursuant to s. 768.28, Florida Statutes, and by its insurer under the terms of the settlement agreement and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Jane Doe. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $260,000, the total amount paid for lobbying fees may not exceed $65,000, and the total amount paid for costs or other similar expenses may not exceed $3,084.56.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Vice Chair*
Appropriations
Banking and Insurance
Rules

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining

SENATOR PERRY E. THURSTON, JR.
33rd District

April 10, 2019

The Honorable Lizbeth Benacquisto
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Benacquisto,

Please be advised that I am writing this letter concerning my bill, SB 38: Relief of Jane Doe by the School Board of Miami-Dade County. The bill has been referred to the Senate Rules Committee. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please do not hesitate to contact me if you have any questions.

Respectfully,

Perry E. Thurston, Jr.

Perry E. Thurston, Jr., District 33

REPLY TO:
☐ 2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (888) 284-6086
☐ 206 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: *www.flsenate.gov*

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 236
INTRODUCER:	Criminal Justice Committee and Senator Book
SUBJECT:	Public Records and Public Meetings
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	**Fav/CS**
2.	Ponder	McVaney	GO	**Favorable**
3.	Storch	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 236 creates a new public records exemption to make confidential and exempt the complaints, referrals, and reports held by any agency[1] that allege sexual harassment or sexual misconduct. The bill also creates a new public meetings exemption to exempt proceedings that would reveal records involving alleged sexual harassment or sexual misconduct.

The bill expands existing public records and public meetings exemptions to provide that a written request by the alleged violator to make records and proceedings public will not result in the loss of confidential and exempt or exempt status of these records if the complaint or referral involves allegations of sexual harassment or sexual misconduct.

The bill expands an existing public records exemption for the personal identifying information of an alleged victim in an allegation of sexual harassment to include the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or any information that could assist an individual in determining the identity of such alleged victim.

The bill provides a statement of public necessity as required by the State Constitution.

[1] Section 119.011(2), F.S., broadly defines agency to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates new public records and public meetings exemptions, and expands a current public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill may have an indeterminate fiscal impact on the Commission on Ethics (COE) and possibly other agencies relating to training and redaction of confidential and exempt information. See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[2] This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[3]

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.[4] The Public Records Act states that

> [i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[5]

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.[6] Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

[2] FLA CONST., art. I, s. 24(a).
[3] *Id*.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.
[6] *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[7] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[8]

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[9] A violation of the Public Records Act may result in civil or criminal liability.[10]

Only the Legislature may create an exemption to public records requirements.[11] An exemption must be created by general law and must specifically state the public necessity justifying the exemption.[12] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[13] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[14]

When creating or expanding a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[15] Records designated as "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[16]

Open Meetings Law

The Florida Constitution provides that the public has a right to access governmental meetings.[17] Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or

[7] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

[8] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).

[9] Section 119.07(1)(a), F.S.

[10] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

[11] FLA. CONST., art. I, s. 24(c).

[12] *Id.*

[13] The bill may, however, contain multiple exemptions that relate to one subject.

[14] FLA. CONST., art. I, s. 24(c).

[15] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

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

[17] FLA CONST.., art. I, s. 24(b).

discussed.[18] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.[19]

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the "Government in the Sunshine Law,"[20] or the "Sunshine Law,"[21] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.[22] The board or commission must provide the public reasonable notice of such meetings.[23] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[24] Minutes of a public meeting must be promptly recorded and open to public inspection.[25] Failure to abide by public meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.[26] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[27]

The Legislature may create an exemption to public meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.[28] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[29] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[30]

The following are general exemptions from the requirement that all meetings of any state agency or authority be open to the public:

- That portion of a meeting that would reveal a security or fire safety system plan; and

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[18] *Id*.
[19] FLA CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."
[20] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).
[21] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).
[22] Section 286.011(1)-(2), F.S.
[23] *Id.*
[24] Section 286.011(6), F.S.
[25] Section 286.011(2), F.S.
[26] Section 286.011(1), F.S.
[27] Section 286.011(3), F.S.
[28] FLA CONST., art. I, s. 24(c).
[29] *Id*.
[30] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

- Any portion of a team meeting at which negotiation strategies are discussed.[31]

The Commission on Ethics

The State Constitution provides that "[t]here shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission."[32] Section 112.320, F.S., creates the Commission on Ethics (COE). The purpose of the COE is to serve as guardian of the standards of conduct for the officers and employees of the state, and of a county, city, or other political subdivision of the state, as defined in part III of ch. 112, F.S., and to serve as the independent commission provided for by the State Constitution.[33]

The nine-member COE is responsible for investigating and issuing public reports on complaints of breach of public trust by public officers and employees.[34] A "breach of the public trust" is defined as a violation of a provision of the State Constitution or of part III of ch. 112, F.S., which establishes a standard of ethical conduct, a disclosure requirement, or a prohibition applicable to public officers or employees in order to avoid conflicts between public duties and private interests.[35] Examples of a breach of public trust include solicitation or acceptance of gifts, unauthorized compensation, or conflicting employment or contractual relationship.[36]

The law requires the COE to investigate an alleged violation of part III of ch. 112, F.S., or other alleged breach of the public trust within its jurisdiction:

- Upon a written complaint executed on a form prescribed by the COE and signed under oath or affirmation by any person; or
- Upon receipt of a written referral of a possible violation of this part or other possible breach of the public trust from the Governor, the Department of Law Enforcement, a state attorney, or a U.S. Attorney which at least six members of the COE determine is sufficient to indicate a violation of this part or any other breach of the public trust.[37]

A copy of the complaint or referral must be sent to the alleged violator within five days after the receipt of such complaint or a determination that the referral received is sufficient to indicate a violation of part III of ch. 112, F.S., or any other breach of the public trust.[38]

Following receipt of a legally sufficient complaint or referral, the COE will conduct a preliminary investigation to determine whether there is probable cause to believe that a violation has occurred. If at the conclusion of such preliminary investigation the COE finds no probable cause to believe there is a violation or breach of public trust committed, the COE must dismiss

[31] Section 286.0113, F.S.
[32] FLA. CONST., art. II, s. 8(f).
[33] Section 112.320, F.S.
[34] Florida Commission on Ethics, *About Us*, available at http://www.ethics.state.fl.us/AboutUs/Index.aspx (last visited February 4, 2019).
[35] Section 112.312(3), F.S.
[36] *See generally* Section 112.313, F.S.
[37] Section 112.324(1)(a)-(b), F.S.
[38] Section 112.324(1), F.S.

the complaint or referral. At that point, the complaint or referral becomes a matter of public record.[39]

In contrast, if the COE finds probable cause to believe there is a violation or breach of public trust, the complainant and the alleged violator must be notified in writing. Following such notification, the notice and all documents made or received in the disposition of the complaint or referral then become public record. Any person who the COE finds probable cause to believe has committed a violation or breach of public trust is entitled to a public hearing. On its own motion, the COE may require a public hearing, conduct such further investigation as it deems necessary, or enter into stipulations and settlements as it finds just and in the best interest of the state.[40]

Exemption and Confidentiality of COE Complaint Records and Personal Identifying Information of a Victim

Section 112.324, F.S., provides that the following are confidential and exempt from public disclosure requirements:

- The complaint and records relating to the complaint or to any preliminary investigation held by the COE or its agents, by a commission on ethics and public trust established by any county defined in s. 125.011(1), F.S., or by any municipality defined in s. 165.031, F.S., or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326, F.S; and
- Written referrals and records relating to such referrals held by the COE or its agents, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the COE or its agents.[41]

The law also provides that the following are exempt from public meetings requirement:

- Any portion of a proceeding conducted by the COE, a commission on ethics and public trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation; and
- Any portion of a proceeding of the COE in which a determination regarding a referral is discussed or acted upon.[42]

The above-discussed public records and public meetings exemptions apply until:

- The complaint is dismissed as legally insufficient;
- The alleged violator requests in writing that such records and proceedings be made public;
- The COE determines that it will not investigate the referral; or
- The COE, a commission on ethics and public trust, or a county or municipality that has established such local investigatory process determines, based on such investigation, whether probable cause exists to believe that a violation has occurred.[43]

[39] Section 112.324(3), F.S.
[40] *Id.*
[41] Section 112.324(2)(a)-(b), F.S.
[42] Section 112.324(2)(c)-(d), F.S.
[43] Section 112.324(2)(e), F.S.

The public necessity statement justifying the exemption found in s. 112.324, F.S., explained that the "release of such information could potentially be defamatory to an individual under investigation, cause unwarranted damage to the good name or reputation of such individual, or significantly impair the investigation."[44]

Section 119.071(2)(n), F.S., provides that personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. However, such information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities. The term "personal identifying information" is not defined for purposes of Chapter 119 nor does this provision include examples of types of personal identifying information that would be exempt under this provision.

III. Effect of Proposed Changes:

Section 1 amends s. 112.324, F.S, to continue the confidential and exempt nature of complaints or referrals that involve allegations of sexual harassment or sexual misconduct regardless of a written request by the alleged violator to make such records and proceedings public. By limiting the ability of alleged violator to remove the confidential and exempt status of the records, this exemption is expanded to protect the alleged victim as well as the alleged violator.

Section 1 also prohibits the disclosure of the personal identifying information of an alleged victim of sexual harassment or sexual misconduct or any information that could assist an individual in determining the identity of such alleged victim in a portion of a proceeding conducted by the COE or like local commission which is open to the public.

Section 2 amends s. 119.071, F.S., to expand the public records exemption to make confidential and exempt the complaints, referrals, and reports that allege sexual harassment or sexual misconduct, and any related records that are held by an agency. Such information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities.

The bill specifies that the exemption applies until:

- The agency determines that it will not investigate the allegation;
- The agency takes disciplinary action against the subject of the allegation and determines that it will take no further action in the matter; or
- A finding is made as to whether probable cause exists.

The bill expands an existing public records exemption for the personal identifying information of an alleged victim in an allegation of sexual harassment to include the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or any information that could assist an individual in determining the identity of such alleged victim. Such personal identifying information remains confidential and exempt even in the event that the complaint, referral, or report containing the information becomes public record. The bill provides, however,

[44] Ch. 2010-130, Laws of Fla.

that such information may be disclosed to another governmental entity in the furtherance of the agency's official duties and responsibilities or to the parties to the allegation and their attorneys.

Section 3 amends s. 286.0113, F.S., to create a new public meetings exemption to make exempt any portion of a meeting that would reveal any records involving an allegation of sexual harassment or sexual misconduct until:

- The agency determines that it will not investigate the allegation;
- The agency takes disciplinary action against the subject of the allegation and determines that it will take no further action in the matter; or
- A finding is made as to whether probable cause exists.

The bill requires that the personal identifying information of an alleged victim of sexual harassment or sexual misconduct or any information that could assist an individual in determining the identity of such victim that is confidential and exempt pursuant to ch. 119, F.S., is to remain confidential and exempt during any meeting that is open to the public.

Section 4 sets forth the required public necessity statement. The statement provides as justification for the exemption of complaints, referrals, and reports alleging sexual harassment or sexual misconduct, and any related records, that the release of such information could potentially be defamatory to an individual under investigation, could subject alleged victims to further sexual harassment or retaliation, or could significantly impair the integrity of any investigation of such allegations. The public necessity statement also explains that the potential for disclosure of such information could create a disincentive for alleged victims to report instances of alleged sexual harassment or sexual misconduct.

The public necessity statement also provides justification for the exemptions of any portion of a meeting that would reveal any records involving an allegation of sexual harassment or sexual misconduct and the disclosure of personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or any information that could assist an individual in determining the identity of such alleged victim, by noting that a victim may remain at risk of further harassment and retaliation, and the disclosure of the victim's identity may cause damage to his or her reputation.

Section 5 provides that the bill is effective upon becoming law.

The public records and public meetings exemptions are subject to the Act pursuant to s. 119.15, F.S., and will be repealed October 2, 2024, unless the Legislature reviews and reenacts the exemptions before that date.

Because the bill creates a new public records and public meetings exemption, and expands a current public record exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Public Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding exemptions to the public records and public meetings requirements. This bill enacts new exemptions and expands a current exemption. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding exemptions to the public records and public meetings requirements to state with specificity the public necessity justifying the exemption. Section 4 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires exemptions to the public records and public meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect victims of sexual harassment or sexual misconduct. There are substantial legislative findings in the statement of public necessity in support of the public records and public meetings exemptions.

The statutory exemption seeks to protect the personal identifying information of an alleged victim of sexual harassment or sexual misconduct or *any information that could assist an individual in determining the identity of such alleged victim*. (Emphasis added) The stated purpose of the exemption is to protect from disclosure the alleged victim's identity "because a victim may remain at risk of further harassment and retaliation, and the disclosure of the victim's identity may cause damage to his or her reputation." The phrase "any information that could assist an individual in determining the identity of such alleged victim" could be interpreted as being open ended as to what type of information may be included and deemed to be covered by the exemption. In *Halifax,* the Supreme Court held that the exemption at issue was unconstitutional for facial overbreadth because the legislature failed to define "strategic plans" and specify the "critical confidential information" (as provided in the public necessity statement) not to be disclosed.[45] In finding the exemption unconstitutional, the Court noted that the legislature had created a "categorical exemption" which reach[ed] far more information than necessary to

[45] *Halifax*, 724 So. 2d at 570.

accomplish the purpose of the exemption."[46] Similar to the exemption in *Halifax*, the phrase "any information that could assist an individual in determining the identity of such alleged victim," may be overbroad as this phrase is undefined and may reach more information than necessary to accomplish the purpose of the exemption. If a court does find the exemption to be overly broad similar to *Halifax*, the remedy may be to strike the entire exemption as unconstitutional.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

No others identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with the agency making redactions in response to public records request.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on the COE and possibly other agencies relating to training and redaction of confidential and exempt information. However, costs may be minimal if they can be absorbed by the COE and other agencies because training and redaction of confidential and exempt information are part of the day-to-day responsibilities of the COE and other agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[46] *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.324, 119.071, and 286.0113.

IX. Additional Information:

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

CS by Criminal Justice on February 11, 2019:
The Committee Substitute:

- Clarifies that the Open Government Sunset Review Act applies to the public records and public meetings exemptions in s. 112.324, F.S., that are expanded by the bill; and
- Specifies that the public record exemption expanded by ch. 119, F.S., applies to the personal identifying information of an alleged victim *of sexual harassment or sexual misconduct.*

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senator Book

591-02310-19 2019236c1

A bill to be entitled

An act relating to public records and public meetings; amending s. 112.324, F.S.; providing an exception to the expiration of certain public records and public meetings exemptions under specified circumstances; prohibiting the disclosure of the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or information that could assist an individual in determining the identity of such alleged victim, in any portion of a proceeding conducted by the Commission on Ethics, a commission on ethics and public trust, or a county or a municipality that has established a local investigatory process which is open to the public; providing for future legislative review and repeal; amending s. 119.071, F.S.; providing an exemption from public records requirements for complaints, referrals, and reports alleging sexual harassment or sexual misconduct, and any related records, which are held by an agency; specifying conditions upon which the exemption expires; providing that the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or information that could assist an individual in determining the identity of such alleged victim, remains confidential and exempt from public records requirements; authorizing disclosure under specified circumstances; providing for future legislative review and repeal; amending s. 286.0113, F.S.; providing an exemption from public meetings

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

591-02310-19 2019236c1

requirements for any portion of a meeting that would reveal records involving an allegation of sexual harassment or sexual misconduct made confidential and exempt under the act; specifying conditions upon which the exemption expires; prohibiting the disclosure of the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or information that could assist an individual in determining the identity of such alleged victim, in any portion of a meeting open to the public; providing for future legislative review and repeal; providing statements of public necessity; providing an effective date.

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

Section 1. Subsection (2) of section 112.324, Florida Statutes, is amended to read:

112.324 Procedures on complaints of violations and referrals; public records and meeting exemptions.—

(2)(a) The complaint and records relating to the complaint or to any preliminary investigation held by the commission or its agents, by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1) or by any municipality defined in s. 165.031, or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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

Constitution.

(b) Written referrals and records relating to such referrals held by the commission or its agents, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the commission or its agents, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) Any portion of a proceeding conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation, is exempt from s. 286.011, s. 24(b), Art. I of the State Constitution, and s. 120.525.

(d) Any portion of a proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, and s. 120.525.

(e) The exemptions in paragraphs (a)-(d) apply until:

1. The complaint is dismissed as legally insufficient;

2. Except in connection with complaints or referrals that involve allegations of sexual harassment or sexual misconduct, the alleged violator requests in writing that such records and proceedings be made public;

3. The commission determines that it will not investigate the referral; or

4. The commission, a commission on ethics and public trust, or a county or municipality that has established such local investigatory process determines, based on such investigation,

whether probable cause exists to believe that a violation has occurred.

(f) Notwithstanding paragraph (e), the personal identifying information of an alleged victim of sexual harassment or sexual misconduct or any information that could assist an individual in determining the identity of such alleged victim remains confidential and exempt as provided under s. 119.071(2)(n)3. and may not be disclosed in a portion of a proceeding conducted by the commission, a commission on ethics and public trust, or a county or municipality that has established such local investigatory process which is open to the public.

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

(h) ~~(f)~~ A complaint or referral under this part against a candidate in any general, special, or primary election may not be filed nor may any intention of filing such a complaint or referral be disclosed on the day of any such election or within the 30 days immediately preceding the date of the election, unless the complaint or referral is based upon personal information or information other than hearsay.

Section 2. Paragraph (n) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(n)1. Complaints, referrals, and reports that allege sexual harassment or sexual misconduct, including allegations of sexual

harassment or sexual misconduct in violation of part III of chapter 112, and any related records that are held by an agency are ~~Personal identifying information of the alleged victim in an allegation of sexual harassment is~~ confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such information may be disclosed to another governmental entity in the furtherance of its official duties and responsibilities.

2. Except as provided in subparagraph 3., the exemption in subparagraph 1. applies until:

a. The agency determines that it will not investigate the allegation;

b. The agency takes disciplinary action against the subject of the allegation and determines that it will take no further action in the matter; or

c. A finding is made as to whether probable cause exists.

3. Notwithstanding the release of any record pursuant to subparagraph 2., the personal identifying information of an alleged victim of sexual harassment or sexual misconduct or any information that could assist an individual in determining the identity of such alleged victim, shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such information may be disclosed to another governmental entity in the furtherance of the agency's official duties and responsibilities or to the parties to the allegation and their attorneys.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024 ~~2022~~, unless reviewed and saved from repeal through reenactment by the Legislature.

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

286.0113 General exemptions from public meetings.—

(3)(a) Any portion of a meeting that would reveal any records involving an allegation of sexual harassment or sexual misconduct which are made confidential and exempt by s. 119.071(2)(n)1. is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution until the agency:

1. Determines it will not investigate the allegation;

2. Takes disciplinary action against the subject of the allegation and determines it will take no further action; or

3. Makes a finding as to probable cause.

(b) Notwithstanding paragraph (a), the personal identifying information of an alleged victim of sexual harassment or sexual misconduct or any information that could assist an individual in determining the identity of such alleged victim remains confidential and exempt as provided under s. 119.071(2)(n)3. and may not be disclosed in a portion of a meeting that is open to the public.

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

Section 4. (1) The Legislature finds that it is a public necessity that complaints, referrals, and reports alleging sexual harassment or sexual misconduct, and any related records that are held by an agency, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution until the agency determines that it will not

investigate the allegation; takes disciplinary action against the subject of the allegation and determines it will take no further action; or makes a finding as to probable cause. This exemption is necessary because the release of such information could potentially be defamatory to an individual under investigation; could subject alleged victims to further sexual harassment or retaliation; or could significantly impair the integrity of any investigation of such allegations. Additionally, the potential for disclosure of such information could create a disincentive for alleged victims to report instances of alleged harassment or misconduct. The Legislature finds that the potential harm that may result from the release of such information outweighs any public benefit that may be derived from the disclosure of such information.

(2) The Legislature also finds that it is a public necessity that any portion of a meeting that would reveal any records involving an allegation of sexual harassment or sexual misconduct which are made confidential and exempt under s. 119.071(2)(n)1., Florida Statutes, be made exempt under s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution until the agency determines that it will not investigate the allegation; takes disciplinary action against the subject of the allegation and determines it will take no further action; or makes a finding as to probable cause. Furthermore, the Legislature finds that it is a public necessity to prohibit the disclosure of the personal identifying information of an alleged victim of sexual harassment or sexual misconduct, or any information that could assist an individual in determining the identity of such alleged victim, in any

portion of a proceeding conducted by the Commission on Ethics, a commission on ethics and public trust, or a county or municipality that has established a local investigatory process which is open to the public, or any portion of a meeting of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision which is open to the public. The failure to close a meeting at which records involving an allegation of sexual harassment or sexual misconduct are discussed or acted upon would defeat the purpose of the public records exemption. The Legislature also finds that it is necessary to maintain the confidentiality of an alleged victim's identity after an agency determines that it will not investigate the allegation; takes disciplinary action against the subject of the allegation and determines it will take no further action; or makes a finding as to probable cause, because a victim may remain at risk of further harassment and retaliation, and the disclosure of the victim's identity may cause damage to his or her reputation.

Section 5. This act shall take effect upon becoming a law.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1210
INTRODUCER:	Senator Book
SUBJECT:	Ratification of Rules of the Department of Financial Services
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Favorable**
2.	Billmeier	Phelps	RC	**Favorable**

I. Summary:

SB 1210 ratifies Rule 64L-3.009, F.A.C., adopted by the Department of Financial Services (DFS).

Chapter 2018-124, Laws of Florida, allows a first responder to recover wage replacement benefits under the Workers' Compensation Law for posttraumatic stress disorder (PTSD) without an accompanying physical injury if the PTSD resulted from the first responder acting within the course of his or her employment and the first responder is examined and subsequently diagnosed with the disorder by a licensed psychiatrist. The PTSD must be due to specified events, including events that involve witnessing "grievous bodily harm of a nature that shocks the conscience." Chapter 2018-124, Laws of Florida, did not define "grievous bodily harm of a nature that shocks the conscience" and directed the DFS to adopt a rule defining the phrase.

The DFS filed the rule for adoption on December 5, 2018. The Statement of Estimated Regulatory Costs (SERC) developed by the DFS determined that the proposed rule will likely increase regulatory costs in excess of $1 million in the aggregate within 5 years after implementation of the rule. Accordingly, the rule must be ratified by the Legislature before it may go into effect. This bill ratifies the rule.

II. Present Situation:

Rulemaking and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy.[1] Rulemaking authority is delegated by the Legislature to an agency in law, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.[2] An agency may not

[1] Section 120.52(16), F.S.
[2] Section 120.52(17), F.S.

engage in rulemaking unless it has a legislative grant of authority to do so.[3] The statutory authority for rulemaking must be specific enough to guide an agency's rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.[4]

Prior to the adoption, amendment, or repeal of any rule an agency must file a notice of the proposed rule in the Florida Administrative Register (F.A.R.).[5] The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule;
- A summary of the agency's SERC, if one is prepared; and
- Whether legislative ratification is required.[6]

SERC Requirements

Agencies must prepare a SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than $200,000 in the aggregate within 1 year after implementation of the rule.[7]

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement and enforce the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.[8]

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,[9] productivity, or innovation; or
- Regulatory costs, including any transactional costs.[10,11]

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[3] *See* ss. 120.52(8) and 120.536(1), F.S.
[4] *See Sloban v. Florida Board of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc*., 773 So.2d 594 (Fla 1st DCA 2000).
[5] Section 120.54(3)(a)2., F.S.
[6] Section 120.54(3)(a)1., F.S.
[7] Sections 120.54(3)(b) and 120.541(1)(b), F.S.
[8] Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of $5 million or less. *See* ss. 120.52(18), (19), and 288.703(6), respectively.
[9] Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.
[10] Transactional costs are direct costs that are readily ascertainable based upon standard business practices. They include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed to comply with the rule, additional operating costs, the cost of monitoring and reporting, and any other costs necessary to comply with the rules.
[11] Section 120.541(2)(a), F.S.

If the economic analysis results in an adverse impact or regulatory costs in excess of $1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.[12]

Chapter 2018-124, Laws of Florida

Chapter 2018-124, Laws of Florida, became law on October 1, 2018. It allows a first responder[13] to recover wage replacement benefits under the Workers' Compensation Law for PTSD[14] without an accompanying physical injury if the PTSD resulted from the first responder acting within the course of his or her employment and the first responder is examined and subsequently diagnosed with the disorder by a licensed psychiatrist. The PTSD must be due to one of the following events:

- Seeing for oneself a deceased minor;
- Directly witnessing the death of a minor;
- Directly witnessing an injury to a minor who subsequently died before or upon arrival at a hospital emergency department;
- Participating in the physical treatment of an injured minor who subsequently died before or upon arrival at a hospital emergency department;
- Manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing a death, including suicide, that involved grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing as defined in 28 U.S.C. s. 530C, manslaughter, self-defense, misadventure, and negligence;
- Directly witnessing an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Participating in the physical treatment of an injury, including an attempted suicide, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or
- Manually transporting a person who was injured, including by attempted suicide, and subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.

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[12] Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See* s. 120.541(4), F.S.

[13] Section 112.1815(1), F.S., defines "first responder" as "a law enforcement officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.102, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., employed by state or local government. A volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is also considered a first responder of the state or local government for purposes of this section."

[14] PTSD psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war/combat, rape or other violent personal assault. *See* https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd (last visited March 22, 2019).

The law does not define, "grievous bodily harm of a nature that shocks the conscience." Instead, it required the DFS to adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience.

Rule 69L-3.009, Florida Administrative Code

On December 5, 2018, the DFS filed the rule for adoption. The rule states:

> Pursuant to s. 112.1815(5), F.S., for purposes of determining the compensability of employment-related post-traumatic stress disorder for first responders, the following injuries qualify as grievous bodily harm of a nature that shocks the conscience:
> (1) Decapitation (full or partial),
> (2) Degloving,
> (3) Enucleation,
> (4) Evisceration,
> (5) Exposure of one or more of the following internal organs:
> (a) Brain,
> (b) Heart,
> (c) Intestines,
> (d) Kidneys,
> (e) Liver, or
> (f) Lungs.
> (6) Impalement,
> (7) Severance (full or partial), and
> (8) Third degree burn on 9 percent or more of the body.

The DFS prepared a Statement of Estimated Regulatory Costs:

> There are approximately 250,000 work-related injuries reported to the Division of Workers' Compensation annually. This rule will add indemnity benefits for first responders as defined in section 112.1815, F.S., with an eligible PTSD claim. Currently, medical only treatment is available for first responders experiencing a work related mental health issue. First responder claims represent 6.5-7 percent of all lost-time claims. Between 2012 and 2018, the Division identified 35,420 accidents that included the class code of a first responder. The total cost (indemnity plus medical) of these claims as of (May 2018) is $8,615,314,959.72 (average cost per claim is $243,233.06) over the life of the claims. Of these first responder claims where a physical injury occurred, 134 claims had a secondary diagnosis of PTSD in the medical bill data, or 0.4 percent of all first responder claims.
>
> Across all claims occurring in the State of Florida, indemnity benefits represent approximately 27-30 percent of the total cost of a claim. Using the average cost per first responder claim of $243,233.06, the indemnity costs represented in this figure are between $65,672 and $72,969 per claim over the life of the claim up to 5 years of data presented. If claims are reported and compensable for the

> 0.4 percent of first responder population, a range of $8.8 to 9.7 million dollars would be expected over the next 5 years of claim development.[15]

The DFS SERC did not separate the costs that would be imposed by the statute from the costs that would be imposed specifically by the rule.

III. Effect of Proposed Changes:

The bill ratifies Rule 69L-3.009, F.A.C., entitled "Injuries that Qualify as Grievous Bodily Harm of a Nature that Shocks the Conscience" for the sole and exclusive purpose of satisfying any condition of effectiveness imposed under s. 120.541(3), F.S.

The bill also:

- Directs that the act shall not be codified in the Florida Statutes;
- Requires that after the act becomes law, its enactment and effective date shall be noted in the Florida Administrative Code, the F.A.R., or both, as appropriate;
- Provides that the act does not alter rulemaking authority or constitute a legislative preemption of, or exception to, any other provision of law regarding adoption or enforcement of the rule and is intended to preserve the status of the rule under ch. 120, F.S.; and
- Does not cure any rulemaking defect, preempt any challenge on lack of authority, or cure any violation of the legal requirements governing rule adoption.

The act is effective upon becoming a law. At that time, the rule becomes effective.

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.

[15] Department of Financial Services, *Analysis of SB 1210* (February 22, 2019) (on file with the Committee on Banking and Insurance).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. Most of the impact on the government sector will be caused by the ch. 2018-124, Laws of Florida, requirement that workers' compensation benefits be paid for more PTSD claims. Without the rule, it would take litigation to determine the meaning of "grievous bodily harm of a nature that shocks the conscience." The rule might have the effect of reducing the number of paid claims.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None. The bill specifically provides that it is not to be codified in the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Book

32-01795-19 20191210__

A bill to be entitled

An act relating to ratification of rules of the Department of Financial Services; ratifying a specified rule relating to implementation of expanded workers' compensation benefits for first responders for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds for likely adverse impact or increase in regulatory costs; providing applicability; providing an effective date.

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

Section 1. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on the effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 69L-3.009, Florida Administrative Code, entitled "Injuries that Qualify as Grievous Bodily Harm of a Nature that Shocks the Conscience," as filed for adoption with the Department of State pursuant to the certification package dated December 5, 2018.

(2) This act serves no other purpose and may not be codified in the Florida Statutes. After this act becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code or the Florida Administrative Register, or both, as appropriate. This act does not alter rulemaking authority delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rules cited, and is

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32-01795-19 20191210__

intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This act does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

Section 2. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Health Policy
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR LAUREN BOOK
32nd District

March 15, 2019

Chair Lizbeth Benacquisto
Committee on Rules
402 Senate Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Benacquisto:

I respectfully request that **SB 1210: Ratification of Rules of the Department of Financial Services**, be placed on the agenda for the next Committee on Rules meeting.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

Lauren Book

Senator Lauren Book
Senate District 32

Cc: John B. Phelps, *Staff Director*
Cynthia Futch, *Committee Administrative Assistant*

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1210
Bill Number (if applicable)

Topic Ratification of Rules

Amendment Barcode (if applicable)

Name Jim Tolley

Job Title President

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City *State* *Zip*

Phone 850-224-7333

Email jimt@fpfp.org

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/19 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1210

Meeting Date *Bill Number (if applicable)*

Topic Ratification of PTSD Benefits for First Responders Rule *Amendment Barcode (if applicable)*

Name Meredith Stanfield

Job Title Director of Legislative & Cabinet Affairs

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing CFO Jimmy Patronis

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 302
INTRODUCER:	Rules Committee, Health Policy Committee and Senator Brandes
SUBJECT:	Nonemergency Medical Transportation Services
DATE:	April 22, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Williams	Brown	HP	**Fav/CS**
2.	Billmeier	Knudson	BI	**Favorable**
3.	Williams	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 302 authorizes a transportation network company under contract with a Medicaid managed care plan, a transportation broker under contract with a Medicaid managed care plan, a transportation broker under direct contract with the Agency for Health Care Administration (AHCA), or a transportation network company that receives referrals from a transportation broker contracting with Medicaid managed care plans or the AHCA to provide Medicaid nonemergency transportation services to a Medicaid recipient, subject to compliance with requirements of the AHCA.

The bill directs the AHCA to update any regulations, policies, and other guidance, including the Non-Emergency Transportation Services Coverage Policy handbook, as necessary, to reflect this authorization by October 1, 2019.

The bill provides that transportation network companies (TNCs) and TNC drivers and prospective drivers must undergo a background screening pursuant to s. 435.03, F.S., or functionally equivalent procedures, as determined by the AHCA.

The bill stipulates that its provisions may not be construed to:

- Expand or limit the existing transportation benefit provided to Medicaid recipients or to require a Medicaid managed care plan to contract with a transportation network company or a transportation broker.

- Exempt any person, firm, corporation, association, or governmental entity that engages in the business or service of basic life support or advanced life support transportation from licensure requirements provided in s. 401.25, F.S.

The bill has no fiscal impact on state or local governments.

The effective date of the bill is July 1, 2019.

II. Present Situation:

Non-Emergency Medical Transportation (NEMT) Services

Non-emergency medical transportation (NEMT) includes transportation services offered to health care consumers who face barriers getting to their medical appointments. Those barriers can include not having a valid driver's license, not having a working vehicle in the household, being unable to travel or wait for services alone, or having a physical, cognitive, mental, or developmental limitation.

NEMT services are usually intended for medical appointments or other forms of non-emergent care. NEMT is widely known to serve Medicaid beneficiaries. Transportation services were established by the federal government as required Medicaid benefits when the Medicaid program was established at the national level in 1966.[1]

Florida Medicaid Program

The Florida Medicaid program is a partnership between the federal and state governments. Each state operates its own Medicaid program under a state plan approved by the federal Centers for Medicare & Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies.

Florida Medicaid is administered by the Agency for Health Care Administration (AHCA) and financed with federal and state funds. Just under four million Floridians are currently enrolled in Medicaid, and the program's estimated expenditures for the 2019-2020 state fiscal year are $28.2 billion.[2]

Eligibility for Florida Medicaid is based on several factors, including age, household or individual income, and assets. State Medicaid payment guidelines are provided in s. 409.903, F.S., (Mandatory Payments for Eligible Persons) and s. 409.904, F.S., (Optional Payments for Eligible Persons). Minimum coverage thresholds are established in federal law for certain population groups, such as children or pregnant women.

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[1] *See* What is Non-Emergency Medical Transportation, Patient Access?: available at https://patientengagementhit.com/news/what-is-non-emergency-medical-transportation-patient-access (last visited March 3, 2019).

[2] *See* Social Security Estimating Conference, Medicaid Caseloads and Expenditures, November 19, 2018, and December 10, 2018, Executive Summary available at http://edr.state.fl.us/Content/conferences/medicaid/execsummary.pdf (last visited March 3, 2019).

Services are not eligible for federal matching funds under Medicaid unless they are authorized by the federal government. Section 409.905, F.S., specifies mandatory Medicaid services, which are required by the federal government, while s. 409.906, F.S., specifies optional services that the state has chosen to cover in its Medicaid program. Among the mandatory services included in s. 409.905, F.S., are Medicaid transportation services. Subsection (12) of this section reads:

> The agency shall ensure that appropriate transportation services are available for a Medicaid recipient in need of transport to a qualified Medicaid provider for medically necessary and Medicaid-compensable services, provided a client's ability to choose a specific transportation provider shall be limited to those options resulting from policies established by the agency to meet the fiscal limitations of the General Appropriations Act. The agency may pay for transportation and other related travel expenses as necessary only if these services are not otherwise available.

Under the coverage policies (also known as handbooks) separately adopted in rule by the AHCA, both emergency transportation services[3] and non-emergency transportation (NET) services[4] are covered when they meet specified criteria. Each of the handbooks consistently addresses: introductory details relating to service description, legal authority, definitions; recipient and provider eligibility; coverage information; exclusions; required documentation; authorization requirements; and reimbursement guidance.

As part of the implementation of Statewide Medicaid Managed Care (SMMC) in 2011, the Florida Medicaid program incorporated into managed care contracts the provision of NET services. As specified in s. 409.973, F.S., "transportation to access covered services" is one of the benefits managed care plans are required to provide under SMMC.

Approximately 80 percent of the enrollees in Florida Medicaid have their NET services provided as part of their managed care service coverage. The remainder of the Medicaid enrollees receive NET services that are paid for by the AHCA on a fee-for-service basis.

The AHCA has a federal waiver that allows for selective contracting with transportation brokers to provide NET services to Medicaid recipients not enrolled in managed care plans. To provide this benefit to such recipients, the AHCA has contracted with two transportation brokers.[5]

The AHCA published a notice in the Florida Administrative Register (FAR) for a rule change for Rule 59G-4.330 specific to NET services, on June 6, 2018, with a workshop held on June 22, 2018, and a deadline for submission of any comments on June 25, 2018. The proposed amendment would update the policy to specify that transportation network companies are

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[3] *See* Rule 59G-4.015, F.A.C.; Medicaid Emergency Transportation Services Coverage Policy (October 2016), available at https://www.flrules.org/Gateway/reference.asp?No=Ref-07441 (last visited March 3, 2019).
[4] Rule 59G-4.330, F.A.C.; Medicaid NET Coverage Policy available at http://www.fdhc.state.fl.us/medicaid/review/Specific/59G-4.330_NET_Coverage_Policy_Adoption.pdf (last visited March 3, 2019).
[5] Agency for Health Care Administration, *Senate Bill 302 Analysis* (January 23, 2019)(on file with the Senate Committee on Health Policy).

eligible to render Medicaid non-emergency transportation services. To date, no follow-up information has appeared in the FAR.[6]

The AHCA indicates that the only additional requirement that it would impose beyond what is specified in s. 627.748, F.S., would be to require that TNC drivers undergo FDLE Level I background screening requirements, as that is required for Medicaid providers per s. 409.907, F.S.

Transportation Brokers

Currently, the AHCA and managed care plans participating in the SMMC program contract directly with transportation brokers to coordinate and reimburse for NET services. A transportation broker is a company that subcontracts with NET providers throughout the state to schedule, monitor, and pay for transportation services. The Medicaid transportation brokers ensure that drivers have completed background screening and drug screening requirements and that they meet all other state and federal Medicaid requirements related to transportation services. They also ensure that vehicles meet all requirements and that each recipient receives the appropriate mode of transportation.[7]

Nonemergency Medical Transportation Services

Section 316.87, F.S., created in 2016, is specific to nonemergency medical transportation services. The provision prohibits a county that has licensed or issued a permit to a provider of nonemergency medical transportation services from requiring the provider to use a vehicle larger than needed to transport the number of passengers or that is inconsistent with the medical condition of the individuals receiving the service. This section is not applicable to procurement, contracting, or provision of paratransit services, directly or indirectly, by a county or an authority, pursuant to the Americans with Disabilities Act of 1990, as amended.

Transportation Network Companies

Transportation network companies (TNCs) are regulated under s. 627.748, F.S. Transportation network companies use smartphone technology to connect individuals who want to ride with private drivers for a fee.

In addition to definitions of relevant terms, s. 627.748, F.S., contains provisions regarding exclusions, a requirement for agent designation, fare transparency, identification requirements for vehicles and drivers, electronic receipts, insurance requirements specific to the company and drivers, including related disclosures and exclusions, limitations on TNCs, zero tolerance for driver drug or alcohol use, specific driver requirements, prohibited driver and company conduct, nondiscrimination and accessibility requirements, recordkeeping, and a prohibition on local preemption.

[6] *See* https://www.flrules.org/gateway/RuleNo.asp?id=59G-4.330 (last visited March 3, 2019).
[7] Id.

Emergency Medical Services (EMS) and Certificates of Public Convenience and Necessity (COPCN)

Chapter 401, F.S., relates to medical telecommunications and transportation. Part III of ch. 401, F.S., consisting of ss. 401.2101-401.465, F.S., is specific to medical transportation services and provides for the regulation of emergency medical services by the Department of Health (DOH), including the licensure of EMS service entities, the certification of the staff employed by those services, and the permitting of vehicles used by the staff in those services—whether for Basic Life Support (BLS), Advanced Life Support (ALS), and Air Ambulance Services (AAS). As indicated on the DOH website, at present, the department is responsible for the licensure and oversight of over 60,000 Emergency Medical technicians and paramedics, 270+ advanced and basic life support agencies, and over 4,500 EMS vehicles.[8]

In addition to the state requirements for licensure of EMS services, the statute provides that county governments also have a responsibility in the licensure of EMS service entities. Section 401.25, F.S., relating to licensure as a BLS or an ALS EMS service, includes, among other standards, the requirement for the issuance of a Certificate of Public Convenience and Necessity by the county in which the service will operate. Section 401.25(2)(d), F.S., requires the department to issue a license to any applicant which has obtained a certificate of public convenience and necessity from each county in which the applicant will operate.

Section 401.25(6), F.S., authorizes counties to adopt ordinances that provide reasonable standards for certificates of public convenience and necessity for basic or advanced life support services and air ambulance services, and, in so doing, to consider state guidelines, recommendations of the local or regional trauma agency created under ch. 395, F.S., and the recommendations of municipalities within its jurisdiction.

Similar to s. 401.25, F.S., specific to ALS and BLS EMS entities, s. 401.251, F.S., is specific to those entities seeking to provide air ambulance services. Among the licensure requirements, paragraph (4)(b) stipulates that an air ambulance service that uses rotary-winged aircraft in conjunction with another emergency medical service must meet the provisions of s. 401.251, F.S., and must separate basic life support and advanced life support requirements unique to air ambulance operations as is required by rules of the department. Section 401.251, F.S., also subjects the air ambulance service to the provisions of s. 401.25, F.S., relating to a certificate of public convenience and necessity. However, an air ambulance service may operate in any county under the terms of mutual aid agreements.

In addition to the applicable statutory provisions, the DOH has adopted and enforces rules under chapter 64J-1, Florida Administrative Code (F.A.C.), specific to EMS regulation. Rule 64J-1.001, F.A.C., defines a "certificate of public convenience and necessity" as "a written statement or document, issued by the governing board of a county, granting permission for an applicant or licensee to provide services authorized by a license issued under chapter 401, part III, F.S., for the benefit of the population of that county or the benefit of the population of some geographic area of that county. No COPCN from one county may interfere with the prerogatives asserted by another county regarding COPCN."

[8] *See* http://www.floridahealth.gov/licensing-and-regulation/ems-system/index.html (last visited March 4, 2019).

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 316.87, F.S., relating to nonemergency transportation services. A new subsection (2) is added to this section of statute to authorize a transportation network company under contract with a Medicaid managed care plan, a transportation broker under contract with a Medicaid managed care plan, a transportation broker under direct contract with the AHCA, or a transportation network company that receives referrals from a transportation broker contracting with Medicaid managed care plans or the AHCA to provide Medicaid nonemergency transportation services to a Medicaid recipient, subject to compliance with requirements of the AHCA.

Transportation network company drivers and prospective drivers must undergo background screening pursuant to s. 435.03, F.S., or functionally equivalent procedures, as determined by the AHCA.

The bill directs the AHCA to update any regulations, policies, and other guidance, including the Non-Emergency Transportation Services Coverage Policy handbook, as necessary to reflect this authorization by October 1, 2019.

The bill stipulates that requirements for transportation network companies and transportation network company drivers may not exceed requirements for transportation network companies imposed under s. 627.748, F.S., except as necessary to conform to federal Medicaid transportation requirements administered by the AHCA.

The bill stipulates that its provisions may not be construed to:

- Expand or limit the existing transportation benefit provided to Medicaid recipients or to require a Medicaid managed care plan to contract with a transportation network company or a transportation broker.
- Exempt any person, firm, corporation, association, or governmental entity that engages in the business or service of basic life support or advanced life support transportation from licensure requirements provided in s. 401.25, F.S.

The AHCA indicates that it is not aware of any other state Medicaid programs that reimburse NET services provided by TNCs.[9]

Section 2 of the bill provides for a July 1, 2019, effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[9] *Supra* note 5.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Affected transportation providers may benefit financially from potential flexibility provided for Medicaid managed care plans to contract with such providers. Individuals in need of Medicaid nonemergency transportation services may benefit from having additional options. TNCs would have the opportunity to compete with existing transportation providers such as taxis to provide services to Medicaid recipients.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Agency for Health Care Administration might have difficulty meeting the time constraints of the requirement on lines 50-53 of the bill to update its existing regulations, policies, and other guidance, including the nonemergency transportation services policy handbook, by October 1, 2019.[10]

VIII. Statutes Affected:

This bill substantially amends sections 316.87 and 401.25 of the Florida Statutes.

[10] Id.

IX. Additional Information:

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

CS/CS by Rules on April 23, 2019:
The CS/CS:

- Makes clarifying and stylistic edits, and re-structures but maintains existing provisions.
- Specifies background screening requirements for transportation network company drivers and prospective drivers, under s. 435.03, F.S., or functionally equivalent procedures.
- Deletes a proposed addition to s. 401.25, F.S., relating to regulation of Emergency Medical Services ambulance services by the Department of Health, and provides a cross-reference to such regulation.

CS by Health Policy on February 19, 2019:
The CS:

- Adds to the list of those entities that may provide nonemergency transportation services a transportation network company that receives referrals from a transportation broker contracting with Medicaid managed care plans or the Agency for Health Care Administration (AHCA);
- Directs the AHCA to update any regulations, policies, and other guidance necessary, not just the Non-emergency Transportation Services Coverage Policy as was required by the underlying bill; and
- Amends s. 401.25, F.S., relating to Department of Health Emergency Medical Services licensure of basic life support providers and advanced life support providers and creates a new subsection (8) of that section to authorize a Medicaid managed care plan that administers nonemergency Medicaid transportation benefits, a plan's subcontracted transportation broker, or a transportation broker that administers the nonemergency Medicaid transportation benefit under contract with the AHCA, to engage a licensed basic life support or a licensed advanced life support ambulance for the provision of nonemergency Medicaid transportation in permitted ambulances in any county without first obtaining a Certificate of Public Convenience and Necessity, as would otherwise be required under paragraph (2)(d) of that section.

B. Amendments:

None.

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

163830

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2019	.	
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	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 316.87, Florida Statutes, is amended to read:

316.87 Nonemergency medical transportation services.—

(1) To ensure the availability of nonemergency medical transportation services throughout the state, a provider licensed by the county or operating under a permit issued by the county may not be required to use a vehicle that is larger than

163830

needed to transport the number of persons being transported or that is inconsistent with the medical condition of the individuals receiving the nonemergency medical transportation services. This subsection ~~section~~ does not apply to the procurement, contracting, or provision of paratransit transportation services, directly or indirectly, by a county or an authority, pursuant to the Americans with Disabilities Act of 1990, as amended.

(2) Subject to compliance with state and federal Medicaid requirements, a transportation network company that:

(a) Is under contract with a Medicaid managed care plan;

(b) Is under contract with a transportation broker under contract with a Medicaid managed care plan;

(c) Is under contract with a transportation broker under contract with the Agency for Health Care Administration; or

(d) Receives referrals from a transportation broker under contract with a Medicaid managed care plan or the Agency for Health Care Administration,

may provide nonemergency medical transportation services under ss. 409.905 and 409.973 to a Medicaid recipient if all drivers and prospective drivers are screened pursuant to the procedures set forth in s. 435.03 or functionally equivalent procedures, as determined by the Agency for Health Care Administration. By October 1, 2019, the Agency for Health Care Administration shall update its regulations, policies, or other guidance, including its Medicaid Non-Emergency Transportation Services Coverage Policy, as necessary, to reflect this authorization. Requirements for transportation network companies and

163830

transportation network company drivers may not exceed those imposed under s. 627.748, except as necessary to conform to other applicable state and federal Medicaid transportation requirements administered by the Agency for Health Care Administration.

(3) Subsection (2) may not be construed to:

(a) Expand or limit the transportation benefits provided to Medicaid recipients or to require a Medicaid managed care plan to contract with a transportation network company or transportation broker.

(b) Exempt any person, firm, corporation, association, or governmental entity that engages in the business or service of providing advanced life support or basic life support transportation services from the licensure requirements of this section.

Section 2. 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 nonemergency medical transportation services; amending s. 316.87, F.S.; authorizing certain transportation network companies to provide nonemergency medical transportation services to a Medicaid recipient under certain circumstances; requiring the Agency for Health Care Administration to update its regulations, policies, or other guidance by

163830

a specified date to reflect such authorization; providing limitations on requirements for transportation network companies and transportation network company drivers; providing construction; providing an effective date.

590480

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2019	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment to Amendment (163830)

Delete lines 54 - 55
and insert:
transportation services from the licensure requirements provided in s. 401.25.

By the Committee on Health Policy; and Senator Brandes

588-02478-19 2019302c1

A bill to be entitled

An act relating to nonemergency medical transportation services; amending s. 316.87, F.S.; authorizing Medicaid nonemergency transportation services to be provided to a Medicaid recipient by certain transportation network companies or transportation brokers, subject to compliance with certain requirements; requiring the Agency for Health Care Administration to update certain regulations, policies, or other guidance by a specified date; providing that the requirements for transportation network companies and transportation network company drivers may not exceed specified requirements, except as necessary to conform to federal Medicaid transportation requirements administered by the agency; providing construction; amending s. 401.25, F.S.; authorizing a licensed basic life support or licensed advanced life support ambulance service to provide nonemergency Medicaid transportation in permitted ambulances in any county at the request of a certain eligible plan; providing an effective date.

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

Section 1. Section 316.87, Florida Statutes, is amended to read:

316.87 Nonemergency medical transportation services.—

(1) To ensure the availability of nonemergency medical transportation services throughout the state, a provider

588-02478-19 2019302c1

licensed by the county or operating under a permit issued by the county may not be required to use a vehicle that is larger than needed to transport the number of persons being transported or that is inconsistent with the medical condition of the individuals receiving the nonemergency medical transportation services. This subsection ~~section~~ does not apply to the procurement, contracting, or provision of paratransit transportation services, directly or indirectly, by a county or an authority, pursuant to the Americans with Disabilities Act of 1990, as amended.

(2)(a) Subject to compliance with any applicable state and federal Medicaid requirements, a transportation network company under contract with a Medicaid managed care plan, a transportation broker under contract with a Medicaid managed care plan, a transportation broker under direct contract with the Agency for Health Care Administration, or a transportation network company that receives referrals from a transportation broker contracting with Medicaid managed care plans or the Agency for Health Care Administration may provide Medicaid nonemergency transportation services to a Medicaid recipient. The Agency for Health Care Administration shall update any regulations, policies, or other guidance, including the Non-Emergency Transportation Services Coverage Policy, as necessary to reflect this authorization by October 1, 2019. Requirements for transportation network companies and transportation network company drivers may not exceed those imposed under s. 627.748, except as necessary to conform to federal Medicaid transportation requirements administered by the Agency for Health Care Administration.

(b) This subsection may not be construed to expand or limit the existing transportation benefit provided to Medicaid recipients or to require a Medicaid managed care plan to contract with a transportation network company or a transportation broker.

Section 2. Subsection (8) is added to section 401.25, Florida Statutes, to read:

401.25 Licensure as a basic life support or an advanced life support service.—

(8) At the request of an eligible plan as defined in s. 409.962 which administers the nonemergency Medicaid transportation benefit, the plan's subcontracted transportation broker, or a transportation broker that administers the nonemergency Medicaid transportation benefit for the Agency for Health Care Administration, a licensed basic life support or licensed advanced life support ambulance service may provide nonemergency Medicaid transportation in permitted ambulances in any county without obtaining a certificate of public convenience and necessity as required in paragraph (2)(d).

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

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto
Committee on Rules

Subject: Committee Agenda Request

Date: March 14, 2019

I respectfully request that **Senate Bill #302**, relating to **Nonemergency Medical Transportation Services**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

302
Bill Number (if applicable)

Topic Non Emergency Medical Transportation

163830
Amendment Barcode (if applicable)

Name Cesar Fernandez

Job Title

Address 480 NE 30th ST, Apt 802
Street

Phone 786 262 6092

Miami FL 33137
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Lyft

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/19
Meeting Date

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

SB 302
Bill Number (if applicable)

Topic Nonemergency Medical Transport

Amendment Barcode (if applicable)

Name Jim Millican

Job Title Chief

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City *State* *Zip*

Phone 727526-5650

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

4/23/2019 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 302

Meeting Date *Bill Number (if applicable)*

Topic Non-Emergency Medical Transport *Amendment Barcode (if applicable)*

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street Phone (850) 681-0024

Street

Tallahassee, FL 32301 Email jorge@flapartners.com

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information Waive Speaking: ☑ In Support ☐ Against

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

Representing Uber Technologies

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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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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(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/19
Meeting Date

302
Bill Number (if applicable)

Topic NON-EMERGENCY MEDICAL TRANS.

Amendment Barcode (if applicable)

Name CHRISTIAN CAMARA

Job Title LEGISLATIVE FELLOW

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Phone 305-721-1600

Email CHRISTIAN@CHAMBERCONSULTANTS FL.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing INSTITUTE FOR JUSTICE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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APPEARANCE RECORD

4-23
Meeting Date

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

302
Bill Number (if applicable)

Topic Medical Transportation

Amendment Barcode (if applicable)

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing American Cancer Society

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 772
INTRODUCER:	Judiciary Committee; Banking and Insurance Committee; and Senator Stargel
SUBJECT:	Liens Against Motor Vehicles and Vessels
DATE:	April 22, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Davis	Cibula	JU	**Fav/CS**
3.	Matiyow	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 772 revises several vehicle and vessel lien statutes used by motor vehicle repair shops and towing-storage companies to recover their costs.

The bill:

- Allows a lienholder to post a bond and obtain the release of a vehicle subject to a motor vehicle repair shop lien claimed for repair work;
- Requires additional information that must be included in notices of liens for recovering, towing, or storing vehicles and vessels and notices for enforcing a lien by selling a motor vehicle;
- Revises procedures for identifying unknown vehicle and vessel owners and lienholders;
- Requires notices of claim of lien and sale to be sent within specified timeframes;
- Allows both electronic and paper title to evidence an interest in a vehicle or vessel;
- Requires repair shops to allow inspection of vehicles subject to a sale to enforce a lien following a written inspection request;
- Requires motor vehicle repair shops to release all personal property found in the vehicle to the owner or lienholder;
- Permits administrative fees of no more than $250 that may be added to the amount due for storage, repairs, adjustments, or modifications to vehicles;
- Allows owners and lienholders to post a bond for the release of a vehicle or vessel subject to a claim of lien for towing and storage charges at any time before the sale of the vehicle or vessel;

- Requires lienors to file specified documentation with the Department of Highway Safety and Motor Vehicles (DHSMV) prior to transferring title to a vehicle or vessel sold to satisfy a lien for repairs, towing, or storage;
- Prohibits the DHSMV from transferring title to a vehicle or vessel without certain required documents; and
- Requires a third-party mailing service certified by the DHSMV to send all notices of lien and sale.

The bill provides an effective date of January 1, 2020.

II. Present Situation:

Liens

Liens are claims against property that evidence a debt, obligation, or duty. Liens can be created by judgment, equity, agreement, or statute. The rights and duties of a lienholder depend on the type of lien created and are generally set out in the order, agreement, or statute creating the lien.

Motor vehicle repair shops (repair shops) may place liens on motor vehicles (vehicles) for labor or services performed on the vehicles under a written repair estimate to recover the costs of repair and storage. Similarly, the operators of towing and storage companies (towing-storage operators) may place liens on vehicles or vessels to recover the costs of towing and storage. Notice of the claim of lien must be sent to interested parties by certified mail within a specified timeframe, and the vehicle or vessel may be sold if no one claims it or the balance owed for repairs, towing, or storage remains unpaid. Notice of the sale must be sent to interested parties and published in a newspaper in the county where the sale is to occur prior to the date of the sale.

Motor Vehicle Repair Shops

Motor vehicle repair shops[1] (repair shops) are regulated by the Department of Agriculture and Consumer Services under the Florida Motor Vehicle Repair Act,[2] which requires all repair shops, with minor exceptions, to register with the Department of Agriculture and Consumer Services.

When a customer[3] requests that a repair shop perform repairs to a motor vehicle[4] (vehicle) that will cost more than $100, the repair shop must prepare a written estimate of the cost of the

[1] Section 559.903(6), F.S., defines "motor vehicle repair shop" as any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to: mobile motor vehicle repair shops, motor vehicle and recreational vehicle dealers; garages; service stations; self-employed individuals; truck stops; paint and body shops; brake, muffler, or transmission shops; and shops doing glass work.
[2] Ss. 559.901 through 559.9221, F.S.
[3] "Customer" means the person who signs the written repair estimate or any other person whom the person who signs the written repair estimate designates on the written repair estimate as a person who may authorize repair work. S. 559.903(1), F.S.
[4] "Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons and property, and propelled by power other than muscular power. "Motor vehicle" also means a recreational vehicle primarily used as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. S. 320.01(1)(a) and (b), F.S.

repairs before beginning any work, unless the customer waives his or her right to such an estimate.[5] Following the completion of any repairs, the repair shop must give each customer a legible copy of an invoice for the repairs.[6]

Unlawful Acts and Practices

It is unlawful for any repair shop or its employees to:

- Make or charge for repairs not expressly or impliedly authorized by the customer;[7]
- Misrepresent that repairs have been made to a vehicle;[8]
- Fraudulently alter a customer contract, estimate, invoice, or other document;[9] or
- Make or authorize a false, deceptive, or misleading written or oral statement.[10]

Liens Claimed by Motor Vehicle Repair Shop

Claim of Lien; Notice

At any time after completion of repairs made to a motor vehicle under a written estimate, a repair shop may claim a lien on the vehicle for the cost of the repairs.[11] A repair shop must give notice of a claim of lien to:

- The registered owner of the vehicle;
- The customer listed on the repair order; and
- All other persons claiming an interest in or lien on the vehicle, as disclosed by the records of:
  - The Department of Highway Safety and Motor Vehicles (DHSMV); and
  - Any corresponding agency in another state in which the vehicle is identified as being titled or registered by the National Motor Vehicle Title Information System[12] (NMVTIS) or an equivalent commercially available system.[13]

The notice of claim of lien must be sent by certified mail within 7 business days, excluding Saturdays and Sundays, from the date storage charges begin to accrue and must contain:

- The vehicle's description;[14]
- The name and address of the vehicle's owner, the customer listed on the repair order, and any person claiming an interest in or lien on the vehicle;[15]

[5] Ss. 559.905(1) and 559.905(3), F.S.
[6] S. 559.911, F.S.
[7] S. 559.920(2), F.S.
[8] S. 559.920(3), F.S.
[9] S. 559.920(6), F.S.
[10] S. 559.920(8), F.S.
[11] This is a possessory lien, meaning a repair shop can only claim a lien on a vehicle if it has actual or constructive possession of the vehicle. Ss. 713.58(1) and (3), F.S.; *State v. Miller*, 373 So.2d 677, 678 (Fla. 1979) ("appellee invoked the provisions of s. 713.58, F.S., which grants a possessory lien in favor of persons providing labor and services on personal property").
[12] "National Motor Vehicle Title Information System" means the federally authorized electronic National Motor Vehicle Title Information System. S. 713.78(1)(d), F.S.
[13] "Equivalent commercially available system" means a service that charges a fee to provide vehicle information and that, at a minimum, maintains records from those states participating in data sharing with the NMVTIS. Sections 718.78(1)(e) and 713.78(4)(a), F.S.
[14] S. 713.585(1)(a), F.S.
[15] S. 713.585(1)(b), F.S.

- The repair shop's name, address, and telephone number;[16]
- The date, time, and location of proposed or scheduled sale of the vehicle, if known;[17] and
- Notice that:
  - The repair shop claims a lien on the vehicle for labor and services performed and storage charges, if any, and the amount that, if paid, would satisfy the lien;[18]
  - The lien is subject to enforcement and the vehicle may be sold to satisfy the lien;[19]
  - The owner of the vehicle or any person claiming an interest in or lien on the vehicle has a right to a hearing at any time before the sale;[20]
  - The owner of the vehicle has a right to recover possession of the vehicle without instituting judicial proceedings by posting a bond;[21]
  - Any proceeds from the sale of the vehicle remaining after payment of the amount claimed to be owed to the lienor will be deposited with the clerk of the circuit court for disposition;[22] and
  - A lienholder, if any, has the right to demand a hearing or to post a bond.[23]

If a repair shop fails to give notice of the claim of lien to any person claiming a lien on the vehicle within 7 business days after the storage charges begin to accrue, the repair shop is precluded from charging for more than 7 days of storage.[24] However, failure to timely provide the notice does not affect charges owed for repairs.[25]

Unidentified Owner or Lienholder

A repair shop that cannot identify a vehicle's owner or lienholder must, after 7 business days from the date storage charges begin to accrue on the vehicle, notify local law enforcement by certified mail or acknowledged hand delivery that:

- The repair shop was unable to identify the owner or lienholder;
- A physical search of the vehicle did not disclose ownership information; and
- The repair shop made a good faith effort to identify the owner or lienholder.[26]

A good faith effort means the repair shop checked the:

- DHSMV database for the identity of the owner and lienholder;[27]
- NMVTIS or an equivalent commercially available system to determine the state of registration if there is no current registration on file with the DHSMV;[28] and
- Vehicle for:

[16] S. 713.585(1)(c), F.S.
[17] S. 713.585(1)(f), F.S.
[18] S. 713.585(1)(d), F.S.
[19] S. 713.585(1)(e), F.S.
[20] S. 713.585(1)(g), F.S.
[21] S. 713.585(1)(h), F.S.
[22] S. 713.585(1)(i), F.S.
[23] S. 713.585(1)(j), F.S.
[24] S. 713.585(13), F.S.
[25] *Id.*
[26] S. 713.585(2), F.S.
[27] S. 713.585(2)(a), F.S.
[28] S. 713.585(2)(b), F.S.

- Any type of tag, tag record, temporary tag, or regular tag;[29]
- An inspection sticker or other stickers and decals that could indicate the state of possible registration;[30] and
- Any papers that could be in the glove box, trunk, or other areas for the state of registration.[31]

Failure of the repair shop to make a good faith effort to identify the owner or lienholder of the vehicle precludes it from assessing any storage charges.[32]

Inspection of Vehicle; Release of Personal Property

Currently, registered owners, customers, and persons claiming an interest in or lien on a vehicle on which a repair shop claims a lien for repairs and storage do not have a statutory right to inspect the vehicle. Neither do they have an express statutory right to retrieve personal property left in a vehicle at the time the vehicle came into the possession of a repair shop before the release of the vehicle. Further, repair shops are not required to accept title[33] in a specified form as evidence of a person's interest in a vehicle.

Bond to Release Vehicle

A customer may have his or her vehicle released from a lien claimed by a repair shop for repair work performed under a written estimate by filing with the clerk of the court in the circuit in which the repairs occurred a bond, payable to the shop claiming the lien and conditioned for the payment of any judgment which may be entered on the lien.[34] When a customer posts such a bond, the clerk of the court must notify the repair shop of the bond and direct the repair shop to release the vehicle.[35] The shop has 60 days to file suit to recover the bond, or else the bond will be discharged.[36] The prevailing party in the suit may be awarded damages, court costs, and reasonable attorney fees.[37]

A customer may also initiate judicial proceedings against a repair shop that does not release or return the vehicle after receiving notice of the bond and a directive to do so.[38] If the customer prevails in such proceedings, he or she may be entitled to damages, court costs, and reasonable attorney fees.[39] If the repair shop prevails, the repair shop may be entitled to its reasonable attorney fees.[40]

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[29] S. 713.585(2)(c), F.S.
[30] S. 713.585(2)(d), F.S.
[31] S. 713.585(2)(e), F.S.
[32] S. 713.585(13), F.S.
[33] Section 319.001(1), F.S., defines "certificate of title" as the record that evidences ownership of a vehicle, and can be either a paper certificate authorized by the DHSMV or an electronic certificate stored in the DHSMV database.
[34] S. 559.917(1)(a), F.S.
[35] *Id.*
[36] S. 559.917(1)(b), F.S.
[37] *Id.*
[38] S. 559.917(2), F.S.
[39] *Id.*
[40] *Id.*

However, persons of record claiming a lien against a vehicle are not entitled to post a bond for the release of the vehicle or to initiate judicial proceedings pursuant to this section.

Sale of the Vehicle; Notice

If the date of the sale was not included in the notice of claim of lien, the repair shop must send a notice of sale by certified mail, no less than 15 days before the date of the sale, to:

- The customer listed on the repair order; and
- All other persons claiming an interest in or lien on the vehicle, as disclosed by the records of:
  - The DHSMV; or
  - A corresponding agency of any other state in which the vehicle appears to have been registered after checking the NMVTIS or an equivalent commercially available system.[41]

The repair shop must also publish notice of the time and place of the sale, at least 15 days before the date of the sale, in a newspaper of general circulation in the county in which the vehicle is held.[42]

Proceeds of Sale

Following the sale of a vehicle to satisfy a lien for repairs or storage, the repair shop must deposit the proceeds of the sale, minus the amount owed for repairs and storage and all reasonable costs incurred in conducting the sale, with the clerk of the circuit court.[43] The clerk of the circuit court must hold the proceeds for the owner of the vehicle or any lienholder whose lien is discharged by the sale and may disburse the proceeds only upon a court order.[44]

Transfer of Title

When a vehicle is sold to satisfy a lien for repairs or storage, the purchaser takes title to the vehicle free and clear of all liens unless otherwise provided by court order.[45]

To transfer title to the vehicle following a sale, the repair shop must file with the DHSMV:

- A certified copy of:
  - The certificate of compliance filed with the clerk of court; and
  - The report of sale;
- Proof of the required check of the NMVTIS or an equivalent commercially available system; and
- Any other proof required by DHSMV rules and regulations.[46]

[41] S. 713.585(3), F.S.
[42] S. 713.585(4), F.S.
[43] S. 713.585(8), F.S.
[44] *Id.*
[45] S. 713.585(12), F.S.
[46] S. 713.585(9), F.S.

Towing and Wrecker Companies

Towing and wrecker companies are licensed and regulated by the counties in which they operate and are regulated by county ordinances.[47] These ordinances may establish license application procedures and fees, maximum towing rates, towing authorization requirements, and penalties for ordinance violations, among other things.[48]

There is no right at common law to a lien on a vehicle or vessel for towing and storage charges.[49] Such a lien is instead a statutory creation.[50]

Liens for Recovering, Towing, or Storing Vehicles and Vessels

Claim of Lien; Notice

A person who regularly engages in transporting vehicles[51] or vessels[52] by wrecker,[53] tow truck, or car carrier (towing-storage operator) may claim a lien for reasonable towing and storage fees upon any vehicle or vessel recovered, removed, or stored for more than 6 hours at the request of:

- The owner of the vehicle or vessel;[54]
- The owner or lessor, or a person authorized by the owner or lessor, of property on which the vehicle or vessel is wrongfully parked;[55]
- A landlord, or a person authorized by a landlord, when the vehicle or vessel remained on leased premises after the tenancy terminated;[56] or
- A law enforcement agency.[57]

A towing-storage operator who claims a lien for recovery, towing, or storing services must send notice of the claim of lien to:

- The registered owner;
- The insurance company insuring the vehicle or vessel; and
- All persons claiming a lien on the vehicle or vessel, as disclosed by the records of:
  - The DHSMV; or

[47] See, e.g., Hillsborough County, *Towing Companies*, https://www.hillsboroughcounty.org/en/residents/citizens/consumer-issues/towing-companies (last visited March 21, 2019); Orange County, *Towing Information*, http://www.orangecountyfl.net/traffictransportation/towingandparkinginformation/towinginformation.aspx#.XHdwbVxKiUk (last visited March 21, 2019).
[48] See, e.g., Miami-Dade County, *Towing License*, https://www8.miamidade.gov/global/license.page?Mduid_license=lic1495741572333567 (last visited March 21, 2019).
[49] Fla. Jur. 2d Liens for Recovering, Towing, or Storing Vehicle, Generally s. 31.
[50] S. 713.78, F.S.
[51] "Vehicle" means any mobile item, whether motorized or not, which is mounted on wheels. S. 713.78(1)(a), F.S.
[52] "Vessel" means every description of watercraft, barge, and airboat used or capable of being used as a means of transportation on water, other than a seaplane or a "documented vessel" as defined in s. 327.02, F.S., and s. 713.78(1)(b), F.S.
[53] "Wrecker" means any truck or other vehicle which is used to tow, carry, or otherwise transport motor vehicles or vessels upon the streets and highways of this state and which is equipped for that purpose with a boom, winch, car carrier, or other similar equipment. S. 713.78(1)(c), F.S.
[54] S. 713.78(2)(a), F.S.
[55] S. 713.78(2)(b), F.S. Removal must comply with s. 715.07, F.S.
[56] S. 713.78(2)(c), F.S. Removal must comply with ss. 83.806 or 715.104, F.S.
[57] S. 713.78(2)(d), F.S.

- Any corresponding agency in another state in which the vehicle is identified as being titled or registered by the NMVTIS or an equivalent commercially available system.[58]

The notice of claim of lien must be sent by certified mail within 7 business days after the date of storage of the vehicle or vessel and state:

- The towing-storage operator possesses the vehicle or vessel;
- That a lien is claimed on the vehicle or vessel;
- That charges have accrued, and the amount of the charges;
- That the lien is subject to enforcement by law;
- That the owner and any lienholder have the right to a hearing; and
- That any vehicle or vessel that remains unclaimed, or for which the charges remain unpaid, may be sold.[59]

If a law enforcement agency authorized a towing-storage operator to remove a vehicle or vessel, or a towing-storage operator notifies a law enforcement agency of possession of a towed vehicle or vessel,[60] the law enforcement agency where the vehicle or vessel is stored must contact the DHSMV, or the appropriate agency in the state of registration, if known, within 24 hours and provide a full description of the vehicle or vessel.[61] The DHSMV, or appropriate state agency, must search its records to determine the identity of the owner, the company insuring the vehicle or vessel, and any lienholders and provide the information to the law enforcement agency within 72 hours.[62] The towing-storage operator must obtain such information from the law enforcement agency within 5 days after the date of storage and provide the required notice.[63]

Unidentified Owner or Lienholder

Any towing-storage operator who cannot identify the owner or lienholder of a vehicle or vessel must, after 7 working days of the initial tow or storage, notify law enforcement in the jurisdiction where the vehicle or vessel is stored by certified mail or acknowledged hand delivery that:

- The towing-storage operator was unable to identify the owner or lienholder;
- A physical search of the vehicle or vessel did not disclose ownership information; and
- The towing-storage operator made a good faith effort to identify the owner or lienholder.[64]

A good faith effort means the towing-storage operated checked the:

- DHSMV database;[65]

[58] S. 713.78(4)(a), F.S.
[59] S. 713.78(4)(c), F.S.
[60] Within 30 minutes after completion of a tow or removal from private property without the consent of the registered owner or other legally authorized person, a towing-storage operator must notify the municipal police department, or, in an unincorporated area, the sheriff, of the tow or removal, the storage site, the time of the tow or removal, and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel. S. 715.07(2)(a)2., F.S.
[61] S. 713.78(4)(b), F.S.
[62] *Id.*
[63] *Id.*
[64] S. 713.78(4)(d), F.S.
[65] S. 713.78(4)(d)1., F.S.

- Electronic NMVTIS or an equivalent commercially available system to determine the state of registration when there is not a current registration record for the vehicle on file with the DHSMV;[66]
- Vehicle or vessel for:
  - Any type of tag, tag record, temporary tag, or regular tag;[67]
  - An inspection sticker or other stickers and decals that may indicate the state of registration;[68]
  - Any papers that may be in the glove box, trunk, or other areas for a state registration;[69] and
  - A vehicle identification number,[70] a vessel registration number,[71] or a hull identification number;[72]
- If towed at the request of law enforcement, any law enforcement report:
  - For a tag number or other information identifying the vehicle or vessel, if the vessel was towed at the request of a law enforcement officer;[73]
  - To see if any driver's license information indicates an out-of-state address, if there is no address on the impound report;[74] and
  - Trip sheet or tow ticket of the tow truck operator to see if a tag was on the vehicle or vessel at the beginning of the tow.[75]

Failure of the towing-storage operator to make a good faith effort to identify the owner or lienholder of the vehicle or vessel precludes the towing-storage operator from assessing any storage charges.[76]

Inspection of Vehicles and Vessels; Release of Property

A towing-storage operator must permit vehicle or vessel owners, lienholders, insurance company representatives, or their agents,[77] to inspect the towed vehicle or vessel.[78] A towing-storage operator must also release to the owner, lienholder, or the agent of the owner or lienholder all personal property not affixed to a vehicle or vessel that was in the vehicle or vessel at the time the towing-storage operator obtained possession of it.[79] However, the towing-storage operator is not required to accept an electronic title as proof of ownership or lien; thus, the towing-storage operator may require parties wishing to inspect the vehicle or vessel to present a paper title before allowing the inspection.

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[66] S. 713.78(4)(d)2., F.S.
[67] S. 713.78(4)(d)3., F.S.
[68] S. 713.78(4)(d)7., F.S.
[69] S. 713.78(4)(d)8., F.S.
[70] S. 713.78(4)(d)9., F.S.
[71] S. 713.78(4)(d)10., F.S.
[72] S. 713.78(4)(d)11., F.S.
[73] S. 713.78(4)(d)4., F.S.
[74] S. 713.78(4)(d)6., F.S.
[75] S. 713.78(4)(d)5., F.S.
[76] S. 713.78(9), F.S.
[77] An agency is evidenced by an original writing acknowledged by the owner before a notary public or other person empowered by law to administer oaths.
[78] S. 713.78(10), F.S.
[79] *Id.*

Bond to Release Vehicle or Vessel

The owner or lienholder of a vehicle or vessel subject to a lien for towing and storage charges may, within 10 days after learning of the location of the vehicle or vessel, file a complaint in the county court of the county where the vehicle or vessel is stored to determine whether the vehicle or vessel was wrongfully taken or withheld.[80] The vehicle or vessel must be released if, after filing a complaint, the owner or lienholder files a bond with the clerk of the court to ensure the payment of charges owed for towing and storage should the owner or lienholder not prevail in litigation.[81] After posting bond, the clerk must issue a notice of the bond to the towing-storage operator and direct the towing-storage operator to release the vehicle or vessel.[82]

Sale of Vehicles and Vessels; Notice

A towing-storage operator may sell at public auction a stored vehicle or vessel which remains unclaimed, or for which charges for recovery, towing, or storage remain unpaid, after:

- 35 days from the date of storage if the vehicle or vessel is more than 3 years old; or
- 50 days from the date of storage if the vehicle or vessel is 3 years old or less.[83]

If a law enforcement agency notified of a towing-storage operator's inability to identify an owner or lienholder pursuant to s. 713.78(4)(d), F.S., fails to respond to such notice prior to the date of sale, the towing-storage operator may proceed with the sale.[84]

If the date of the sale was not included in the notice of claim of lien, the towing-storage operator must send a notice of sale by certified mail, no less than 15 days before the date of the sale, to:

- The person in whose name the vehicle or vessel is registered; and
- All persons claiming a lien on the vehicle or vessel as shown in the records of the DHSMV or any corresponding agency in any other state in which the vehicle is identified as being titled by a records check of the NMVTIS or an equivalent commercially available system.[85]

The towing-storage operator must also publish notice of the time and place of the sale, at least 10 days before the date of the sale, in a newspaper of general circulation in the county where the sale will occur.[86]

Proceeds of Sale

If the owner or lienholder of the vehicle or vessel sold at auction is absent, the proceeds of the sale of the vehicle or vessel, minus any reasonable towing and storage charges owed and costs of the sale, must be deposited with the clerk of the court for the county where the sale occurred.[87] The clerk must hold the proceeds for the benefit of the owner or lienholder whose interest in the vehicle or vessel was destroyed by the sale.[88]

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[80] S. 713.78(5)(a), F.S.
[81] S. 713.78(5)(b), F.S
[82] *Id.*
[83] S. 713.78(6), F.S.
[84] Department of Highway Safety and Motor Vehicles, Procedure TL-26-09.
[85] *Id.*, Exhibits D and E; Section 713.78(6), F.S.
[86] S. 713.78(6), F.S.
[87] *Id.*
[88] *Id.*

Transfer of Title

Title to a vehicle or vessel sold to satisfy a lien for recovery, towing, or storage transfers to the purchaser free of all liens unless otherwise provided by court order.[89] To transfer title to such a vehicle, the towing-storage operator must apply to the tax collector or local license plate agency.[90] However, if the vehicle does not sell, the towing-storage operator must apply for a certificate of title in its own name.[91]

Fraud Allegations

Some repair shops and towing-storage operators have been accused of exploiting existing lien law by dishonestly placing a lien on a customer's vehicle or even selling a customer's vehicle without properly notifying an existing lienholder of the new lien or the impending sale of the vehicle. These practices allegedly take several forms, some of which are fraudulently inflating charges or charging for services that were not provided, while billing the consumer and placing a lien on the vehicle.[92]

In some instances, lenders allegedly receive an envelope by certified mail, sign for its receipt, and open it to discover the envelope is empty or contains meaningless documents. However, the service provider may use the signed certified mail receipt as proof the lender received a notice of claim of lien and proceed with the sale of the vehicle when it goes unclaimed. In this situation, a lender is effectively denied the opportunity to satisfy the lien or challenge it in court and may be ultimately forced to abandon its interest in the vehicle because it failed to take action within statutorily prescribed timeframes.

Another allegation is that in other instances, the service provider gives proper notice of claim of lien to the owner, lender, and other interested parties; however, the costs associated with the services provided may be fraudulent or significantly inflated. In such cases, the cost to satisfy the lien may exceed the amount owed to the lender by the owner and, in some cases, the market value of the vehicle. Lenders receiving notice of lien in these circumstances must decide whether to satisfy the lien and recover the vehicle, post a bond to recover the vehicle and challenge the lien in court, or abandon the vehicle. However, the lender may have limited information about the accuracy of the charges to use in making its decision.

Such lien fraud allegedly costs consumer and lenders tens of millions of dollars every year and increases the cost of credit for consumers wishing to finance the purchase of a motor vehicle.[93]

[89] *Id.*
[90] DHSMV, *supra*, at 87.
[91] *Id.*
[92] Letter from Danielle Arlowe, Senior Vice President, State Government *Affairs, American Financial Services Association (Feb. 11, 2019)* (on file with the Senate Committee on Judiciary).
[93] *Id*.

III. Effect of Proposed Changes:

Liens Claimed by Motor Vehicle Repair Shops (Section 3)

Claim of Lien; Notice

The bill continues to require notices of claims of lien required by s. 713.585(1), F.S., to be sent to the registered owner, the customer, and all other persons claiming an interest in or lien on the vehicle within 7 business days, excluding Saturdays and Sundays, after the date storage charges begin to accrue on the vehicle. However, the bill requires such notice to be sent by certified mail at least 30 days before the date of the sale and allows repair shop agents to provide the notice.

The bill revises content requirements for a notice of claim of lien. In addition to existing requirements, the notice must:

- Include the last eight digits of the vehicle identification number (VIN) of the vehicle subject to the lien clearly identified and printed in the delivery address box and on the outside of the envelope; and
- Contain:
  - The repair shop's registration number, owner's name, and physical address and the entity name of the business as registered with the Department of Agriculture and Consumer Services where the repairs or storage occurred, which must also be on the outside of the envelope;
  - The name of the person or entity that authorized the labor or services;
  - The date the vehicle was dropped off for repairs and the date the repairs were completed;
  - The date the customer was notified of the completion of the repairs;
  - An itemized statement of the amount claimed to be owed to the repair shop;
  - Notice that the repair shop will make the vehicle available for inspection during regular business hours within 3 business days after receiving a written inspection request upon presentation of a copy of an electronic or paper title; and
  - The address where the vehicle is physically located.

Inspection of Vehicles; Release of Personal Property and Vehicle

The bill authorizes the registered owner, customer, and persons claiming an interest in or lien on a vehicle subject to a lien for repairs or storage to request an inspection of the vehicle at any time before the proposed or scheduled date of sale of the vehicle. The bill requires repair shops to make the vehicle available for inspection during regular business hours within 3 business days after receiving a written inspection request from such persons, and requires a repair shop to accept either an electronic or paper title as evidence of a person's interest in a vehicle.

The bill also requires a repair shop to release to a vehicle's owner or lienholder, or the agent of an owner or lienholder:

- All personal property found in but not affixed to a vehicle; and
- The vehicle, upon payment of the charges owed.

Bond to Release Vehicle (Section 1)

The bill amends s. 559.917, F.S., to add any person of record claiming a lien against a vehicle to the list of persons who may have a vehicle released by filing a bond with the clerk of the court in

the circuit in which the repairs occurred. The bill also allows such persons to initiate judicial proceedings against a repair shop that does not release or return the vehicle after receiving notice of the bond and a directive to release the vehicle.

Enforcement of Lien by Sale of Motor Vehicles; Notice (Section 3)

The bill amends s. 713.585(3), F.S., and prohibits sale of a vehicle to satisfy a lien for repairs or storage earlier than 60 days after completion of the repair work. The bill clarifies the timeframe applicable to notices of sale required by s. 713.585(3), F.S., by specifying that the requisite parties must receive the notice of sale *at least* 15 days before the date of the sale.

The bill adds requirements for the notice of sale, which must be sent by certified mail. The notice must contain:

- The last eight digits of the VIN of the vehicle subject to the sale clearly identified and printed in the delivery address box and on the outside of the envelope;[94] and
- The repair shop's registration number, owner's name, and physical address, and the entity name of the business, as registered with the Department of Agriculture and Consumer Services, where the repair work or storage occurred, which must also be on the outside of the envelope containing the notice of sale.

The bill requires a repair shop to publish a notice of sale in a newspaper circulated in the county where the repair shop completed the repairs and in the county where the sale of the vehicle will occur. The bill also adds to the list of items in s. 713.585(9), F.S., what must be included in or filed with DHSMV to demonstrate proof for application for a transfer of title. Those additional items are:

- The certificate of compliance filed with the clerk of the court following publication:
- The VIN of the vehicle to be sold; and
- A copy of the notice of lien and the notice of sale.

Transfer of Title

DHSMV may not approve a title transfer if the application does not include a copy of:

- The notice of claim of lien, including the VIN; and
- The notice of sale.

The VIN on the notice of lien must match the VIN that is the subject of the transfer of title.

Fees

The bill authorizes a repair shop, or its agent, to charge an administrative fee not to exceed $250. The bill defines "administrative fee' as a lien fee or any fee imposed by the lienor or the lienor's agent for administrative costs added to the amount due for storage, repairs, adjustments, or modifications to the vehicle. However, the bill precludes the repair shop from charging fees that exceed $250.

[94] *Id.*

Third-Party Mailing Service

The bill requires a repair shop, garage, automotive service facility, or storage operator, to use a third-party mailing service approved by the DHSMV to transmit all notices of lien and sale. If no third-party service is approved by DHSMV, a lienor may mail the notices but must provide evidence of compliance upon submission of an application for certificate of title or certificate of destruction. The bill defines a third-party mailing service as a business entity certified by the DHSMV that, upon receiving a request submitted through a website by a motor vehicle repair shop, garage, or automotive service facility, or storage operator:

- Accesses National Motor Vehicle Title Insurance System records to obtain the last state of record of a vehicle;
- Accesses the owner, lienholder, and insurer information for a vehicle from the DHSMV;
- Electronically generates the notices of lien and sale;
- Prints and sends the notices of lien and sale to each owner, lienholder, and insurer of record by certified mail; and
- Electronically returns tracking information or other proof of mailing and delivery of the notices to the requestor.

The third-party mailing service must electronically report to DHSMV, through an electronic data exchange process using a web interface, the following information related to repair and storage notices:
The VIN;
The license plate number;
The name and address of the repair shop or lienor;
The physical location of the vehicle;
The date the vehicle was dropped off for repairs;
The date the repairs were completed;
The amount due for repairs and the storage amount per day;
The dates the notice was mailed and delivered;
The date that the owner was notified that the repairs were completed; and
Other information required by the department.

The bill requires third-party mailing services to apply to the DHSMV for approval before providing notices of lien and sale on behalf of repair shops. The DHSMV may approve an applicant if it:

- Provides the DHSMV with evidence that is has been issued a $1 million bond;
- Submits an acceptable internal control and data security audit (Level 2) or equivalent performed by a licensed certified public accountant; and successfully demonstrates the ability to electronically provide required data to the DHSMV via an electronic data exchange process using a web interface.

The bill authorizes DHSMV to deny, suspend, or revoke a third-party mailing service's certification if it determines that the third-party service committed an act of fraud or misrepresentation related to a notice required by this section.

The bill requires a third-party mailing service to maintain all records of notices of lien and of sale for 5 years and allow DHSMV to inspect and copy records upon request. The records may be maintained in an electronic format.

A certification is valid for 1 year. The third-party service must annually provide the department with evidence that it maintains the $1 million bond and must annually submit a Level 2 audit or equivalent as described above.

The third-party service must maintain a publicly available website that allows owners, registrants, lienholders, insurance companies, or their agents to search for notices sent pursuant to s. 713.585, F.S. The search results must return the same information provided to DHSMV, excluding any personal identifying information.

Unlawful Acts and Practices (Section 2)

The bill amends s. 559.920, F.S., to make it unlawful for a repair shop and its employees to violate any provision of s. 713.585, F.S., regarding the enforcement of liens for repair and storage costs by sale of the vehicles subject to the liens. A violation of s. 713.585, F.S., also constitutes a violation of the Florida Motor Vehicle Repair Act.

Liens for Recovering, Towing, or Storing Vehicles and Vessels (Section 4)

Claim of Lien; Notice

The bill requires towing-storage operators to send the notice of claim of lien required by s. 713.78(4), F.S., by certified mail, to the registered owner, the insurance company insuring the vehicle, and all lienholders within 7 business days, excluding Saturday and Sunday, after the date of storage of the vehicle or vessel. However, the bill requires such notice to be sent at least 30 days before the date of the sale.

The bill revises requirements for a notice of claim of lien. In addition to existing requirements, a notice must:

- Include the last eight digits of the VIN, if the claim of lien is for a vehicle, or the hull identification number if the subject of the lien is a vessel :
  - Clearly printed in the delivery address box; and;
- On the outside of the envelope. State the name, physical address, and telephone number of the towing-storage operator and the entity name, as registered with the Division of Corporations, of the business where the towing and storage occurred, which must also appear on the outside of the envelope;
- State the name of the person or entity that authorized the towing-storage operator to take possession of the vehicle or vessel;
- List the address where the vehicle or vessel is physically located;
- State that charges have accrued and include an itemized statement of said charges; and
- State that any vehicle or vessel that goes unclaimed, or for which the charges owed remain unpaid, may be sold:
  - 35 days after the vehicle or vessel is stored if the vehicle or vessel is more than 3 years old; or
  - 50 days after the vehicle or vessel is stored if the vehicle or vessel is 3 years old or less.

The notice of lien may not be sent less than 30 days before the sale of the vehicle or vessel.

The bill amends s. 713.78(9), F.S., to prohibit a towing-storage operator that fails to provide a notice of claim of lien from charging for more than 7 days of storage. Such failure does not prohibit the towing-storage operator from charging for towing the vehicle or vessel.

Inspection of Vehicles and Vessels; Release of Property

The bill requires a towing-storage operator to accept either an electronic or paper title as evidence of a person's interest in a vehicle or vessel.

Bond to Release Vehicles or Vessels

The bill, in s. 713.78(5), F.S., authorizes an owner or lienholder to post a bond for release of a vehicle or vessel with the clerk of the court at any time before the sale of the vehicle or vessel. The owner or lienholder is no longer required to file a complaint before posting such a bond.

Sale of Vehicles; Notice

The bill adds requirements for a notice of sale required by s. 713.78(6), F.S. The notice must be sent by certified mail and:

- Include the last eight digits of the VIN of the vehicle or the hull identification number of a vessel subject to sale in the delivery address box and on the outside of the envelope; and
- State the name, physical address, and telephone number of the towing-storage operator, the VIN for a vehicle and the hull identification number if a vessel on the outside of the envelope containing the notice of sale.

Transfer of Title

The bill adds subsection (14) to s. 713.78, F.S., which provides that to transfer title to a vehicle or vessel after a public sale to satisfy a lien for recovery, towing, or storage charges, a towing-storage operator must file with the DHSMV:

- Copies of:
  - The notice of lien;
  - The notice of sale which must include the VIN if the claim of lien is for a vehicle or the hull identification number if the claim of lien is for a vessel; and
- Proof of the required check of the records of the NMVTIS or an equivalent commercially available system.

The bill also prohibits the DHSMV from approving a title transfer if the application does not include copies of:

- The notice of lien;
- The notice of sale; and
- The vehicle or hull identification number on the notice of lien must match the vehicle or vessel that is the subject of the transfer.

Fees

The bill authorizes a towing-storage operator, or its agent, to charge an administrative fee not to exceed $250 to the registered owner, the insurance company, or a person claiming a lien against the vehicle or vessel to obtain its release. The bill defines "administrative fee" as a lien fee or any fee imposed by the lienor or the lienor's agent for administrative costs added to the amount for towing and storing the vehicle or vessel. However, the bill precludes the towing-storage operator from charging fees not authorized by s. 125.013, F.S., general obligation bonds, and s. 166.043, F.S., ordinances and rules imposing price controls. Further, the bill prohibits towing-storage operators from charging fees authorized by these sections which exceed $250.

Third-Party Mailing Service

The bill requires towing-storage operators to use a third-party mailing service certified by the DHSMV to transmit notices of lien and sale. The definition of "third-party mailing service," the requirements for certification and the denial, revocation, and renewal of certification, and the record maintenance provisions are identical to the bill's provisions applicable to third-party mailing services sending notices of lien and sale for a repair shop.
The bill provides an effective date of January 1, 2020.

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:

The bill may reduce losses experienced by motor vehicle and vessel lienholders, including lenders, because it may reduce fraudulent practices relating to notices of lien and sale. The bill may also reduce costs to consumers hoping to finance the purchase of a vehicle.

The bill may impact repair shops and towing-storage operators by capping the amount of administrative costs and fees they may add to the amount due for repair, towing, or storage of a vehicle or vessel.

C. Government Sector Impact:

The bill requires DHSMV to certify a third-party mailing service before it can send notices of lien and sale on behalf of lienors. Currently DHSMV does not certify third-party mailing services. The bill will likely have a negative fiscal impact on DHSMV; however, the actual fiscal impact is unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 559.917, 559.920, 713.585, and 713.78.

IX. Additional Information:

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

CS/CS by Judiciary on April 8, 2019:
The committee substitute to the committee substitute:

- Changes references from the Division of Corporations to the Department of Agriculture and Consumer Services to correctly note where vehicle repair shops must register their business information with the state;
- Removes the unnecessary requirement that lien notices be sent "return receipt requested" because the notices will be sent by a third-party mailing service that will electronically track the notices;
- Requires that only the last eight digits of a VIN, and not the complete VIN, be printed on a notice and outside envelope;
  Requires the hull identification number of a vessel to be included in a notice of sale to enforce a lien, an application for transfer of title to DHSMV, and a third-party mail service notice when a vessel is involved;

- Revises criteria that must be contained in the itemized statement of the amount the lienor claims to be owed;
- Revises the information the third party service must report to DHSMV to include the date that a vehicle was dropped off for repairs, when those repairs were completed, the amount due for repairs and storage, the date the owner was notified that the repairs were completed, and other information required by DHSMV;
- Revises the time to 30 days from 15 days that a notice of lien must be sent before a sale may occur; and
- Makes technical changes to correctly place different business entities into the correct sections of the bill to accurately reflect the services they provide.

CS by Banking and Insurance on March 25, 2019:
The CS:

- Replaces references to the date a notice of lien or sale is received with references to the dates such notices are sent;
- Eliminates an alternative 10-day timeframe for lienors to provide a notice of lien;
- Adds information that must be in a notice of lien, including the date the vehicle was dropped off for repairs, the date the repairs were completed, and the address where the vehicle is physically located;
- Requires a towing-storage operator to send a notice of lien at least 15 days before the date of the sale of a vehicle or vessel;
- Requires motor vehicle repair shops to make a vehicle available for inspection within 3 business days after receipt of a written inspection request from the owner, the customer, or a person claiming an interest in the vehicle;
- Requires lienors to accept either an electronic or paper title as evidence of a person's interest in a vehicle or vessel;
- Requires lienors to use a third-party mailing service, certified by DHSMV, to send notices of lien and sale, defined the term "third-party mailing service," and established a certification process;
- Requires motor vehicle repair shops to release to the owner, lienholder, or their respective agents all personal property found in but not affixed to a vehicle;
- Requires motor vehicle repair shops to release a vehicle upon payment of the charges owed for services;
- Changes the effective date from July 1, 2019, to January 1, 2020; and
- Makes non-substantive grammatical changes.

B. Amendments:

None.

By the Committees on Judiciary; and Banking and Insurance; and Senators Stargel and Baxley

590-04040-19 2019772c2

A bill to be entitled

An act relating to liens against motor vehicles and vessels; amending s. 559.917, F.S.; authorizing a person claiming a lien against a motor vehicle to obtain the release of the vehicle from a lien claimed by a motor vehicle repair shop under certain circumstances; amending s. 559.920, F.S.; prohibiting a motor vehicle repair shop from violating certain provisions; amending s. 713.585, F.S.; revising notice requirements for enforcing a lien by sale of a motor vehicle; revising requirements for notice of lien and notice of sale of a motor vehicle; requiring a lienor to make the motor vehicle available for inspection by notice recipients; revising requirements for transfer of title; authorizing a lienor to charge an administrative fee up to a certain amount; defining the term "administrative fee"; requiring a motor vehicle repair shop, garage, automotive service facility, or storage operator to use a third-party service to provide notices of lien and sale; providing an exception; defining the term "third-party service"; requiring a third-party service to apply to and be approved by the Department of Highway Safety and Motor Vehicles; providing requirements; authorizing the department to deny, suspend, or revoke approval under certain circumstances; providing recordkeeping requirements; providing requirements for retaining approved status; requiring maintenance of a website for access to certain information; requiring a lienor

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590-04040-19 2019772c2

to release certain personal property; requiring the lienor to release the vehicle upon payment of charges; requiring a lienor to accept a copy of an electronic title or a paper title as evidence of a person's interest in a vehicle; amending s. 713.78, F.S.; revising requirements for notice of lien for recovering, towing, or storing a vehicle or vessel; revising requirements for notice of the sale of such vehicle or vessel; revising requirements for transfer of title; authorizing a lienor to charge an administrative fee up to a certain amount; defining the term "administrative fee"; requiring a towing-storage operator to use a third-party service to provide notices of lien and sale; providing an exception; defining the term "third-party service"; requiring a third-party service to apply to and be approved by the department; providing requirements; authorizing the department to deny, suspend, or revoke approval under certain circumstances; providing recordkeeping requirements; providing requirements for retaining approved status; requiring maintenance of a website for access to certain information; requiring a lienor to accept a copy of an electronic title or a paper title as evidence of a person's interest in a vehicle or vessel; providing an effective date.

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

Section 1. Section 559.917, Florida Statutes, is amended to

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read:

559.917 Bond to release possessory lien claimed by motor vehicle repair shop.—

(1)(a) A ~~Any~~ customer or a person of record claiming a lien against a motor vehicle may obtain the release of the ~~her or his~~ motor vehicle from any lien claimed under part II of chapter 713 by a motor vehicle repair shop for repair work performed under a written repair estimate by filing with the clerk of the court in the circuit in which the disputed transaction occurred a cash or surety bond, payable to the person claiming the lien and conditioned for the payment of any judgment which may be entered on the lien. The bond shall be in the amount stated on the invoice required by s. 559.911, plus accrued storage charges, if any, less any amount paid to the motor vehicle repair shop as indicated on the invoice. The customer or person shall not be required to institute judicial proceedings in order to post the bond in the registry of the court and shall not~~, nor shall the customer~~ be required to use a particular form for posting the bond~~,~~ unless the clerk provides ~~shall provide~~ such form to the customer or person for filing. Upon the posting of such bond, the clerk of the court shall automatically issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the ~~customer's~~ motor vehicle.

(b) The lienor shall have 60 days to file suit to recover the bond. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorney ~~attorney's~~ fees. If the lienor fails to file suit within 60 days after the posting of such bond, the bond shall be discharged by the clerk.

(2) The failure of a lienor to release or return to the

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customer or person the motor vehicle upon which any lien is claimed, upon receiving a copy of a certificate giving notice of the posting of the bond and directing release of the motor vehicle, shall subject the lienor to judicial proceedings which may be brought by the customer or person to compel compliance with the certificate. Whenever a customer or person brings an action to compel compliance with the certificate, the customer or person need only establish that:

(a) Bond in the amount of the invoice, plus accrued storage charges, if any, less any amount paid to the motor vehicle repair shop as indicated on the invoice, was posted;

(b) A certificate was issued pursuant to this section;

(c) The motor vehicle repair shop, or any employee or agent thereof who is authorized to release the motor vehicle, received a copy of a certificate issued pursuant to this section; and

(d) The motor vehicle repair shop or employee authorized to release the motor vehicle failed to release the motor vehicle.

The customer or person, upon a judgment in her or his favor in an action brought under this subsection, may be entitled to damages plus court costs and reasonable attorney ~~attorney's~~ fees sustained by her or him by reason of such wrongful detention or retention. Upon a judgment in favor of the motor vehicle repair shop, the shop may be entitled to reasonable attorney ~~attorney's~~ fees.

(3) A ~~Any~~ motor vehicle repair shop that ~~which~~, or an ~~any~~ employee or agent thereof who is authorized to release the motor vehicle who, upon receiving a copy of a certificate giving notice of the posting of the bond in the required amount and

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directing release of the motor vehicle, fails to release or return the property to the customer or person pursuant to this section commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) A ~~Any~~ customer or person who stops payment on a credit card charge or a check drawn in favor of a motor vehicle repair shop on account of an invoice or who fails to post a cash or surety bond pursuant to this section shall be prohibited from any recourse under this section with respect to the motor vehicle repair shop.

Section 2. Section 559.920, Florida Statutes, is amended to read:

559.920 Unlawful acts and practices.—It shall be a violation of this act for any motor vehicle repair shop or employee thereof to do any of the following:

(1) Engage or attempt to engage in repair work for compensation of any type without first being registered with or having submitted an affidavit of exemption to the department.~~;~~

(2) Make or charge for repairs which have not been expressly or impliedly authorized by the customer.~~;~~

(3) Misrepresent that repairs have been made to a motor vehicle.~~;~~

(4) Misrepresent that certain parts and repairs are necessary to repair a vehicle.~~;~~

(5) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.~~;~~

(6) Fraudulently alter any customer contract, estimate,

invoice, or other document.~~;~~

(7) Fraudulently misuse any customer's credit card.~~;~~

(8) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive or misleading.~~;~~

(9) Make false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.~~;~~

(10) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to her or his insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.~~;~~

(11) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.~~;~~

(12) Fail or refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work.~~;~~

(13) Willfully depart from or disregard accepted practices and professional standards.~~;~~

(14) Have repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair shop or employee thereof demonstrates that the customer could not reasonably have been notified.~~;~~

(15) Conduct the business of motor vehicle repair in a

location other than that stated on the registration certificate.~~;~~

(16) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in such a manner that it does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.~~; or~~

(17) Perform any other act that is a violation of this part or that constitutes fraud or misrepresentation.

(18) Violate any provision of s. 713.585.

Section 3. Subsections (1) through (4), (9), and (13) of section 713.585, Florida Statutes, are amended, and subsections (14) through (18) are added to that section, to read:

713.585 Enforcement of lien by sale of motor vehicle.—A person claiming a lien under s. 713.58 for performing labor or services on a motor vehicle may enforce such lien by sale of the vehicle in accordance with the following procedures:

(1) The lienor or the lienor's agent must give notice of the lien~~,~~ by certified mail~~, return receipt requested, within 7 business days, excluding Saturday and Sunday, from the beginning date of the assessment of storage charges on said motor vehicle,~~ to the registered owner of the vehicle, to the customer as indicated on the order for repair, and to all other persons claiming an interest therein ~~in~~ or lien thereon, as disclosed by the records of the Department of Highway Safety and Motor Vehicles or as disclosed by the records of any corresponding agency of any other state in which the vehicle is identified through a records check of the National Motor Vehicle Title Information System or an equivalent commercially available

system as being the current state where the vehicle is titled. Such notice must ~~contain~~:

(a) Be sent to the registered owner, the customer, and all other persons claiming an interest therein or lien thereon within 7 business days, excluding Saturday and Sunday, after the date on which storage charges begin to accrue on the vehicle. However, in no event shall the notice of lien be sent less than 30 days before the sale of the motor vehicle.

(b) Be sent by certified mail with the last eight digits of the vehicle identification number of the motor vehicle subject to the lien clearly printed in the delivery address box and on the outside of the envelope sent to the registered owner, the customer, and all other persons claiming an interest therein or lien thereon.

(c) ~~(a)~~ Contain a description of the vehicle, including, at minimum, its year, make, vehicle identification number, and ~~the vehicle's~~ location.

(d) ~~(b)~~ Contain the name and address of the owner of the vehicle, the customer as indicated on the order for repair, and any person claiming an interest therein ~~in~~ or lien thereon.

(e) ~~(c)~~ Contain the name, address, and telephone number of the lienor.

(f) ~~(d)~~ Contain notice that the lienor claims a lien on the vehicle for labor and services performed and storage charges, if any, and the cash sum which, if paid to the lienor, would be sufficient to redeem the vehicle from the lien claimed by the lienor.

(g) Contain the motor vehicle repair shop's registration number, owner's name, and physical address and the entity name,

as registered with the Department of Agriculture and Consumer Services, of the business where the repair work or storage occurred, which must also appear on the outside of the envelope sent to the registered owner, the customer, and all other persons claiming an interest in or lien on the vehicle.

(h) Contain the name of the person or entity that authorized the labor or services on the vehicle.

(i) Contain an itemized statement of the amount claimed to be owed to the lienor, including the date the vehicle was dropped off for repairs; the date the repairs were completed; the date the customer was notified of the completion of the repairs; the amount due for repairs, adjustments, or modifications to the vehicle; any administrative fees; and any daily storage charges.

(j) ~~(c)~~ Contain notice that the lien claimed by the lienor is subject to enforcement pursuant to this section and that the vehicle may be sold to satisfy the lien.

(k) ~~(f)~~ Contain ~~If known,~~ the date, time, and location of any proposed or scheduled sale of the vehicle. A vehicle may not be sold earlier than 60 days after completion of the repair work.

(l) ~~(g)~~ Contain notice that the owner of the vehicle or any person claiming an interest therein ~~in~~ or lien thereon has a right to a hearing at any time before the scheduled date of sale by filing a demand for hearing with the clerk of the circuit court in the county in which the vehicle is held and mailing copies of the demand for hearing to all other owners and lienors as reflected on the notice.

(m) ~~(h)~~ Contain notice that the owner of the vehicle has a

right to recover possession of the vehicle without instituting judicial proceedings by posting bond in accordance with s. 559.917.

(n) ~~(i)~~ Contain notice that any proceeds from the sale of the vehicle remaining after payment of the amount claimed to be due and owing to the lienor will be deposited with the clerk of the circuit court for disposition upon court order pursuant to subsection (8).

(o) ~~(j)~~ Contain notice that a lienholder, if any, has the right, as specified in subsection (5), to demand a hearing or to post a bond.

(p) Contain a statement that the lienor will make the vehicle available for inspection during regular business hours within 3 business days after receiving a written request to inspect the vehicle from a notice recipient, who may present either a copy of an electronic title or a paper title as evidence of his or her interest in and right to inspect the vehicle.

(q) Contain the address at which the vehicle is physically located.

(2) If attempts to locate the owner or lienholder are unsuccessful after a check of the records of the Department of Highway Safety and Motor Vehicles and any state disclosed by the check of the National Motor Vehicle Title Information System or an equivalent commercially available system, the lienor must notify the local law enforcement agency in writing by certified mail or acknowledged hand delivery that the lienor has been unable to locate the owner or lienholder, that a physical search of the vehicle has disclosed no ownership information, and that

a good faith effort, including records checks of the Department of Highway Safety and Motor Vehicles database and the National Motor Vehicle Title Information System or an equivalent commercially available system, has been made. A description of the motor vehicle which includes the year, make, and identification number must be given on the notice. This notification must take place within 7 business days, excluding Saturday and Sunday, after ~~from~~ the ~~beginning~~ date on which ~~of the assessment of~~ storage charges begin to accrue on the ~~said motor~~ vehicle. For purposes of this subsection ~~paragraph~~, the term "good faith effort" means that the following checks have been performed by the company to establish the prior state of registration and title:

(a) A check of the department's ~~Department of Highway Safety and Motor Vehicles~~ database for the owner and any lienholder.~~;~~

(b) A check of the federally mandated electronic National Motor Vehicle Title Information System or an equivalent commercially available system to determine the state of registration when there is not a current title or registration record for the vehicle on file with the department. ~~of Highway Safety and Motor Vehicles;~~

(c) A check of the vehicle for any type of tag, tag record, temporary tag, or regular tag.~~;~~

(d) A check of the vehicle for an inspection sticker or other stickers and decals that could indicate the state of possible registration.~~; and~~

(e) A check of the interior of the vehicle for any papers that could be in the glove box, trunk, or other areas for the

state of registration.

(3) A vehicle may not be sold earlier than 60 days after completion of the repair work. If the date of the sale was not included in the notice of lien required in subsection (1), notice of the sale must be sent by certified mail at least~~, return receipt requested, not less than~~ 15 days before the date of sale~~,~~ to the customer as indicated on the order for repair~~,~~ and to all other persons claiming an interest in or lien on the motor vehicle, as disclosed by the records of the Department of Highway Safety and Motor Vehicles or of a corresponding agency of any other state in which the vehicle appears to have been registered after completion of a check of the National Motor Vehicle Title Information System or an equivalent commercially available system. Such notice must:

(a) Be sent by certified mail with the last eight digits of the vehicle identification number of the motor vehicle subject to the sale clearly identified and printed in the delivery address box and on the outside of the envelope sent to the registered owner, the customer, and all other persons claiming an interest therein or lien thereon.

(b) Contain the motor vehicle repair shop's registration number, owner's name, and physical address and the entity name, as registered with the Department of Agriculture and Consumer Services, of the business where the repair work or storage occurred, which must also appear on the outside of the envelope containing the notice of sale in the return address section of the envelope.

(4) The lienor, at least 15 days before the proposed or scheduled date of sale of the vehicle, shall publish the notice

required by this section once in a newspaper circulated in the county where the vehicle repair work was completed and where the sale is to take place ~~held~~. A certificate of compliance with the notification provisions of this section, which includes the vehicle identification number, verified by the lienor, together with a copy of the notice of lien required by subsection (1) and the notice of sale required by subsection (3), which must include ~~and return receipt for mailing of the notice required by this section,~~ proof of publication, and checks of the Department of Highway Safety and Motor Vehicles and the National Motor Vehicle Title Information System or an equivalent commercially available system, must be duly and expeditiously filed with the clerk of the circuit court in the county where the vehicle is held. The lienor, at the time of filing the certificate of compliance, must pay to the clerk of that court a service charge of $10 for indexing and recording the certificate.

(9)(a) A copy of the certificate of compliance, which must include the vehicle identification number, and the report of sale, certified by the clerk of the court, a copy of the notice of lien required by subsection (1) and the notice of sale required by subsection (3), and proof of the required check of the National Motor Vehicle Title Information System or an equivalent commercially available system shall constitute satisfactory proof for application to the Department of Highway Safety and Motor Vehicles for transfer of title, together with any other proof required by any rules and regulations of the department.

(b) The Department of Highway Safety and Motor Vehicles may not approve an application for transfer of title if the

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application fails to include a copy of the notice of lien required by subsection (1) and the notice of sale required by subsection (3). The vehicle identification number on the notice of lien must match the vehicle identification number of the vehicle that is the subject of the transfer of title.

(13) A failure to make good faith efforts as defined in subsection (2) precludes the imposition of any storage charges against the vehicle. If a lienor fails to provide notice to any person claiming a lien on a vehicle under subsection (1) within 7 business days after the date ~~assessment~~ of storage of the vehicle ~~charges has begun~~, ~~then~~ the lienor may not charge the person ~~is precluded from charging~~ for more than 7 days of storage, but such failure ~~to provide timely notice~~ does not affect charges made for repairs, adjustments, or modifications to the vehicle or the priority of liens on the vehicle.

(14) At any time before the proposed or scheduled date of sale of a vehicle, the owner, the customer, or a person claiming an interest therein or lien thereon may request to inspect the vehicle. The lienor must make the vehicle available for inspection during regular business hours within 3 business days after receiving a written request to inspect the vehicle.

(15)(a) A lienor or the lienor's agent may charge an administrative fee to the registered owner, the insurance company insuring the vehicle, or a person of record claiming a lien against the vehicle to obtain release of the vehicle. Such administrative fee may not exceed $250. For purposes of this paragraph, the term "administrative fee" means a lien fee or any fee imposed by the lienor or the lienor's agent for administrative costs added to the amount due for storage,

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repairs, adjustments, or modifications to the vehicle.

(b) A lienor or the lienor's agent may not charge fees or costs, other than those authorized in this section, that exceed $250.

(16) A motor vehicle repair shop, garage, automotive service facility, or storage operator must use a third-party service approved by the Department of Highway Safety and Motor Vehicles to transmit all notices required by this section. If there is no third-party service approved by the department, the motor vehicle repair shop, garage, automotive service facility, or storage operator may mail the notices and provide evidence of compliance with this section upon submission of an application for certificate of title or certificate of destruction.

(a) For purposes of this subsection, the term "third-party service" means a qualified business entity that, upon a request submitted through a website by a motor vehicle repair shop, garage, automotive service facility, or storage operator:

1. Accesses the National Motor Vehicle Title Information System records to obtain the last state of record of the vehicle.

2. Accesses the owner, lienholder, and insurer information, as applicable, for a vehicle from the department.

3. Electronically generates the notices required of a motor vehicle repair shop, a garage, an automotive service facility, and a storage operator by this section through the website.

4. Prints and sends the notices required under this section to each owner, lienholder, and insurer of record by certified mail.

5. Electronically returns tracking information or other

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proof of mailing and delivery of the notices to the motor vehicle repair shop, the garage, the automotive service facility, and the storage operator.

6. Electronically reports to the department, via an electronic data exchange process using a web interface, the following information related to the repair and storage notices:

a. The vehicle identification number.

b. The license plate number.

c. The name and address of the repair shop or lienor.

d. The physical location of the vehicle.

e. The date on which the vehicle was dropped off for repairs.

f. The date on which the repairs were completed.

g. The amount due for repairs and the storage amount per day.

h. The dates on which the notice was mailed and delivered.

i. The date on which the owner was notified that the repairs were completed.

j. Other information required by the department.

(b) A third-party service must apply to and be approved by the department in order to provide notices under this section. The department shall prescribe the format for the application. The department may approve the applicant as qualified to perform the services provided in paragraph (a) if the applicant:

1. Provides the department with a $1 million bond.

2. Submits an acceptable internal control and data security audit (Level 2) or its equivalent performed by a licensed certified public accountant.

3. Successfully demonstrates the ability to electronically

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provide required data to the department via an electronic data exchange process using a web interface.

(c) The department may deny, suspend, or revoke approval of a third-party service if the department determines that the third-party service has committed an act of fraud or misrepresentation related to a notice required by this section.

(d) A third-party service must maintain all records related to providing notices under this section for 5 years and allow the department to inspect and copy such records upon request. The records may be maintained in an electronic format.

(e) A third-party service must annually provide the department with evidence that it maintains a $1 million bond and must annually submit an internal control and data security audit (Level 2) or its equivalent performed by a licensed certified public accountant to continue its approved status each year.

(f) A third-party service must maintain a publicly available website that allows owners, registrants, lienholders, insurance companies, or their agents to search for notices sent pursuant to this section. The search results must exclude personal identifying information but provide the same information provided to the department.

(17) A lienor must release to the owner, lienholder, or agent thereof all of the personal property found in but not affixed to the vehicle. Upon payment of the charges owed, the lienor must release the vehicle to the paying owner, lienholder, or agent thereof.

(18) A lienor must accept either a copy of an electronic title or a paper title as evidence of a person’s interest in a vehicle.

Section 4. Subsection (4), paragraphs (a) and (b) of subsection (5), and subsections (6) and (9) of section 713.78, Florida Statutes, are amended, and subsections (14) through (17) are added to that section, to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.—

(4)(a) A ~~Any~~ person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who comes into possession of a vehicle or vessel pursuant to subsection (2), and who claims a lien for recovery, towing, or storage services, shall give notice, by certified mail, to the registered owner, the insurance company insuring the vehicle notwithstanding ~~the provisions of~~ s. 627.736, and ~~to~~ all persons claiming a lien thereon, as disclosed by the records in the Department of Highway Safety and Motor Vehicles or as disclosed by the records of any corresponding agency in any other state in which the vehicle is identified through a records check of the National Motor Vehicle Title Information System or an equivalent commercially available system as being titled or registered.

(b) Whenever a ~~any~~ law enforcement agency authorizes the removal of a vehicle or vessel or whenever a ~~any~~ towing service, garage, repair shop, or automotive service, storage, or parking place notifies the law enforcement agency of possession of a vehicle or vessel pursuant to s. 715.07(2)(a)2., the law enforcement agency of the jurisdiction where the vehicle or vessel is stored shall contact the Department of Highway Safety and Motor Vehicles, or the appropriate agency of the state of registration, if known, within 24 hours through the medium of electronic communications, giving the full description of the

vehicle or vessel. Upon receipt of the full description of the vehicle or vessel, the department shall search its files to determine the owner's name, the insurance company insuring the vehicle or vessel, and whether any person has filed a lien upon the vehicle or vessel as provided in s. 319.27(2) and (3) and notify the applicable law enforcement agency within 72 hours. The person in charge of the towing service, garage, repair shop, or automotive service, storage, or parking place shall obtain such information from the applicable law enforcement agency within 5 days after the date of storage and shall give notice pursuant to paragraph (a). The department may release the insurance company information to the requestor notwithstanding ~~the provisions of~~ s. 627.736.

(c) The notice of lien must be sent by certified mail to the registered owner, the insurance company insuring the vehicle notwithstanding s. 627.736, and all other persons claiming a lien thereon ~~shall be sent~~ within 7 business days, excluding Saturday and Sunday, after the date of storage of the vehicle or vessel. However, in no event shall the notice of lien be sent less than 30 days before the sale of ~~to the registered owner, the insurance company insuring the vehicle notwithstanding the provisions of s. 627.736, and all persons of record claiming a lien against~~ the vehicle or vessel. The notice must state:

1. If the claim of lien is for a vehicle, the last eight digits of the vehicle identification number of the vehicle subject to the lien, or, if the claim of lien is for a vessel, the hull identification number of the vessel subject to the lien, clearly printed in the delivery address box and on the outside of the envelope sent to the registered owner and all

other persons claiming an interest therein or lien thereon.

2. The name, physical address, and telephone number of the lienor, and the entity name, as registered with the Division of Corporations, of the business where the towing and storage occurred, which must also appear on the outside of the envelope sent to the registered owner and all other persons claiming an interest in or lien on the vehicle or vessel.

3. ~~It shall state~~ The fact of possession of the vehicle or vessel.

4. The name of the person or entity that authorized the lienor to take possession of the vehicle or vessel.~~,~~

5. That a lien as provided in subsection (2) is claimed.~~,~~

6. That charges have accrued and include an itemized statement of the amount thereof.~~,~~

7. That the lien is subject to enforcement under ~~pursuant to~~ law~~,~~ and that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (5).~~, and~~

8. That any vehicle or vessel that ~~which~~ remains unclaimed, or for which the charges for recovery, towing, or storage services remain unpaid, may be sold free of all prior liens ~~after~~ 35 days after the vehicle or vessel is stored by the lienor if the vehicle or vessel is more than 3 years of age or ~~after~~ 50 days after the vehicle or vessel is stored by the lienor if the vehicle or vessel is 3 years of age or less.

9. The address at which the vehicle or vessel is physically located.

(d) The notice of lien may not be sent to the registered owner, the insurance company insuring the vehicle or vessel, and all other persons claiming a lien thereon less than 30 days

before the sale of the vehicle or vessel.

(e)~~(d)~~ If attempts to locate the name and address of the owner or lienholder prove unsuccessful, the towing-storage operator shall, after 7 business ~~working~~ days, excluding Saturday and Sunday, after ~~of~~ the initial tow or storage, notify the public agency of jurisdiction where the vehicle or vessel is stored in writing by certified mail or acknowledged hand delivery that the towing-storage company has been unable to locate the name and address of the owner or lienholder and a physical search of the vehicle or vessel has disclosed no ownership information and a good faith effort has been made, including records checks of the Department of Highway Safety and Motor Vehicles database and the National Motor Vehicle Title Information System or an equivalent commercially available system. For purposes of this paragraph and subsection (9), the term "good faith effort" means that the following checks have been performed by the company to establish the prior state of registration and for title:

1. A check of the department's ~~Department of Highway Safety and Motor Vehicles~~ database for the owner and any lienholder.

2. A check of the electronic National Motor Vehicle Title Information System or an equivalent commercially available system to determine the state of registration when there is not a current registration record for the vehicle or vessel on file with the department ~~of Highway Safety and Motor Vehicles~~.

3. A check of the vehicle or vessel for any type of tag, tag record, temporary tag, or regular tag.

4. A check of the law enforcement report for a tag number or other information identifying the vehicle or vessel, if the

vehicle or vessel was towed at the request of a law enforcement officer.

5. A check of the trip sheet or tow ticket of the tow truck operator to determine whether ~~see if~~ a tag was on the vehicle or vessel at the beginning of the tow, if a private tow.

6. If there is no address of the owner on the impound report, a check of the law enforcement report to determine whether ~~see if~~ an out-of-state address is indicated from driver license information.

7. A check of the vehicle or vessel for an inspection sticker or other stickers and decals that may indicate a state of possible registration.

8. A check of the interior of the vehicle or vessel for any papers that may be in the glove box, trunk, or other areas for a state of registration.

9. A check of the vehicle for a vehicle identification number.

10. A check of the vessel for a vessel registration number.

11. A check of the vessel hull for a hull identification number which should be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outmost seaboard side at the end of the hull that bears the rudder or other steering mechanism.

(5)(a) The owner of a vehicle or vessel removed pursuant to ~~the provisions of~~ subsection (2), or any person claiming a lien, other than the towing-storage operator, within 10 days after the time she or he has knowledge of the location of the vehicle or vessel, may file a complaint in the county court of the county

in which the vehicle or vessel is stored to determine whether ~~if~~ her or his property was wrongfully taken or withheld ~~from her or him~~.

(b) At any time before the sale of the vehicle or vessel ~~Upon filing of a complaint~~, an owner or lienholder may have her or his vehicle or vessel released upon posting with the court a cash or surety bond or other adequate security equal to the amount of the charges for towing or storage and lot rental amount to ensure the payment of such charges in the event she or he does not prevail. Upon the posting of the bond and the payment of the applicable fee set forth in s. 28.24, the clerk of the court shall issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the vehicle or vessel. At the time of such release, after reasonable inspection, she or he shall give a receipt to the towing-storage company reciting any claims she or he has for loss or damage to the vehicle or vessel or the contents thereof.

(6) A ~~Any~~ vehicle or vessel that ~~which~~ is stored pursuant to subsection (2) and ~~which~~ remains unclaimed, or for which reasonable charges for recovery, towing, or storing remain unpaid, and any contents not released pursuant to subsection (10), may be sold by the owner or operator of the storage space for such towing or storage charge ~~after~~ 35 days after ~~from the time~~ the vehicle or vessel is stored by the lienor ~~therein~~ if the vehicle or vessel is more than 3 years of age or ~~after~~ 50 days after ~~following the time~~ the vehicle or vessel is stored by the lienor ~~therein~~ if the vehicle or vessel is 3 years of age or less. The sale shall be at public sale for cash. If the date of the sale was not included in the notice required in subsection

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(4), notice of the sale shall be given to the person in whose name the vehicle or vessel is registered and to all persons claiming a lien on the vehicle or vessel as shown on the records of the Department of Highway Safety and Motor Vehicles or of any corresponding agency in any other state in which the vehicle is identified through a records check of the National Motor Vehicle Title Information System or an equivalent commercially available system as being titled. Notice of the sale must ~~shall~~ be sent by certified mail. The notice must have clearly identified and printed, if the claim of lien is for a motor vehicle, the last eight digits of the vehicle identification number of the motor vehicle subject to the lien, or, if the claim of lien is for a vessel, the hull identification number of the vessel subject to the lien, in the delivery address box and on the outside of the envelope sent to the registered owner and all other persons claiming an interest therein or lien thereon. The notice must be sent to the owner of the vehicle or vessel and the person having the recorded lien on the vehicle or vessel at the address shown on the records of the registering agency at least ~~and shall be mailed not less than~~ 15 days before the sale of the vehicle or vessel ~~date of the sale~~. The notice must state the name, physical address, and telephone number of the lienor, and the vehicle identification number if the claim of lien is for a vehicle or the hull identification number if the claim of lien is for a vessel, all of which must also appear in the return address section on the outside of the envelope containing the notice of sale. After diligent search and inquiry, if the name and address of the registered owner or the owner of the recorded lien cannot be ascertained, the requirements of notice by mail

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may be dispensed with. In addition to the notice by mail, public notice of the time and place of sale shall be made by publishing a notice thereof one time, at least 10 days before ~~prior to~~ the date of the sale, in a newspaper of general circulation in the county in which the sale is to be held. The proceeds of the sale, after payment of reasonable towing and storage charges, and costs of the sale, in that order of priority, shall be deposited with the clerk of the circuit court for the county if the owner or lienholder is absent, and the clerk shall hold such proceeds subject to the claim of the owner or lienholder legally entitled thereto. The clerk shall be entitled to receive 5 percent of such proceeds for the care and disbursement thereof. The certificate of title issued under this law shall be discharged of all liens unless otherwise provided by court order. The owner or lienholder may file a complaint after the vehicle or vessel has been sold in the county court of the county in which it is stored. Upon determining the respective rights of the parties, the court may award damages, attorney ~~attorney's~~ fees, and costs in favor of the prevailing party.

(9) Failure to make good faith ~~best~~ efforts to comply with the notice requirements of this section precludes ~~shall preclude~~ the imposition of any storage charges against the ~~such~~ vehicle or vessel. If a lienor fails to provide notice to a person claiming a lien on a vehicle or vessel in accordance with subsection (4), the lienor may not charge the person for more than 7 days of storage, but such failure does not affect charges made for towing the vehicle or vessel or the priority of liens on the vehicle or vessel.

(14)(a) A copy of the notice of lien required by subsection

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(4) and the notice of sale required by subsection (6), which must include the vehicle identification number if the claim of lien is for a vehicle or the hull identification number if the claim of lien is for a vessel, and proof of the required check of the National Motor Vehicle Title Information System or an equivalent commercially available system shall constitute satisfactory proof for application to the Department of Highway Safety and Motor Vehicles for transfer of title, together with any other proof required by any rules and regulations of the department.

(b) The Department of Highway Safety and Motor Vehicles may not approve an application for transfer of title if the application fails to include a copy of the notice of lien required by subsection (4) and the notice of sale required by subsection (6). The vehicle or hull identification number on the notice of lien must match the vehicle or hull identification number of the vehicle or vessel that is the subject of the transfer of title.

(15)(a) A lienor or the lienor's agent may charge an administrative fee to the registered owner, the insurance company insuring the vehicle or vessel, or a person claiming a lien against the vehicle or vessel to obtain release of the vehicle or vessel. Such administrative fee may not exceed $250. For purposes of this paragraph, the term "administrative fee" means a lien fee or any fee imposed by the lienor or the lienor's agent for administrative costs added to the amount due for towing and storing the vehicle or vessel.

(b) A lienor or the lienor's agent may not charge fees or costs, other than those authorized in this section or ss.

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125.0103 and 166.043, that exceed $250.

(16) A towing-storage operator must use a third-party service approved by the Department of Highway Safety and Motor Vehicles to transmit all notices required by this section. If there is no third-party service approved by the department, the towing-storage operator may mail the notices and provide evidence of compliance with this section upon submission of an application for certificate of title or certificate of destruction.

(a) For purposes of this subsection, the term "third-party service" means a qualified business entity that, upon a request submitted through a website by a towing-storage operator:

1. Accesses the National Motor Vehicle Title Information System records to obtain the last state of record of the vehicle.

2. Accesses the owner, lienholder, and insurer information, as applicable, for a vehicle or vessel from the department.

3. Electronically generates the notices required of a towing-storage operator by this section through the website.

4. Prints and sends the notices required under this section to each owner, lienholder, and insurer of record by certified mail.

5. Electronically returns tracking information or other proof of mailing and delivery of the notices to the towing-storage operator.

6. Electronically reports to the department, via an electronic data exchange process using a web interface, the following information related to the towing and storage notice:

a. The vehicle identification number or vessel hull

identification number.

b. The license plate number, if applicable.

c. The name and address of the towing-storage operator or lienor.

d. The physical location of the vehicle or vessel.

e. The date on which the vehicle or vessel was towed.

f. The amount of storage fees owed at the time of the notice.

g. The date of assessment of storage charges.

h. The dates on which the notice was mailed and delivered.

i. Other information required by the department.

(b) A third-party service must apply to and be approved by the department in order to provide notices under this section. The department shall prescribe the format for the application. The department may approve the applicant as qualified to perform the services provided in paragraph (a) if the applicant:

1. Provides the department with a $1 million bond.

2. Submits an acceptable internal control and data security audit (Level 2) or its equivalent performed by a licensed certified public accountant.

3. Successfully demonstrates the ability to electronically provide required data to the department via an electronic data exchange process using a web interface.

(c) The department may deny, suspend, or revoke approval of a third-party service if the department determines that the third-party service has committed an act of fraud or misrepresentation related to a notice required by this section.

(d) A third-party service must maintain all records related to providing notices under this section for 5 years and allow

the department to inspect and copy such records upon request. The records may be maintained in an electronic format.

(e) A third-party service must annually provide the department with evidence that it maintains a $1 million bond and must annually submit an internal control and data security audit (Level 2) or its equivalent performed by a licensed certified public accountant to continue its approved status each year.

(f) A third-party service must maintain a publicly available website that allows owners, registrants, lienholders, insurance companies, or their agents to search for notices sent pursuant to this section. The search results must exclude personal identifying information but provide the same information provided to the department.

(17) A lienor must accept either a copy of an electronic title or a paper title as evidence of a person's interest in a vehicle or vessel.

Section 5. This act shall take effect January 1, 2020.

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THE FLORIDA SENATE

APPEARANCE RECORD

23 Apr 2019 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 772

Meeting Date *Bill Number (if applicable)*

Topic _____ *Amendment Barcode (if applicable)*

Name Sandra Mortham

Job Title _____

Address 6675 Weeping Willow Way Phone 850-251-2283

Street

Tallahassee FL 32311 Email Smortham@aol.com

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information Waive Speaking: ☑ In Support ☐ Against

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

Representing Florida Independent Auto Dealers

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/19
Meeting Date

772
Bill Number (if applicable)

Topic Liens Against Motor Vehicles and Vessels

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St
Street

Phone 224-7173

Tallahassee FL 32301
City *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/1

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

772
Bill Number (if applicable)

Topic Liens Against Motor Vehicles and Vessels

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Director

Address 136 S. Bronough St.
Street

Phone 850-521-1279

Tallahassee FL 32301
City *State* *Zip*

Email CJohnson@FLchamber.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/23/2019
Meeting Date

772
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Paul Sanford

Job Title _____

Address 106 Soutn Monroe Street
Street

Phone 850-22-7200

Tallahasse FL 32301
City *State* *Zip*

Email _____

Speaking: ☑ For ☐ Against ☐ Information

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

Representing J.M. Family Enterprises

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 1140
INTRODUCER:	Rules Committee; Community Affairs Committee; Judiciary Committee; and Senator Hutson
SUBJECT:	Attorney Fees and Costs
DATE:	April 24, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	**Fav/CS**
2.	Peacock	Yeatman	CA	**Fav/CS**
3.	Tulloch	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1140 authorizes the payment of reasonable attorney fees and costs to the prevailing party in an action challenging the adoption or enforcement of a local government ordinance on preemption grounds if a court finds that the subject of the ordinance has been expressly preempted by the State Constitution or state law. However, a local government may avoid liability for attorney fees and costs if the challenged ordinance is repealed or withdrawn within 60 days of either receiving written notice of the express preemption claim.

The bill provides that the payment of attorney fees and costs is supplemental to all other sanctions and remedies. However, the bill does *not* apply to ordinances relating to:

- Growth management under ch. 163, part II;
- The Florida Building Code under s. 553.73, F.S.; or
- The Florida Fire Prevention Code under s. 633.202, F.S.

The bill provides for a July 1, 2019, effective date and for retroactive application to cases pending on July 1, 2019.

II. Present Situation:

Attorney Fees and Costs: The "American Rule"

Although England and the United States share the same common law origins, the two nations have taken different positions concerning who pays attorney fees and costs in a lawsuit.[1] Under the "English Rule," the "loser pays" attorney fees and costs to the prevailing party as part of that party's overall damages award.[2] However, under the "American Rule," each party to a lawsuit is responsible for his or her own attorney fees and costs no matter who wins.[3]

There are, however, two exceptions to the "American Rule" in Florida. First, the prevailing party may recover attorney fees and costs from the losing party if authorized by statute. Second, the prevailing party may recover attorney fees and costs from the losing party in a contract dispute by prior agreement of the parties to include a "prevailing party provision" in their contract.[4]

Statutory Exceptions to the "American Rule"

Sanctions

When a statutory exception to the "American Rule" is enacted, it may be intended as a sanction or a punitive measure to curtail certain practices. For example, in Florida, section 57.105, F.S. permits a party to be sanctioned for filing a frivolous lawsuit in the form of paying the other party's attorney's fees and costs.[5] Florida courts have noted that the purpose of this statutory exception to the "American Rule" is to "discourage baseless claims, stonewall defenses and sham appeals in civil litigation by placing a price tag through attorney's fees awards on losing parties who engage in these activities."[6]

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[1] Aaron Bartholomew & Sharon Yamen, *The American Rule: The Genesis and Policy of the Enduring Legacy on Attorney Fee Awards*, 30 UTAH B.J., at 14 (September/October 2017) (discussing the history of the American Rule, the difference from the English Rule, and the rationale for each).

[2] *Id.* at 16. The English Rule is thought to discourage frivolous lawsuits, discourage driving up litigation costs during discovery, and make a party truly, completely whole. *Id.* at 16-17.

[3] *Id.* at 14. The early rationale for the American Rule was to give the poor access to justice. The English Rule was seen effectively denying justice to the poor and because, even if the case was meritorious, the risk of paying the other party's attorney fees and costs would serve as deterrent to filing suit. *Id.* at 17. However, commentary suggests the American Rule has actually survived because lawyers are no longer under statutory fee regulations and are free to contract for fees with their clients, thus alleviating the need to recover the fees from the other party. *Id.* at 17-18.

[4] *Id.; Price v. Tyler*, 890 So. 2d 246, 250 (Fla. 2004) (quoting *State Farm Fire & Cas. Co. v. Palma*, 629 So. 2d 830, 832 (Fla. 1993) in parenthetical: "This Court has followed the 'American Rule' that attorney's fees may be awarded by a court only when authorized by statute or by agreement of the parties.").

[5] Section 57.105(1), F.S., provides that "[u]pon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial: (a) Was not supported by the material facts necessary to establish the claim or defense; or (b) Would not be supported by the application of then-existing law to those material facts."

[6] *MC Liberty Express, Inc. v. All Points Services, Inc.*, 252 So. 3d 397, 402 (Fla. 3d DCA 2018) (quoting *Whitten v. Progressive Cas. Ins. Co.*, 410 So. 2d 501, 505 (Fla. 1982)).

Compliance Incentive

Additionally, a statutory exception to the "American Rule" may be intended to act as an incentive to comply with the law. For instance, under Florida's Public Records Act (PRA), if an agency unlawfully refuses to permit public records to be inspected or copied, the PRA provides that the courts "shall assess and award the reasonable costs of enforcement, including reasonable attorneys' fees, against the agency responsible."[7] As noted by the Second District Court of Appeal, the purpose of the PRA's attorney fee provision is "to encourage voluntary compliance with Florida's public records law, which gives effect to the state's policy 'that all state, county, and municipal records shall be open for personal inspection by any person.'"[8]

Local Government

In Florida, local government consists of two entities: **counties and municipalities**.

Counties are established by the Florida Constitution as subdivisions of the State.[9] Additionally, "[c]ounties in Florida are given broad authority to enact ordinances."[10]

The precise scope of the power to enact ordinances and operation of those ordinances depends on whether or not the county operates under a charter. The differences in non-charter and charter county governments are set forth in Article VIII, section 1(f) and (g) of the Florida Constitution:

> (f) **Non-charter government**. Counties not operating under county charters *shall have such power of self-government as is provided by general or special law*. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county *ordinances not inconsistent with general or special law*, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.[11]
>
> (g) **Charter government**. Counties operating under county charters *shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors*. The governing body of a county operating under a charter may enact county ordinances *not inconsistent with general law*. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

[7] Section 119.12, F.S. (requiring pre-suit notice to the agency and determinations by the court).
[8] *Office of State Attorney for Thirteenth Judicial Circuit of Florida v. Gonzalez*, 953 So. 2d 759, 763 (Fla. 2d DCA 2007) (quoting s. 119.01(1), F.S.). *See also N.Y. Times Co. v. PHH Mental Health Servs., Inc.*, 616 So. 2d 27, 29 (Fla. 1993) ("If public agencies are required to pay attorney's fees and costs to parties who are wrongfully denied access to the records of such agencies, then the agencies are less likely to deny proper requests for documents.") (cited by *Gonzalez*).
[9] FLA. CONST. art. VIII, s. 1.
[10] *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005) (citing FLA. CONST. art. VIII, ss. 1(f) and (g); s. 125.01(3), F.S.; and *St. Johns County v. N.E. Fla. Builders Ass'n*, 583 So. 2d 635, 642 (Fla. 1991)).
[11] *See also* s. 125.01, F.S.

Municipalities, on the other hand, are created by legislative enactment.[12] Historically, municipalities were "established in separately described areas containing inhabitants whose interests require special local governmental activities not afforded by State and county units."[13] Municipalities, likewise, have broad statutory authority to enact ordinances under their home rule powers.[14] As set out in s. 166.021(3), F.S.,

> The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:
> (a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;
> (b) Any subject expressly prohibited by the constitution;
> (c) Any subject expressly preempted to state or county government by the constitution or by general law; and
> (d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.[15]

Legislative Preemption

"Preemption essentially takes a topic or a field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the Legislature."[16] There are two types of preemption: **express** and **implied**.

"**Express preemption** requires a specific statement" by the Legislature; it "must be accomplished by clear language stating that intent."[17] "[T]he legislature can easily create express preemption by including clear language in a statute."[18] For example, the Legislature has clearly and expressly preempted the area of state firearms and ammunition regulation as set forth in s. 790.33(1), F.S.:

> **(1) Preemption.--**Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.

[12] FLA. CONST. art. VIII, s. 2.
[13] *City of Miami v. Rosen*, 10 So. 2d 307, 309 (Fla. 1942).
[14] FLA. CONST. art. VIII, s. 2(b); s. 166.021, F.S. *See also City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006).
[15] Section 166.021, F.S. has been held unconstitutional as applied in the case of *City of Miami Beach v. Bd. of Trustees of City Pension Fund for Firefighters & Police Officers in City of Miami Beach*, 91 So. 3d 237 (Fla. 3d DCA 2012).
[16] *City of Hollywood*, at 1243 (quoting *Phantom of Clearwater, Inc.*, at 1018).
[17] *City of Hollywood, at 1243* (quoting *Edwards v. State*, 422 So. 2d 84, 85 (Fla. 2d DCA 1982)).
[18] *Phantom of Clearwater, Inc.*, at 1019 (citing *Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996)).

Implied preemption is "actually a decision by the courts to create preemption in the absence of an explicit legislative directive."[19] "[C]ourts imply preemption only when the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature."[20] "When courts create preemption by implication, the preempted field is usually a narrowly defined field, limited to the specific area where the Legislature has expressed their will to be the sole regulator."[21] The Florida Supreme Court recognized that the Legislature in chapter 440, F.S. had implicitly "preempted local regulation on the subject of worker's compensation," reasoning that "[t]he preemption need not be explicit so long as it is clear that the legislature has clearly preempted local regulation of the subject."[22]

Coexisting State Law and Local Ordinance

Under their broad home rule powers, counties and municipalities may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the state.[23] County and municipal ordinances "are inferior to laws of the state and must not conflict with any controlling provision of a statute."[24] Local government cannot, in other words, "forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden."[25] "[A]n ordinance penalty may not exceed the penalty imposed by the state"; however, an ordinance may provide a penalty less severe than that imposed by a state statute."[26]

Legal Action Challenging Ordinances on Preemption Grounds

A legal action challenging an ordinance on preemption grounds may be brought in a suit for declaratory relief. A suit for declaratory relief is properly brought under the declaratory judgment act to "declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed."[27] "Even though the legislature has expressed its intent that the declaratory judgment act . . . should be broadly construed,[28] there still must exist some justiciable controversy *between adverse parties* that needs to be resolved for a court to exercise its jurisdiction. Otherwise, any opinion on a statute's validity would be advisory only and improperly considered in a declaratory action."[29]

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[19] *Phantom of Clearwater, Inc.*, at 1019.
[20] *Id.* (citations and internal quotations omitted).
[21] *Id.* (citations and internal quotations omitted).
[22] *Barragan v. City of Miami*, 545 So. 2d 252, 254 (Fla. 1989) (citing *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984), *appeal dismissed*, 471 U.S. 1096 (1985)).
[23] *City of Hollywood*, at 1243 (citing *Wyche v. State*, 619 So. 2d 231, 237–38 (Fla. 1993) (citations and internal quotations omitted).
[24] *City of Hollywood*, at 1246 (citing *Thomas v. State*, 614 So. 2d 468, 470 (Fla. 1993)).
[25] *Id.* at 1247 (citations and internal quotations omitted).
[26] *Id.* (citations and internal quotations omitted).
[27] Section 86.011, F.S.
[28] Section 86.101, F.S.
[29] *Atwater v. City of Weston*, 64 So. 3d 701, 704–05 (Fla. 1st DCA 2011) (quoting *Martinez v. Scanlan*, 582 So. 2d 1167, 1170–71 (Fla. 1991) (emphasis added)).

For instance, in *City of Hollywood v. Mulligan*, after his arrest for soliciting a prostitute, Mr. Mulligan's vehicle was seized pursuant to an ordinance passed by the City of Hollywood requiring the forfeiture of any vehicle used in connection with the solicitation of a prostitute. Mr. Mulligan filed an action for declaratory relief to declare the ordinance invalid on the grounds that the Legislature had preempted the forfeiture field. The Florida Supreme Court ultimately held that the forfeiture field had not been preempted.[30]

III. Effect of Proposed Changes:

Section 1 creates s. 57.112, F.S., to authorize the payment of reasonable attorney fees and costs and damages to the prevailing party in a challenge to a local government's adoption or enforcement of a local ordinance on the grounds that the subject of the ordinance is expressly preempted by the State Constitution or by state law. Under the bill, "attorney fees and costs" include the reasonable and necessary attorney fees and costs incurred for all preparations, motions, hearings, trials, and appeals in a proceeding.

However, the bill contains an "escape clause" permitting a local government to avoid potential liability for a challenger's attorney fees and costs. The local government may avoid liability for attorney fees and costs *if* it withdraws or repeals a noticed or adopted ordinance (respectively) within 60 days after receiving a written claim that the subject ordinance is *expressly* preempted by state law or the State Constitution.

The language of the bill also suggests that permitting an award of attorney fees and costs to the prevailing party is meant to be a sanction, given that the bill's statement that the attorney fees and costs award "is cumulative to all other sanctions or remedies available under law or court rule."

Additionally, the bill carves out several exceptions and provides that a prevailing party's right to attorney fees and costs does not apply in challenges to local ordinances relating to the following:

1. The Community Planning Act under ch. 163, part II, which grants the power and responsibility to incorporated municipalities and counties to adopt and implement a comprehensive plan for future development and growth (growth management).[31]
2. The Florida Building Code under s. 553.73, F.S., which authorizes local governments to adopt certain ordinances amending the Florida Building Code so long as those ordinances are more stringent that then minimum standards set forth in the Florida Building Code and comply with the restrictions in s. 553.73, F.S.
3. The Florida Fire Prevention Code under s. 633.202, F.S., which authorizes a local government to adopt ordinances amending the Florida Fire Prevention Code to provide more protection that remain in effect until the State Fire Marshall completes the triennial update to the Code and either adopts or rescinds an amendment adopted by a local government.[32]

Section 2 provides that this bill is remedial in nature and applies retroactively to all cases pending or commenced on or after July 1, 2019.

[30] *City of Hollywood*, at 1241.
[31] Section 163.3167(1), F.S. ("Scope of act").
[32] Section 633.202, F.S.

Section 3 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. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would provide private individuals and businesses with a more effective method of holding local governing bodies accountable to operate within their proper authority.

C. Government Sector Impact:

A local government may see an increase in challenges but will only be potentially liable for attorney fees and costs if it refuses to withdraw or repeal an ordinance on a subject that is expressly preempted by the Legislature.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 57.112 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Rules on April 23, 2019:
The committee substitute:

- Revises the local government's "escape clause" to avoid the payment of attorney fees and costs to a party prevailing in a challenge to an ordinance by:
  - Removing the option to start the clock for withdraw or repeal upon the filing of a motion for attorney fees.
  - Extending the time to withdraw or repeal the ordinance from 21 days to 60 days.
  - Clarifying that the notice of written claim must be based on express preemption.
- Replaces the exception from the right to attorney fees and costs in the bill with exceptions that make the right to attorney fees and costs inapplicable to ordinance challenges relating to ch. 163, F.S., part II, The Florida Building Code, and the Florida Fire Prevention Code.

CS/CS by Community Affairs on April 2, 2019:
The committee substitute:

- Deletes prejudgment interest and costs as part of the reasonable attorney fees and costs that may be recovered.
- Provides that the recovery of attorney fees and costs does not apply to ordinances relating to growth management unless the ordinance is preempted by s. 533.79(20), F.S.

CS by Judiciary on March 18, 2019:
The committee substitute:

- Removes the waiver of sovereign immunity.
- Changes the attorney fee requirement from a one-sided rule, making only the local government liable for attorney fees and costs if it loses, to a prevailing party rule, meaning either party may be liable to pay attorney fees and costs if it loses.
- Changes the applicability of the attorney fee requirement from all preemption challenges, which includes express or implied preemption, to express preemption only.

B. Amendments:

None.

124644

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2019	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment

Delete lines 30 - 37
and insert:
this subsection if:
(a) The governing body of a local governmental entity receives written notice that an ordinance that has been publicly noticed or adopted is expressly preempted by the State Constitution or state law; and
(b) The governing body of the local governmental entity withdraws the ordinance from consideration or repeals the

124644

ordinance within 60 days after receiving such written notice.

344278

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2019	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment to Amendment (124644)

Delete line 5
and insert:
this section if:

552588

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2019	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment

Delete lines 40 - 42
and insert:
(5) This section does not apply to local ordinances adopted pursuant to part II of chapter 163; s. 553.73; or s. 633.202.

By the Committees on Community Affairs; and Judiciary; and
Senator Hutson

578-03800-19 20191140c2

A bill to be entitled

An act relating to attorney fees and costs; creating s. 57.112, F.S.; defining the term "attorney fees and costs"; providing for award of attorney fees and costs and damages in civil actions challenging local ordinances as being preempted by the State Constitution or state law; prohibiting an award of attorney fees and costs under certain circumstances; providing construction; providing applicability; providing retroactive application; providing an effective date.

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

Section 1. Section 57.112, Florida Statutes, is created to read:

57.112 Attorney fees and costs and damages; preempted local actions.—

(1) As used in this section, the term "attorney fees and costs" means the reasonable and necessary attorney fees and costs incurred for all preparations, motions, hearings, trials, and appeals in a proceeding.

(2) If a civil action is filed against a local government to challenge the adoption or enforcement of a local ordinance on the grounds that it is expressly preempted by the State Constitution or by state law, the court shall assess and award reasonable attorney fees and costs and damages to the prevailing party.

(3) Attorney fees and costs may not be awarded pursuant to

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

578-03800-19 20191140c2

this section if the local government withdraws or repeals an ordinance that the court determined was preempted within 21 days after the earlier of:

(a) The local government's receipt of a written claim that the ordinance, as proposed or adopted, is preempted by the State Constitution or by state law; or

(b) A motion being filed seeking attorney fees and costs pursuant to this section.

(4) The provisions in this section are supplemental to all other sanctions or remedies available under law or court rule.

(5) Unless an ordinance is preempted by s. 553.79(20), this section does not apply to ordinances relating to growth management.

Section 2. This act is intended to be remedial in nature and applies retroactively to all cases pending or commenced on or after July 1, 2019.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 15, 2019

I respectfully request that **Senate Bill #1140**, relating to Attorney Fees and Costs, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/23/19
Meeting Date

1140
Bill Number (if applicable)

124644
Amendment Barcode (if applicable)

Topic Attorney Fees and Costs

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757
Street

Phone 222-9684

Tallahassee FL 32302
City *State* *Zip*

Email rohara@flcities.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1140
Bill Number (if applicable)

124644
Amendment Barcode (if applicable)

Topic Attorney Fees and Costs

Name Laura Youmans

Job Title Legislative Counsel

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Tallahassee, FL 32301
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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

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04/23/19
Meeting Date

1140
Bill Number (if applicable)

552588
Amendment Barcode (if applicable)

Topic Attorney Fees and Costs

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757
Street

Tallahassee FL 32302
City *State* *Zip*

Phone 222-9684

Email rohara@flcities.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/23/19
Meeting Date

1140
Bill Number (if applicable)

552588
Amendment Barcode (if applicable)

Topic Attorney Fees and Costs

Name Laura Youmans

Job Title Legislative Counsel

Address 100 S. Monroe Street
Street

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Tallahassee, FL 32301
City *State* *Zip*

Email lyoumans@fl-counties.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1140
[redacted]
Bill Number (if applicable)

Topic Attorney Fees and Costs

Amendment Barcode (if applicable)

Name Christopher Emmanuel

Job Title Policy Director

Address 136 S. Bronough
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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/22/19
Meeting Date

1140
Bill Number (if applicable)

Amendment Barcode (if applicable

Topic Attorney Fees and Costs

Name Brewster Bevis

Job Title Senior Vice President

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Phone 224-7173

Tallahassee FL 32301
City *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/1

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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04/23/19
Meeting Date

1140
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Attorney Fees and Costs

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757
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Phone 222-9684

Email rohara@flcities.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1140
Bill Number (if applicable)

Topic Attorney Fees & Costs

Amendment Barcode (if applicable)

Name JAKE FARMER

Job Title Director Governmental Affairs

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Street

Phone 850 222 4082

Tallahassee FL 32301
City *State* *Zip*

Email JAKE@FRF.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Retail Federation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/23/19
Meeting Date

1140
Bill Number (if applicable)

Topic Attorney Fees & Costs

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title General Counsel

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Street

Phone 224-2250

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City *State* *Zip*

Email spadgett@frla.org

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Restaurant & Lodging Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1140
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Laura Youmans

Job Title Legislative Counsel

Address 100 S. Monroe Street
Street

Phone 850.922.4300

Tallahassee, FL 32301
City *State* *Zip*

Email lyoumans@flcounties.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-23-19
Meeting Date

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

1140
Bill Number (if applicable)

Topic Ballot Proces

Amendment Barcode (if applicable)

Name Carolyn Lynderwood

Job Title Retired

Address ~~Self~~
Street 712 Canterbury Rd
City Flagler Beach *State* FL *Zip* 32136

Phone 727-442-7757

Email Clmynderw@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-23-19 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1140

Meeting Date *Bill Number (if applicable)*

Topic Ballot Processes *Amendment Barcode (if applicable)*

Name Megan Girard

Job Title Eletronic Inspector

Address 10 Silver Dr Phone 352-497-7171

Street

Ocala FL 34472 Email

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information Waive Speaking: ☐ In Support ☒ Against

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

Representing Self

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1140
Bill Number (if applicable)

Topic Ballot Processes

Amendment Barcode (if applicable)

Name Dawn Douglas

Job Title teacher

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Street

Phone 727-385-3550

Largo, FL 33771
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/19
Meeting Date

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

SB 1140
Bill Number (if applicable)

Topic Ballot Processes

Amendment Barcode (if applicable)

Name LaShawn Floyd

Job Title Educator

Address 1583 SE Tiffany Club Pl
Street

Phone 561-201-1214

PSL, FL 34952
City State Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Citizens

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/23/19
Meeting Date

1140
Bill Number (if applicable)

Topic BALLOT PROCESSES

Amendment Barcode (if applicable)

Name IRAN ALICEA

Job Title PRESIDENT HSEF

Address 5717 TRACE MEADOW LOOP
Street

RIVERVIEW, FL 33578
City *State* *Zip*

Phone (914) 443-0087

Email IRAN425@MSN.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23-19
Meeting Date

1140
Bill Number (if applicable)

Topic Attorney Fees

Amendment Barcode (if applicable)

Name Brendan Sullivan

Job Title Legislative Representative Brotherhood Locomotive Engineers

Address 1010 Braemar Drive
Street
Winter Park FL
City *State* *Zip*

Phone 386-576-6699

Email onetrainman@Hotmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/23/19
Meeting Date

1140
Bill Number (if applicable)

Topic Ballot Processes

Amendment Barcode (if applicable)

Name Jackie McCollister

Job Title Bus Driver (School Bus)

Address 10400 Coronet Rd
Street

Lakeland FL 33811
City *State* *Zip*

Phone

Email

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/2015
Meeting Date

SB1140
Bill Number (if applicable)

Topic Ballots Process

Amendment Barcode (if applicable)

Name Sherene Tolbert

Job Title

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Street

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Tampa FL 33610
City *State* *Zip*

Email Stolbert1006@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1140
Bill Number (if applicable)

Topic Attorney Fees

Amendment Barcode (if applicable)

Name Reginald Maddox

Job Title

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Street

Phone 813-992-6096

Tampa FL 33634
City *State* *Zip*

Email maddoxdb@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Reginald Maddox

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.29.19
Meeting Date

1140
Bill Number (if applicable)

Topic ~~Bottle Processes~~ Attorney fees

Amendment Barcode (if applicable)

Name Wednesday Godley

Job Title

Address 8891 SE 90th Ave Rd
Street

Phone 352-425-2583

Ocala FL 34472
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

SB 1140
Bill Number (if applicable)

Topic Attorney Fees

Amendment Barcode (if applicable)

Name Richi Templin

Job Title

Address 135 S. Monroe
Street

Phone 850-224-6926

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 1338
INTRODUCER:	Senator Rodriguez
SUBJECT:	Guardianship
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	**Favorable**
2.	Delia	Hendon	CF	**Favorable**
3.	Tulloch	Phelps	RC	**Favorable**

I. Summary:

SB 1338 amends three provisions of the Florida Guardianship Law. The bill makes minor or technical changes to the venue provision in s. 744.3701(1)-(4), F.S., clarifying that venue for purposes of appointing a guardian applies to minors as well as incapacitated persons. Additionally, the bill makes technical changes to s. 744.3701(1), F.S., to clarify that only the enumerated list of persons or agency representatives may inspect a confidential guardianship report or settlement agreement unless a court order based on good cause or another statutory provision permits others to inspect these documents.

Most significantly, the bill changes the standard and procedures for the mandatory dismissal of a petition to determine incapacity by a court under s. 744.331(4), F.S. Under existing law, a court *must* dismiss a petition if at least two of the three members of an examining committee conclude that the alleged incapacitated person is not incapacitated in any respect. Under the bill, a court must dismiss the petition only if the committee unanimously concludes the incapacitated person is not incapacitated in any way. However, the bill provides interested parties an opportunity to object to the dismissal by filing a timely verified motion making a reasonable showing, by evidence in the record or proffered, that the hearing is necessary. However, a party that files the motion in bad faith is subject to sanctions.

The bill may have a fiscal impact on the state court system. The bill provides that it is effective upon becoming a law and applies retroactively to pending cases under the Florida Guardianship Law.

II. Present Situation:

Guardianship

Guardianships are trust relationships designed to protect vulnerable members of society who do not have the ability to protect themselves, such as minor children and incapacitated adults. Under a guardianship, a "guardian" is appointed to act on behalf of the vulnerable person, also called a "ward."[1] There are two main forms of guardianship: (1) guardianship over the person and (2) guardianship over the property, which may be limited or plenary.[2] A guardian is given the legal duty and authority to care for the ward and his or her property during the ward's infancy, disability, or incapacity.[3]

For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, when an individual's mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined by a court appointed examination committee.[4] Once an adult is adjudicated incompetent, then a guardian may be appointed.[5]

For minors, i.e., an unmarried person under the age of 18,[6] no petition to determine incapacity need be filed[7] because minors are presumptively lacking in capacity by operation of law. Minors are treated differently "based upon the particular vulnerability of children, their inability to make critical decisions in an informed, mature manner, and the importance of the parental role in child rearing."[8] For instance, minors are deemed not to have legal capacity to initiate legal proceedings[9] or enter contracts.[10]

The process to determine incapacity and the appointment of a guardian begins with a petition filed in the appropriate circuit court.

Procedures to Determine Incapacity and Appoint a Guardian

"Guardianships are governed by a comprehensive statutory code and set of procedural rules."[11] "The guardianship statutes and rules complement one another. The guardianship statutes set out the substantive law in this area and the Florida Probate Rules set out 'the procedure in all probate

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[1] *See generally*, s. 744.102(9), F.S.
[2] Section 744.102(9), F.S.
[3] BLACK'S LAW DICTIONARY, 10th edition, 2014.
[4] *See generally*, s. 744.102(12), F.S.
[5] *D.H. v. Adept Cmty. Services, Inc.*, 43 Fla. L. Weekly S533 (Fla. Nov. 1, 2018), *reh'g denied*, SC17-829, 2018 WL 6264576 (Fla. Nov. 29, 2018) (quoting *Hayes v. Guardianship of Thompson*, 952 So.2d 498, 505 (Fla. 2006))(internal quotation marks omitted).
[6] Section 744.102(13), F.S.
[7] Fla. Prob. R. 5.555(a)-(b).
[8] 25 Fla. Jur 2d Family Law § 252
[9] D.H. v. Adept Cmty. Services, Inc., 43 Fla. L. Weekly S533 (Fla. Nov. 1, 2018), reh'g denied, SC17-829, 2018 WL 6264576 (Fla. Nov. 29, 2018).
[10] 25 Fla. Jur 2d Family Law § 495.
[11] *Hayes v. Guardianship of Thompson*, 952 So. 2d 498, 506 (Fla. 2006) (quoting Fla. Prob. R. 5.010).

and guardianship proceedings.'"[12] Because guardianship proceedings seek to protect the ward,[13] unlike most other types of litigation, guardianship proceedings are not adversarial.[14]

Appropriate Court Venue

Venue is "[t]he proper or a possible place for a lawsuit to proceed, usually because the place has some connection either with the events that gave rise to the lawsuit or with the plaintiff or defendant."[15] Venue for alleged incapacitated adults is determined under s. 744.1097, F.S.[16] The statute treats proceedings to declare a person incapacitated and proceedings to appoint a guardian as two separate proceedings for purposes of venue.

For proceedings to declare a person incapacitated, the venue is the court where either (1) the incapacitated adult resides or (2) the incapacitated adult is found.[17]

For proceedings to appoint a guardian, the venue depends on whether the incapacitated person is a state resident or non-state resident:

- If a state resident, then venue is the county where the incapacitated person resides.[18]
- If the person is not a state resident, however, then venue is any county where the incapacitated person's property is located.[19]
- If the person is not a state resident and owns no property, then venue is in the county where any debtor of the incapacitated person resides. [20]

Although the venue statute does not currently include minors, the committee note to Florida Probate Rule 5.555 indicates that venue for purposes of appointing a guardian to a minor is determined under ch. 744 in the same manner.[21]

Petition to Determine Incapacity and Appoint a Guardian

A petition to determine incapacity may be executed by an adult and must be served on and read to the alleged incapacitated person. The notice and copies of the petition must be provided to the

[12] *Id.*
[13] Section 744.1012, F.S.
[14] *Hayes* at 505.
[15] BLACK'S LAW DICTIONARY (10th ed. 2014).
[16] The venue provision does not apply to veterans. *See* s. 744.1097(1), F.S.
[17] *Id.*
[18] Section 744.1097(2)(a), F.S.
[19] Section 744.1097(2)(b), F.S.
[20] Section 744.1097(2)(c), F.S.
[21] Fla. Prob. R. 5.555 ("COMMITTEE NOTES: The provisions of chapter 744, Florida Statutes, and the guardianship rules enacted in 1989 leave some uncertainty with respect to the procedural requirements in guardianships for minors who are not incapacitated persons. This rule is intended to address only certain procedures with respect to the establishment and administration of guardianships over minors. The committee believes that certain provisions of the guardianship law and rules apply to both guardianships of minors as well as guardianships of incapacitated persons and no change has been suggested with respect to such rules. Because no adjudication of a minor is required by statute, it is contemplated that appointment of a guardian for a minor may be accomplished without a hearing. Initial and annual guardianship reports for minors have been simplified where all assets are on deposit with a designated financial institution under applicable Florida law.").

attorney for the alleged incapacitated person and served on all next of kin identified in the petition.[22]

Within five days after the petition has been filed, the court must appoint an examining committee to examine the alleged incapacitated person and file a written report with the court. The examining committee consists of three members:

> One member must be a psychiatrist or other physician. The remaining members must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion. One of three members of the committee must have knowledge of the type of incapacity alleged in the petition.[23]

Depending on the recommendations of the committee, the petition may either be dismissed or proceed to an adjudicatory hearing.

Dismissal of Petitions to Determine Incapacity

If a majority of the examining committee members, two of three, conclude the alleged incapacitated person is not incapacitated in any respect, section 744.331(4), F.S. states that the "court *shall* dismiss the petition." This provision was strictly construed in *Rothman v. Rothman*,[24] which held that a court had no discretion to hold a hearing and had to dismiss the petition in that case, notwithstanding extrinsic evidence by the alleged incapacitated person's grandson that tended to call into doubt the reports received by the examining committee.[25]

Adjudicatory Hearing

The adjudicatory hearing must be conducted no more than 30 days after the filing of the last examining committee member's report.[26] In the hearing on the petition alleging incapacity, the partial or total incapacity of the person must be established by clear and convincing evidence.[27] The court must enter a written order determining incapacity after finding that a person is incapacitated with respect to the exercise of a particular right or all rights. A person is determined to be incapacitated only with respect to those rights specified in the court's order.[28] When an order determines that a person is incapable of exercising delegable rights, the court must consider whether there is an alternative to guardianship which will sufficiently address the problems of the incapacitated person. If an alternative to guardianship will not sufficiently address the problems of the incapacitated person, a guardian will be appointed.[29]

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[22] Section 744.331(1), F.S.
[23] Section 744.331(3), F.S.
[24] 93 So 3d 1052 (4th DCA 2012).
[25] *Id.* at 1053.
[26] Section 744.331(5)(a), F.S.
[27] Section 744.331(5)(c), F.S.
[28] Section 744.331(6), F.S.
[29] Section 744.331(6)(b), F.S.

An order appointing a guardian must be issued contemporaneously with the order adjudicating the person incapacitated.[30] If a petition for the appointment of a guardian has not been filed at the time of the hearing on the petition to determine incapacity, the court may appoint an emergency temporary guardian.[31]

Minors

For minors, only a petition to appoint a guardian is filed. A petition to determine incapacity is not necessary.[32]

Guardians

Once a guardian is appointed by the court, the guardian serves as a surrogate decision-maker and makes personal or financial decisions, or both, for the ward.[33] Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship.[34] A fiduciary relationship exists between two persons when one of them is under a duty to act or to give advice for the benefit of another upon matters within the scope of that relationship.[35] The most basic duty of a fiduciary is the duty of loyalty: a fiduciary must refrain from self-dealing, must not take unfair advantage of the ward, must act in the best interest of the ward, and must disclose material facts.[36] In addition to the duty of loyalty, a fiduciary also owes a duty of care to carry out his or her responsibilities in an informed and considered manner.

At the heart of a court's interpretation of a fiduciary relationship is a concern that persons who assume trustee-like positions with discretionary power over the interests of others might breach their duties and abuse their position. Section 744.446, F.S., states that the "fiduciary relationship which exists between the guardian and the ward may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law." In the event of a breach by the guardian of the guardian's fiduciary duty, the court must take the necessary actions to protect the ward and the ward's assets.[37]

Confidentiality of Guardianship Reports

Section 744.361, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary including protecting and preserving the property of the ward and his or her overall physical and social health. For instance, a guardian must file with the court an initial guardianship report,[38] an annual guardianship report,[39] and an annual accounting of the ward's

[30] Section 744.344(3), F.S.
[31] Section 744.344(4), F.S.
[32] Fla. Prob. R. 5.555 (a)-(b), F.S..
[33] Section 744.102(9), F.S.
[34] *In re Guardianship of Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990).
[35] *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).
[36] *Capital Bank v. MVP, Inc.* 644 So. 2d 515, 520 (Fla. 3d DCA 1994).
[37] Section 744.446(4), F.S.
[38] Section 744.362, F.S.
[39] Section 744.367, F.S.

property.[40] The reports provide evidence of the guardian's faithful execution of his or her fiduciary duties.[41]

The guardianships reports as well as settlement agreements are deemed confidential information under s. 744.3701, F.S., and may only be shared with specific, enumerated individuals or agency representatives, or when authorized by a court order.[42]

Continuing Court Jurisdiction

The court retains jurisdiction over all guardianships and shall review the appropriateness and extent of a guardianship annually.[43] At any time, any interested person, including the ward, may petition the court for review alleging that the guardian is not complying with the guardianship plan or is exceeding his or her authority under the guardianship plan and is not acting in the best interest of the ward. If the petition for review is found to be without merit the court may assess costs and attorney fees against the petitioner.[44]

A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee.[45] Fees and costs incurred are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable.[46]

A ward has the right to be restored to capacity at the earliest possible time.[47] The ward, or any interested person filing a suggestion of capacity, has the burden of proving the ward is capable of exercising some or all of the rights which were removed.[48]

III. Effect of Proposed Changes:

SB 1338 amends three provisions of Florida's Guardianship Law. The changes in Sections 1 and 3 appear to be more minor or technical in nature, while the change is Section 2 substantively changes the standard and procedures for the dismissal of a petition to determine incapacity.

Section 1 makes technical changes to s. 744.1097, F.S., concerning how venue is determined in two types of proceedings: (1) proceeding for declaration of incapacity, and (2) proceeding for the appointment of a guardian. For the second type of proceeding, appointment of a guardian, the bill adds the word "minor" to clarify that the venue determination applies to minors as well as incapacitated persons. This appears to bring the statutory language in line with current practice.

[40] Section 744.3678, F.S.
[41] Section 744.368, F.S.
[42] *See also* Fla. R. Jud. Admin. 2.420 (d)(1)(xv)(requiring clerks of court to maintain confidentiality of "[g]uardianship reports, orders appointing court monitors, and orders relating to findings of no probable cause in guardianship cases. §§ 744.1076, 744.3701, Fla. Stat.").
[43] Section 744.372, F.S.
[44] Section 744.3715, F.S.
[45] Section 744.108(1), F.S.
[46] Section 744.108(8), F.S.
[47] Section 744.3215(1)(c), F.S.
[48] Section 744.464(2)(b), F.S.

Additionally, the bill adds the word minor to clarify that the provisions requiring a change of venue (either by virtue of a petition from the guardian or by virtue of the ward being "found" in a different county than the county of residence) applies to minors as well as incapacitated persons.

Section 2 makes technical changes to s. 744.3701(1), F.S.:

- Removing a comma in the first sentence to clarify that the court's order to permit inspection of confidential guardianship reports and settlement agreements must be based on a showing of good cause.
- Adding language directly after the comma to clarify that confidential guardianship reports and settlement agreements may also be inspected if "otherwise provided by this chapter."
- Reformatting and creating a list of the existing enumerated persons and agency representatives who may inspect confidential guardianship reports and settlement agreements without a court order based on good cause or some other statutory authorization.

Section 3 of the bill substantively amends the standard and procedures for dismissal of petitions to determine capacity in s. 744.331(4), F.S. Currently, a court is *required* to dismiss a petition if a *majority* (2 out of 3) of the examining committee members conclude that the alleged incapacitated person is not incapacitated in any respect. This provision has been construed in *Rothman v. Rothman* as an absolute, non-discretionary requirement by a court, notwithstanding any other extrinsic evidence.

The bill amends the standard for dismissal of petitions to require to court to dismiss a petition if the examining committee *unanimously* (3 out of 3) concludes the alleged incapacitated person is not incapacitated in any respect.

However, the bill also provides an *exception*, permitting an interested person to challenge the unanimous determination and essentially object to dismissal of the petition. The procedures governing this exception provide that the court must dismiss a petition *unless* a verified motion challenging the examining committee's unanimous conclusion is

- Filed within 10 days after service of the last examining committee report; and
- Makes a reasonable showing that a hearing on the petition is *necessary* based on evidence already in the record or proffered evidence.

When a verified motion is filed, the court must rule on it as soon as practicable. There is also an inference that the verified motion must be filed in good faith based on the bill's provision that the court may imposed sanction under s. 744.331(7)(c)2, F.S if it finds the verified motion was filed in bad faith.

Section 4 provides that the bill applies retroactively to all pending proceedings under the Florida Guardianship Law.

Section 5 provides the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill, particularly the new standard and procedure for dismissal of a petition, may increase costs associated with court proceedings. Many of these costs will be borne by the alleged incapacitated person. However, it may also protect more incapacitated, vulnerable individuals and their assets from those seeking to take advantage of the incapacity by ensuring the courts still have discretion and are not bound by potentially improper reports given to the examining committee. Additionally, the bill provides for the threat of sanctions for any verified motions challenging the examining committee's conclusions filed in bad faith.

C. Government Sector Impact:

The additional hearing authorized by the bill may have a fiscal impact on the state court system by increasing judicial workloads.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 744.1097, 744.331, and 744.3701, Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Rodriguez

37-01934A-19 20191338__

A bill to be entitled

An act relating to guardianship; amending s. 744.1097, F.S.; applying provisions relating to the determination of venue in proceedings for the appointment of a guardian to minors; amending s. 744.331, F.S.; requiring that a court dismiss a petition for determination of incapacity if all members of the examining committee conclude that the person is not incapacitated, unless a certain motion is filed within a specified period; providing requirements for such motion; requiring the court to rule on the motion as soon as practicable; authorizing the court to impose sanctions under certain circumstances; amending s. 744.3701, F.S.; making technical revisions; providing for retroactive application; providing an effective date.

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

Section 1. Section 744.1097, Florida Statutes, is amended to read:

744.1097 Venue.—

(1) The venue in proceedings for declaration of incapacity shall be where the alleged incapacitated person resides or is found. ~~The provisions of~~ This section does ~~do~~ not apply to veterans.

(2) The venue in proceedings for the appointment of a guardian is ~~shall be~~:

(a) If the incapacitated person or minor is a resident of this state, in the county where the incapacitated person or minor resides.

(b) If the incapacitated person or minor is not a resident of this state, in any county in this state where property of the incapacitated person or minor is located.

(c) If the incapacitated person or minor is not a resident of this state and owns no property in this state, in the county where any debtor of the incapacitated person or minor resides.

(3) When the residence of an incapacitated person or minor is changed to another county, the guardian shall petition to have the venue of the guardianship changed to the county of the acquired residence, except as provided in s. 744.1098.

(4) If an incapacitated person or minor is a resident of this state and is found in a county other than the county of residence, the venue for declaration of incapacity and for the appointment of a guardian may be the county where the incapacitated person or minor is found. Upon transfer of the incapacitated person or minor to the county of residence, the guardian may have the venue of the guardianship changed to the county of residence and a successor guardian may be appointed.

Section 2. Subsection (4) of section 744.331, Florida Statutes is amended to read:

744.331 Procedures to determine incapacity.—

(4) DISMISSAL OF PETITION.—If all three members of the examining committee conclude that the alleged incapacitated person is not incapacitated in any respect, the court must dismiss the petition unless a verified motion that challenges the examining committee's conclusion is filed no later than 10 days after service of the last examining committee report. The

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

verified motion must make a reasonable showing, by evidence in the record or proffered, that a hearing on the petition is necessary. The court shall rule on the verified motion as soon as is practicable. If the court finds that the verified motion is filed in bad faith, the court may impose sanctions under subparagraph (7)(c)2. ~~If a majority of the examining committee members conclude that the alleged incapacitated person is not incapacitated in any respect, the court shall dismiss the petition.~~

Section 3. Subsection (1) of section 744.3701, Florida Statutes, is amended to read:

744.3701 Confidentiality.—

(1) Unless otherwise ordered by the court~~,~~ upon a showing of good cause, or unless otherwise provided by this chapter, an initial, annual, or final guardianship report or amendment thereto, or a court record relating to the settlement of a claim, is subject to inspection only by any of the following:

(a) The court.~~,~~

(b) The clerk or the clerk's representative.~~,~~

(c) The guardian and the guardian's attorney.~~,~~

(d) The guardian ad litem with regard to the settlement of the claim.~~,~~

(e) The ward if he or she is at least 14 years of age and has not been determined to be totally incapacitated.~~,~~

(f) The ward's attorney.~~,~~

(g) The minor if he or she is at least 14 years of age.~~, or~~

(h) The attorney representing the minor with regard to the minor's claim~~, or as otherwise provided by this chapter~~.

Section 4. This act applies retroactively to all

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

proceedings pending before the effective date of this act and to all proceedings commenced on or after the effective date of this act.

Section 5. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 23, 2019
Meeting Date

SB 1338
Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Brittany Finkbeiner

Job Title

Address 215 South Monroe Street, Suite 815
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Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Real Property, Probate & Trust Law Section of the Florida Bar

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1476
INTRODUCER:	Banking and Insurance Committee and Senator Flores
SUBJECT:	Citizens Property Insurance Corporation
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Toman	Yeatman	CA	**Favorable**
3.	Matiyow	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1476 provides that Citizens Property Insurance Corporation (Citizens) may not impose a rate increase in any single year in excess of 5 percent, except for sinkhole coverage, for any single policy that covers property located in a county:

- Where the Office of Insurance Regulation determines there is not a reasonable degree of competition; and
- That has 25 percent or more of county land designated as an area of critical state concern.

The reduced rate cap begins January 1, 2020, and expires January 1, 2022.

This is an exception from current law, which applies to all counties and prohibits Citizens from imposing a rate increase in any single year in excess of 10 percent for any single policy, except for sinkhole coverage.

Currently, Citizens policyholders who reside in Monroe County would meet the criteria for the reduced rate cap. The bill would reduce premiums paid to Citizens by an estimated $2.95 million over the 2 years the 5 percent rate cap is in effect.[1]

The effective date of the bill is July 1, 2019.

[1] Email from Christine Ashburn, Communications, Legislative and External Affairs Chief for Citizens Property Insurance Corporation, March 22, 2019 (on file with Senate Committee on Banking and Insurance).

II. Present Situation:

Citizens Property Insurance Corporation (Citizens)

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[2] Citizens is not a private insurance company.[3] Citizens was statutorily created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors[4] that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.[5] Assets may not be commingled or used to fund losses in another account.[6]

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile homeowners, dwellings, tenants, and condominium unit owner's policies.

The Commercial Lines Account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

The Coastal Account offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.[7]

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[2] Admitted market means insurance companies licensed to transact insurance in Florida.
[3] Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.
[4] The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives each appoint two members.
[5] The Personal Lines Account and the Commercial Lines Account are combined for credit and Florida Hurricane Catastrophe Fund coverage.
[6] Section 627.351(6)(b)2b., F.S.
[7] In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.[8] Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens. For new policies applying with Citizens, any private market offer through the clearinghouse for similar coverage that is not greater than 15 percent of Citizens' rate makes the policy ineligible for coverage with Citizens. Additionally, a renewal Citizens policy that receives any private market offer through the clearinghouse for similar coverage that is equal to or less than Citizens' rate is ineligible for coverage with Citizens.

Citizens Board of Governors

Citizens operates under the direction of a nine member Board of Governors (board). The board members are not Citizens' employees and are not paid. The Chief Financial Officer, President of the Senate, and Speaker of the House of Representatives each appoint two members of the board, with one member appointed chair by the Chief Financial Officer (CFO). The Governor appoints three members, one of whom serves as a consumer representative.[9] Board members serve 3 year staggered terms.

At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. By law, board members with the required insurance expertise fall within the exemption in the conflicting employment or contractual relationship statute that applies to public officers and agency employees.[10] Thus, these board members can maintain employment in the private sector in jobs involving business with Citizens without violating the conflict of interest statute because half of the board members are required by law to have insurance expertise in order to sit on the board.[11]

Citizens Glide Path Rates

Citizens' rates for coverage are required to be actuarially sound and, except as otherwise provided in s. 627.351(6), F.S., are subject to the rate standards for property and casualty insurance in s. 627.062, F.S.[12] From 2007 until 2010, Citizens rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glide path" to impose annual rate increases up to a level that is actuarially sound. Citizens must implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges.[13] The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor

[8] Section 10, ch. 2013-60 L.O.F.
[9] s. 627.351(6)(c)4.a., F.S.
[10] Board members of Citizens fall under the definition of "public officer" in s. 112.313(1), F.S., because that definition includes any person appointed to hold office in any agency, including serving on an advisory board. "Agency" is defined in s. 112.312, F.S.
[11] Section 627.351(6)(c)4.a., F.S.
[12] Among the factors the Office of Insurance Regulation considers when reviewing a rate filing is the degree of competition among the insurers for the risk insured, per s. 627.062(3)(b), F.S.
[13] Section 627.351(6)(n)6., F.S.

added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.

Citizens Financial Resources

Citizens' financial resources include insurance premiums, investment income, operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. If a deficit occurs in a Citizens account, Citizens is authorized to levy assessments on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.[14] The assessments Citizens may impose and their sequence is as follows:

Citizens Surcharge: Requires up to 15 percent of premium surcharge for 12 months on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied on each of the three Citizens' accounts with a maximum assessment of 45 percent of premium.

Regular Assessment: If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers (except medical malpractice and workers comp). The assessment may be recouped from policyholders through a rate filing process of up to 2 percent of premium or 2 percent of the deficit, whichever is greater. This assessment is not levied against Citizens' policyholders.

Emergency Assessment: Requires any remaining deficit for either of Citizens three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers comp), but including Citizens' policyholders. This assessment is levied up to 10 percent of premium or 10 percent of the deficit per account, whichever is greater. The maximum emergency assessment that can be levied against Florida's varicose insurance policyholders is 30 percent per policy.

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules, which are approved by the OIR, give flexibility for Citizens to denote some risks as uninsurable based on factors not enumerated in statute, such as age of home, condition and age of roof, vacant property, certain seasonal occupancy, and type of electrical wiring.

[14] Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are.

Eligibility Based on Premium Amount

Under current law, an applicant for residential insurance cannot buy insurance in Citizens if an admitted insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 15 percent or more.[15] In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

Under current law, a residential policyholder cannot renew insurance in Citizens if an insurer in the private market offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.[16]

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.[17] Structures with a dwelling replacement cost or a condominium unit that has a dwelling and contents replacement cost of $700,000 or more are not eligible for coverage by the corporation.[18]

However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of $1 million or less in Miami-Dade and Monroe counties, after the OIR determined there was not a reasonable degree of competition in these counties (i.e. the counties were deemed non-competitive).[19]

Citizens does not have any eligibility restrictions based on the value of the property insured for condominium associations, homeowner associations, or apartment building policies. Citizens has multiple eligibility and coverage restrictions for commercial businesses, depending on where the business is located and the type of policy the business purchases from Citizens. These restrictions are contained in the underwriting rules of Citizens, not in the statute.

Areas of Critical State Concern

The Areas of Critical State Concern Program was created by the Florida Environmental Land and Water Management Act of 1972.[20] The program is intended to protect resources and public facilities of major statewide significance, within designated geographic areas, from uncontrolled development that would cause substantial deterioration of such resources. Section 380.05, F.S., allows the Florida Administration Commission[21] to designate areas that contain resources of statewide significance as an Area of Critical State Concern.

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[15] Section 627.351(6)(c)5., F.S.
[16] Section 627.351(6)(c)5., F.S.
[17] Section 627.351(6)(a)3., F.S.
[18] *Id.*
[19] *Id.* and Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (on file with the Committee on Banking and Insurance).
[20] Florida Department of Economic Opportunity, Areas of Critical State Concern Program, *available at* http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern (last visited March 28, 2019).
[21] Section 380.031(1), F.S., "Administration Commission" or "commission" means the Governor and the Cabinet.

Florida Keys Area of Critical State Concern

The Florida Keys Area of Critical State Concern, designated in 1974, includes the Village of Islamorada, City of Marathon, City of Layton, City of Key Colony Beach, and unincorporated Monroe County. In 1984, the City of Key West was also designated an Area of Critical State Concern. Administration Commission oversight includes authority to promulgate administrative rules that guide local government growth and development decisions related to comprehensive plans and land development regulations. Annually, the Florida Department of Economic Opportunity (DEO) is required by s. 380.0552(4)(b), F.S., to submit a written report to the Florida Administration Commission describing the progress of the Florida Keys Area toward completing the work program tasks specified in commission rules.

Big Cypress Area of Critical State Concern

The Big Cypress Area of Critical State Concern includes portions of Collier, Mainland Monroe, and Miami-Dade Counties and was designated by the Big Cypress Conservation Act of 1973[22] and s. 380.055, F.S. The area is approximately 860,000 acres of which 729,000 acres are in the Big Cypress National Preserve. The purpose for designation was to "conserve and protect the natural, environmental and economic resources and the scenic beauty of the Big Cypress Area, including the proposed Federal Big Cypress National Fresh Water Reserve, the Everglades National Park, and ecologically related wetlands, estuarine fisheries, and the fresh water aquifer, and ecologically related areas."[23]

III. Effect of Proposed Changes:

The bill would reduce the current Citizens rate cap of no more than a 10 percent increase, per policy, per year, to no more than a 5 percent increase, per policy, per year, in a county where the Office of Insurance Regulation determines there is not a reasonable degree of competition and the county has 25 percent or more of land designated as an area of critical state concern. Sinkhole coverage is excluded from the rate caps. The reduced rate cap for these areas begin January 1, 2020, and expires January 1, 2022.

Currently, the OIR has determined Miami-Dade and Monroe County to be noncompetitive for purposes of determining eligibility for Citizens.[24] Monroe County has more than 25 percent of county land designated as an Area of Critical State Concern. Thus, Monroe County is currently the only county that would qualify for the reduced rate cap of 5 percent.

The effective date of the bill is July 1, 2019.

[22] Florida Department of Economic Opportunity, Big Cypress Area, *available at* http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/areas-of-critical-state-concern/the-big-cypress-swamp (last visited March 28, 2019).
[23] Fla. Admin. Code R. 28-25.002
[24] Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (on file with the Committee on Banking and Insurance).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Citizens policyholders in Monroe County will have potential rate increases capped at no more than 5 percent per year rather than the current cap of no more than 10 percent per year. Representatives from Citizens estimate the bill will reduce premiums paid to Citizens by an estimated $2.95 million over the 2 years the 5 percent rate cap is in effect.[25]

Should Citizens run a deficit for failing to collect enough premium to pay for losses, surcharges and assessments could be needed. If needed, they would be levied to Citizens policyholders and all lines of private insurance excluding medical malpractice and workers compensation.

C. Government Sector Impact:

The current percent of increased rate needed for Citizens to be actuarially sound in Monroe County is 47.2 percent.[26]

[25] Email from Christine Ashburn, Communications, Legislative and External Affairs Chief for Citizens Property Insurance Corporation, March 22, 2019 (on file with Senate Committee on Banking and Insurance).
[26] *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.351 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on March 25, 2019:
The CS applies the 5 percent rate cap to counties with 25 percent or more of land designated as an area of critical state concern. The CS reduces from 4 years to 2 years the time in which the 5 percent rate cap would be in effect.

B. Amendments:

None.

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

By the Committee on Banking and Insurance; and Senator Flores

597-03482-19 20191476c1

A bill to be entitled

An act relating to the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; specifying a limit on annual rate increases, except for certain coverage, in policies issued by the corporation to insureds located in certain counties; providing for future expiration; providing an effective date.

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

Section 1. Paragraph (n) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

597-03482-19 20191476c1

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The rate filings for the corporation which were approved by the office and took effect January 1, 2007, are rescinded, except for those rates that were lowered. As soon as possible, the corporation shall begin using the lower rates that were in effect on December 31, 2006, and provide refunds to policyholders who paid higher rates as a result of that rate filing. The rates in effect on December 31, 2006, remain in effect for the 2007 and 2008 calendar years except for any rate change that results in a lower rate. The next rate change that may increase rates shall take effect pursuant to a new rate filing recommended by the corporation and established by the office, subject to this paragraph.

5. Beginning on July 15, 2009, and annually thereafter, the corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes, to be effective no earlier than January 1, 2010.

6.a. Beginning ~~on or after~~ January 1, 2010, and notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under

subparagraph 1., the corporation shall annually implement a rate increase that ~~which~~, except for sinkhole coverage, does not exceed 10 percent for any single policy issued by the corporation, excluding coverage changes and surcharges.

b. Beginning January 1, 2020, and notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase that, except for sinkhole coverage, does not exceed 10 percent for any single policy issued by the corporation and does not exceed 5 percent for any single policy issued by the corporation to an insured located in a county where the office has determined there is not a reasonable degree of competition and where 25 percent or more of the county land is designated as an area of critical state concern under s. 380.05, excluding coverage changes and surcharges. This sub-subparagraph expires January 1, 2022.

7. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

8. The corporation's implementation of rates as prescribed in subparagraph 6. shall cease for any line of business written by the corporation upon the corporation's implementation of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing for each commercial and personal line of business the corporation writes.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

April 23, 2019 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1476

Meeting Date *Bill Number (if applicable)*

Topic _____ *Amendment Barcode (if applicable)*

Name Steve Russ

Job Title Vice President - Firm

Address 3220 Riviera Drive Phone 305-294-0868

Street

Key West, FL 33040 Email steve.russ1@att.net

City *State* *Zip*

Speaking: ☐ For ☐ Against ☒ Information Waive Speaking: ☐ In Support ☐ Against

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

Representing Fair Insurance Rates for Monroe (FIRM)

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1618
INTRODUCER:	Innovation, Industry, and Technology Committee and Senator Simmons
SUBJECT:	Tobacco Products
DATE:	April 23, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Williams	Brown	HP	**Favorable**
2.	Oxamendi	Imhof	IT	**Fav/CS**
3.	Williams	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1618 increases the minimum age to lawfully purchase tobacco products (not including cigars) from 18 to 21 years of age. Under the bill, the minimum age to purchase cigars remains 18 years of age. The provisions of the bill may be cited as the "Tobacco 21 Act."

The bill defines "tobacco products" to include electronic smoking devices, such as electronic cigarettes. The sale of tobacco products through a vending machine is also prohibited by the bill.

The bill decriminalizes the penalties for any person who sells, delivers, barters, furnishes, or gives cigars to persons under the age of 18 or other tobacco products to a person under the age of 21. Instead of criminal penalties, the bill provides a noncriminal penalty of a fine of no more than $500 for the first offense and a fine of no more than $1,000 for a second or subsequent offense within one year of the first violation.

Additionally, the bill repeals the current prohibitions against the possession of tobacco products by persons under the minimum age of lawful possession. However, the bill maintains the current prohibition against any person who misrepresents his or her age for the purpose of inducing a retail tobacco dealer, or an agent or employee of the dealer, to sell any tobacco product or to attempt to purchase any tobacco product from a person or vending machine. The bill provides a noncriminal penalty of 20 hours of community service for a first offense and at least 40 hours of community service for subsequent offenses within one year of the first violation.

CS/SB 1618 may have a significant, negative fiscal impact on state government, the courts, and the clerks of court. See Section V, Fiscal Impact Statement.

The effective date of the bill is October 1, 2019.

II. Present Situation:

Tobacco Products Regulation in Florida

The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation is the state agency responsible for the regulation and enforcement of the tobacco products under ch. 569, F.S.

Section 569.002(6), F.S., defines the term "tobacco products" to include:

> loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Section 210.25(11), F.S., relating to the tax on tobacco products other than cigarettes or cigars, defines the term "tobacco products" to mean:

> loose tobacco suitable for smoking; snuff; snuff flour; Cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1), F.S., or cigars.

A retail tobacco dealer permit is required for each place of business where tobacco products are sold at retail.[1]

Tobacco Products and Minors

Section 569.0075, F.S., prohibits the giving of sample tobacco products to persons under the age of 18.

Section 569.101, F.S., prohibits the sale, delivery, bartering, furnishing or giving of tobacco products to persons under the age of 18. A violation of this prohibition is a second degree misdemeanor.[2] A second or subsequent violation within one year of the first violation is a first degree misdemeanor.[3]

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[1] Section 569.003(1), F.S.

[2] Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. Section 775.083, F.S. provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed $500.

[3] Section 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S. provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.

It is a complete defense to a person charged with a violation of s. 569.101, F.S., if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a prudent person would believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification[4] upon which the person relied in good faith.[5]

Section 569.11, F.S., prohibits persons under the age of 18 years from possessing, directly or indirectly, any tobacco products:

- A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a $25 fine, and attendance at a school-approved anti-tobacco program, if locally available.
- A second violation within 12 weeks of the first violation is punishable with a $25 fine.
- A third or subsequent violation within 12 weeks of the first violation requires that the person be punished with the suspension or revocation of his or her driver license or driving privilege, as provided in s. 322.056, F.S.[6]

However, a person "under the age of 18" does not include any person under the age of 18 who:

- Has had his or her disability of nonage removed under ch. 743, F.S.;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210, F.S., relating to taxation of cigarettes and other tobacco products, or ch. 569, F.S., relating to tobacco products.[7]

Eighty percent of all civil penalties received by a county court under s. 569.11, F.S., must be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.[8]

Retail tobacco product dealers (retailers) must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The division is required to make the signs available to retailers. Retailers must also

[4] Identification includes carefully checking "a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older." See s. 569.101(2)(c), F.S.

[5] Section 569.101(3), F.S.

[6] Section 322.056, F.S., requires the mandatory revocation or suspension of, or delay of eligibility for, a driver license for persons under 18 years of age found guilty of certain alcohol, drug, tobacco or nicotine product and nicotine dispensing device offenses. Penalties range from a 30-day suspension to a two-year revocation of a driver license. However, a court may, in its discretion, order a restricted driver license for business or employment purposes.

[7] Section 569.002(7), F.S.

[8] Section 569.11(6), F.S.

have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.[9]

To prevent persons under 18 years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except when those products are under the direct control or line of sight of the dealer or the dealer's agent or employee. If a tobacco product is sold from a vending machine, the vending machine must have:

- An operational lock-out device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lock-out device to allow the dispensing of one tobacco product;
- A mechanism on the lock-out device to prevent the machine from functioning if the power source for the lock-out device fails or if the lock-out device is disabled; and
- A mechanism to ensure that only one tobacco product is dispensed at a time.[10]

These requirements for the sale of tobacco products do not apply to an establishment that prohibits persons under 18 years of age on premises and do not apply to the sale or delivery of cigars and pipe tobacco.[11]

Section 386.212, F.S., in the Florida Clean Indoor Air Act, prohibits any person under the age of 18 from smoking tobacco within 1,000 feet of a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. A violation of this prohibition is punishable by a maximum noncriminal civil penalty not to exceed $25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco "alternative to suspension" program.

Mail Order, Internet, and Other Remote Sales of Tobacco Products

Section 210.095(5), F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of tobacco products, referred to as "delivery sales." Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale is required to:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes."
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
    - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 27 years of age.
    - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

[9] Section 569.14, F.S.
[10] Section 569.007(1), F.S.
[11] Sections 569.007(2) and (3), F.S.

- Provide to the delivery service, if such service is used, evidence of full compliance with requirements for the collection and remittance of all taxes imposed on tobacco products by this state with respect to the delivery sale.[12]

If a person accepts a purchase order for a delivery sale and delivers the tobacco products without using a delivery service, the person must comply with all of the requirements that apply to a delivery service.[13]

Section 210.095(8), F.S., currently provides that the penalty for the following violations of the delivery sale requirements is a misdemeanor of the third degree:[14]

- A delivery sale delivers tobacco products, on behalf of a delivery service, to an individual who is under 18 years of age.
- A violation of any provision in s. 210.095, F.S., by an individual who is under 18 years of age.

Florida law does not provide a criminal penalty classification for a misdemeanor of the third degree. However, the prohibitions and penalties in s. 569.101, F.S., prohibiting the sale, delivery, bartering, furnishing, or giving, directly or indirectly, to any person who is under 18 years of age, any tobacco product, and s. 569.11, F.S., prohibiting persons under 18 years of age from possessing, directly or indirectly, any tobacco products, apply to s. 210.095, F.S., related to the delivery of tobacco products to persons under the age of 18.

Nicotine Dispensing Devices

Section 877.112, F.S., provides for the regulation of nicotine dispensing devices and nicotine products, such as electronic cigarettes (e-cigarettes). This statute extends the current prohibitions related to tobacco products to the sale, gifting, possession, or use of nicotine dispensing devices and nicotine products to and by persons under 18 years of age.

A "nicotine dispensing device" is:

> any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.[15]

A "nicotine product" is any product that contains nicotine, including liquid nicotine intended for human consumption, whether inhaled, chewed, absorbed, dissolved or ingested by any means.

[12] Section 210.095(5), F.S.
[13] *Id.*
[14] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.
[15] Section 877.112(1)(a), F.S.

The definition does not include a tobacco product under Florida law, a drug or device under federal law, or a product that contains incidental nicotine.[16]

The sale or giving of nicotine products or nicotine dispensing devices to any person under 18 years of age is prohibited and punishable as a second degree misdemeanor.[17] It is a complete defense to a violation if an underage person falsely misrepresented his or her age, the underage person had the appearance to a prudent person to 18 years of age or older, and the person carefully checked, and relied on, the driver license or identification card of the recipient.[18]

Persons under 18 years of age possessing, purchasing, or misrepresenting their age or military service to obtain nicotine products or nicotine dispensing devices commit a noncriminal violation.[19] The penalty is 16 hours of community service or a $25 fine for a first violation, and attendance at a school-approved anti-tobacco and nicotine program, if available. A second violation within 12 weeks of the first violation requires a $25 fine. A third violation within 12 weeks of the first violation requires the suspension or revocation of the person's driver license, as provided in s. 322.056, F.S.[20]

Eighty percent of civil penalties specific to possession of nicotine products or nicotine dispensing devices by minors and misrepresenting age in making such purchases are remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court are retained by the clerk of the county court to cover administrative costs.[21]

Section 877.112(10), F.S., requires a retail dealer of nicotine products and nicotine dispensing devices to post signs that the sale of nicotine products and nicotine dispensing devices to persons under 18 years of age is prohibited.

Nicotine products or nicotine dispensing devices may not be sold or delivered by self-service merchandising, except when such products are under the direct control of, or in the line of sight where effective control may be reasonably maintained by, the retailer or their agent or employee.[22]

To prevent persons under 18 years of age from purchasing or receiving nicotine products or nicotine dispensing devices, s. 877.112(12), F.S., requires retailers to comply with restrictions identical to the restrictions on the sale of tobacco products in s. 569.007(1), F.S., such as requiring the products to be sold or delivered only when under the direct control or line of sight

[16] Section 877.112(1)(b), F.S.
[17] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.
[18] Section 877.112(5), F.S.
[19] Sections 877.112(6) and (7), F.S.
[20] Section 877.112(8), F.S.
[21] Section 877.112(9), F.S.
[22] Section 877.112(11), F.S.

of the retailer and requiring a lock-out device if the products are sold or delivered from a vending machine.

Responsible Retail Tobacco Products Dealers

Section 569.008, F.S., provides a process for a retail tobacco product dealer to mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 18 years of age.[23] The process encourages retail tobacco product dealers to comply with responsible practices. The division may mitigate penalties, if:

- The dealer is qualified as a responsible dealer having established and implemented specified practices designed to ensure that the dealer's employees comply with ch. 569, F.S., such as employee training.
- The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.
- The sale was made through a vending machine equipped with an operational lock-out device.[24]

Administrative Penalties

A retail tobacco dealer permit-holder can be disciplined under the division's penalty guidelines. For a violation of the prohibition in s. 569.06, F.S., against the sale of tobacco products to persons under 18 years of age, the guidelines provide:[25]

- 1st occurrence - $500 fine.
- 2nd occurrence - $1,000 fine.
- 3rd occurrence – $2,000 fine and a 20-day suspension of the dealer permit.
- 4th occurrence – revocation of the dealer permit.

These penalties are based on a single violation in which the permit-holder committed or knew about the violation; or a pattern of at least three violations on different dates within a 12-week period by employees, independent contractors, agents, or patrons on the licensed premises or in the scope of employment in which the permit-holder did not participate; or violations which were occurring in an open and notorious manner on the licensed premises.[26]

III. Effect of Proposed Changes:

"Tobacco 21 Act"

Section 1 of the bill provides that this act may be cited as the "Tobacco 21 Act."

[23] The Florida Responsible Vendor Act in ss. 561.701 - 561.706, F.S., provides a comparable process for mitigation of penalties against vendors of alcoholic beverages.
[24] *See* s. 569.008(3), F.S.
[25] Fla. Admin. Code R. 61A-2.022 (2019).
[26] Fla. Admin. Code R. 61A-2.022(1) (2019).

Mail Order, Internet, and Other Remote Sales of Tobacco Products

Section 2 amends s. 210.095, F.S., to increase the minimum age to purchase tobacco products (not including cigars) from 18 to 21 years of age. The minimum age to purchase cigars remains 18 years of age. The bill revises the penalties in s. 210.095, F.S., by:

- Decriminalizing a violation for a person who omits the required disclaimer from the shipping documents.
- Reducing the penalty from a "third degree misdemeanor" to a noncriminal violation with a penalty for a first offense of at least 20 hours of community service, and a penalty for a second or subsequent violation within one year of the first violation of least 40 hours of community service.
- Providing a penalty of a second degree misdemeanor (instead of the current "third degree misdemeanor") for a person who, in connection with a delivery sale, delivers tobacco products on behalf of a delivery service to an individual who is not an adult.

Mandatory Driver License Penalties

Section 3 amends s. 322.056, F.S., to repeal the mandatory revocation or suspension of, or the delay of eligibility for, a driver's license for persons under 18 years of age found guilty of certain tobacco or nicotine product and nicotine dispensing device offenses.

Definitions

Section 5 revises the definition of the term "tobacco products" and defines the terms "minimum age of purchase" and "electronic smoking device."

The term "minimum age of purchase" is defined to mean 18 years of age for cigars and 21 years of age for any other tobacco product.

The bill defines the term "electronic smoking device" as:

> any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The term includes any component, part, or accessory of such a device, sold separately or with the device, and includes any substance intended to be aerosolized or vaporized during the use of the device. The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

The bill revises the definition of "tobacco products" to mean:

> any product that is made from or derived from tobacco or that contains nicotine and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus.

Under the bill, the term "tobacco products" includes electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and liquids used in electronic smoking devices, whether or not they contain nicotine. However, the term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

By revising the definition of "tobacco products" to include electronic smoking devices, the bill requires a retail dealer of electronic smoking devices to obtain a retail tobacco dealer permit from the division.[27]

Section 14 repeals s. 877.112, F.S., which defines nicotine dispensing devises and nicotine products and prohibits the sale of such products to persons under the age of 18.

Retail sellers of electronic smoking devices are required by the bill to be licensed as retail tobacco products dealers because of the bill's amended definition of the term "tobacco products."

Decriminalization and Penalties

Section 9 amends s. 569.101, F.S., to decriminalize penalties for any person who sells, delivers, barters, furnishes, or gives a cigar to a person under 18 years of age or a tobacco product to a person under the age of 21. Under the bill, a violation of the prohibition on such acts is a noncriminal violation punishable by a fine of no more than $500 for the first offense, and a fine of no more than $1,000 for a second or subsequent offense within one year of the first violation.

Section 10 amends s. 569.11, F.S., relating to prohibitions on the possession of tobacco products by persons under the minimum age of purchase, to delete the current prohibition on the possession of tobacco products by a person who is under the minimum age for lawful possession of tobacco products and the related penalties for violations of the prohibition.

In lieu of criminal penalties, a person misrepresenting his or her age for the purpose of inducing a dealer or an agent or employee of the dealer to sell any tobacco product, or attempts to purchase any tobacco product from a person or vending machine, is subject to a noncriminal penalty of 20 hours of community service for a first offense, and at least 40 hours of community service for a second or subsequent offense within one year of the first violation.

The bill requires a person accused of a violation of s. 561.11, F.S., to appear before the county court for a hearing. The bill removes the option in current law permitting the accused to pay the applicable fine without having to appear in county court.

Section 12 amends s. 569.14(5), F.S., to decrease the applicable penalties for a retail tobacco dealer who fails to post a clear and conspicuous sign stating that the sale of tobacco to a person under the legal age is prohibited under Florida law. A violation of this prohibition remains a second degree misdemeanor, punishable by a fine of no more than $500, as provided in

[27] *See* s. 569.003(1), F.S.

s. 775.083, F.S., and the bill deletes the criminal penalty of a maximum 60-day period of incarceration provided in s. 775.082, F.S.

Sales Restrictions

Section 6 amends s. 569.007(1), F.S., and **Section 14** repeals s. 877.112, F.S., to eliminate the general restrictions on the sale or delivery of tobacco products, nicotine dispensing devises, and nicotine products. The bill requires that tobacco products and electronic smoking devices be sold from behind a counter where the products are required to be retrieved and hand delivered by an employee to the consumer. The bill repeals the current authorization for sales of nicotine products and nicotine dispensing devices from a vending machine.

Responsible Retail Tobacco Products Dealers

Section 8 amends s. 569.008, F.S., to remove the authority for the division to mitigate penalties based on a dealer's adherence to the responsible practices provided in this section. However, the bill retains the current conditions to qualify as a responsible retail tobacco products dealer.

Conforming Provisions

Sections 4, 7, 11, and 13 amend ss. 386.212, 569.075, 569.14, and 569.19, F.S., to increase the minimum age for the purchase or sale of tobacco and nicotine products (not including cigars) in these provisions from 18 years of age to 21 years of age. Under the bill, the minimum age to purchase cigars remains 18 years of age.

Effective Date

Section 15 provides for an effective date of October 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:

The bill amends s. 569.002(7), F.S., to revise the definition of "tobacco products" to include electronic smoking devices. The bill requires retail dealers of electronic smoking devices, such as electronic cigarettes, to obtain a retail tobacco product dealer permit,

which has an annual license fee of $50.[28] The bill addresses additional subjects related to tobacco products, including the legal age for possession of tobacco products and applicable penalties.

To the extent the bill imposes a fee on retail dealers of electronic smoking devices while addressing other subjects, the bill may be unconstitutional as a violation the single-subject requirement for the imposition, authorization, or raising of a state tax or fee under Article VII, Section 19 of the Florida Constitution. Under that section, a "state tax or fee imposed, authorized, or raised under this section must be contained in a separate bill that contains no other subject." A "fee" is defined by the Florida Constitution to mean "any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service."[29]

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who violate the current criminal prohibitions in ss. 569.101 and 569.11, F.S., will no longer incur costs under the bill related to the payment of criminal fines or costs related to incarceration.

Retail dealers of electronic smoking devices, such as electronic cigarettes, are required by the bill to obtain a retail tobacco product dealer permit, which has an annual license fee of $50.[30]

C. Government Sector Impact:

Based on estimates adopted by the Revenue Estimating Conference (REC) for HB 7119, raising the smoking age from 18 years old to 21 years old will reduce state revenue by $1.4 million ($4.8 million recurring) in Fiscal Year 2019-2020, including revenue to the Health Care Trust Fund (Trust). Local government revenue will be reduced by $0.1 million ($0.3 million recurring) in Fiscal Year 2019-2020. The REC estimate excludes the impact caused by the increased smoking age for cigars, since because SB 1618 does not increase the minimum age for cigars.

[28] *See* s. 569.003(1)(c), F.S.
[29] FLA. CONST. art. VII, s. 19(d)(1)
[30] *See* s. 569.003(1)(c), F.S.

Fiscal Year 2019-2020 ($/Millions)

Issues	GR Cash	GR Recurring	Trust Cash	Trust Recurring	Local Cash	Local Recurring	Total Cash	Total Recurring
Sales Tax: Raising Smoking Age to 21	(0.3)	(0.9)	(*)	(*)	(0.1)	(0.3)	(0.4)	(1.2)
Cigarette Tax: Raising Smoking Age to 21	(0.3)	(1.1)	(0.8)	(2.8)	(*)	(*)	(1.1)	(3.9)
Total	(0.6)	(2.0)	(0.8)	(2.8)	(0.1)	(0.3)	(1.5)	(5.1)

The Department of Business and Professional Regulation may incur indeterminate expenses related to personnel or modification of operational priorities needed to accommodate the additional licensure of dealers of electronic smoking devices.

Under current law, clerks of county courts may retain 20 percent of civil penalties received by a county court from penalties imposed for violations of the prohibitions in ss. 569.101 and 569.11, F.S., to cover administrative costs.[31] The bill repeals those penalties, which will eliminate this funding source.

The bill requires a person accused of a violation of s. 561.11, F.S., to appear before the county court for a hearing and removes the option in current law permitting an accused person to pay the applicable fine without having to appear in county court. This may have an indeterminate impact on county courts due to the additional time and personnel required to schedule and hold these hearings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 5 repeals s. 569.002(7), F.S. This subsection provides exclusions from the meaning of "any person under the age of 18." The bill does not provide comparable exclusions for persons under 21 years of age. The elimination of these exceptions to the minimum age to purchase tobacco products, coupled with the increase of the minimum age to 21 years of age, may require active duty or reserve military personnel to be 21 to purchase or possess tobacco products, including electronic smoking devices.

The bill does not revise the definition of "tobacco products" in ch. 210, F.S., which governs the excise tax and surcharge imposed and collected on cigarettes and other tobacco products. Consequently, the bill does not affect:

- The collection of excise taxes and surcharge taxes on tobacco products; and
- The licensure, reporting, and recordkeeping of manufacturers and distributors of the additional nicotine delivery products.

Seven states, and the U.S. Territory of Guam, have raised the minimum age for a person to lawfully possess or purchase tobacco products to 21 years of age: California, New Jersey, Oregon, Hawaii, Maine, Massachusetts, and Virginia (effective July 1, 2019). At least 445 localities, including New York City, Chicago, San Francisco, San Antonio, Boston, Cincinnati,

[31] *See* ss. 569.11(6) and 877.112(9), F.S.

Cleveland, Columbus, and Kansas City (in Kansas and Missouri), plus Washington, D.C., have also raised the minimum to 21 years of age.[32]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.095, 322.056, 386.212, 569.002, 569.007, 569.0075, 569.008, 569.101, 569.11, 569.12, 569.14, and 569.19.

This bill repeals section 877.112 of the Florida Statutes.

This bill creates an undesignated section of Florida law.

IX. Additional Information:

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

CS by Innovation, Industry, and Technology on April 2, 2019:
Under the committee substitute, the minimum age to purchase cigars remains 18 years of age.

B. Amendments:

None.

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

[32] *See* Campaign for Tobacco-Free Kids, States and Localities that have Raised the Minimum Legal Sale Age for Tobacco Products to 21, *available at* https://www.tobaccofreekids.org/assets/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf (Last visited Mar. 15, 2019).

923616

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2019	.	
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	.	

The Committee on Rules (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "Tobacco 21 Act."

Section 2. Section 163.085, Florida Statutes, is created to read:

163.085 Preemption of the establishment of the minimum age for tobacco products, nicotine products, or nicotine dispensing devices, and the regulation of marketing of such products.—

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

(a) "Local government" means a county, municipality, or special district.

(b) "Minimum age" means the lawful age to purchase or knowingly possess tobacco products, nicotine products, or nicotine dispensing devices.

(c) "Nicotine dispensing device" has the same meaning as in s. 877.112.

(d) "Nicotine product" has the same meaning as in s. 877.112.

(e) "Retail licensure" means any certification, registration, or license that is required for a person, firm, association, or corporation to deal, at retail, with or regarding any tobacco products.

(f) "Tobacco products" has the same meaning as in s. 569.002.

(2) PREEMPTION.—The establishment of the minimum age for the sale and delivery of tobacco products, nicotine products, or nicotine dispensing devices, and the regulation of marketing as it relates to the minimum age regarding such products, is preempted to the state. Nothing in this section shall be construed to affect a local government's ability to require retail licensure for the sale of tobacco products.

Section 3. Present paragraphs (b) through (f) of subsection (1) of section 210.095, Florida Statutes, are redesignated as paragraphs (a) through (e), respectively, a new paragraph (f) is added to that section, and present paragraph (a) of subsection (1), paragraph (c) of subsection (2), paragraph (a) of subsection (3), paragraph (a) of subsection (4), subsection (5), and paragraphs (a), (b), (e), and (g) of subsection (8) of that

923616

section are amended, to read:

210.095 Mail order, Internet, and remote sales of tobacco products; age verification.—

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

~~(a) "Adult" means an individual who is at least of the legal minimum purchase age for tobacco products.~~

(f) "The minimum age for purchase" means 18 years of age for cigars and 21 years of age for any other tobacco product.

(2)

(c) A person may not make a delivery sale of tobacco products to any individual who is not the minimum age for purchase ~~an adult~~.

(3) A person may not mail, ship, or otherwise deliver tobacco products in connection with an order for a delivery sale unless, before the first delivery to the consumer, the person accepting the order for the delivery sale:

(a) Obtains from the individual submitting the order a certification that includes:

1. Reliable confirmation that the individual is the minimum age for purchase ~~an adult~~; and

2. A statement signed by the individual in writing and under penalty of perjury which:

a. Certifies the address and date of birth of the individual; and

b. Confirms that the individual wants to receive delivery sales from a tobacco company and understands that, under the laws of this state, the following actions are illegal:

(I) Signing another individual's name to the certification;

(II) Selling tobacco products to individuals under the

legal minimum purchase age; and

(III) Purchasing tobacco products, if the person making the purchase is under the legal minimum purchase age.

In addition to the requirements of this subsection, a person accepting an order for a delivery sale may request that a consumer provide an electronic mail address.

(4) The notice described in paragraph (3)(c) must include prominent and clearly legible statements that sales of tobacco products are:

(a) Illegal if made to individuals who are not the minimum age for purchase ~~adults~~.

The notice must include an explanation of how each tax has been, or is to be, paid with respect to the delivery sale.

(5) Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale must:

(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping cigars to individuals under 18 years of age, prohibits shipping any other tobacco product to individuals under 21 years of age, and requires the payment of all applicable taxes."

(b) Use a method of mailing, shipping, or delivery which obligates the delivery service to require:

1. The individual submitting the order for the delivery sale or another individual who is the minimum age for purchase ~~adult~~ who resides at the individual's address to sign his or her

name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 27 years of age.

2. Proof that the individual is either the addressee or the individual who is the minimum age for purchase ~~adult~~ designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

(c) Provide to the delivery service, if such service is used, evidence of full compliance with subsection (7).

If the person accepting a purchase order for a delivery sale delivers the tobacco products without using a delivery service, the person must comply with all of the requirements of this section which apply to a delivery service. Any failure to comply with a requirement of this section constitutes a violation thereof.

(8)(a) Except as otherwise provided in this section, a violation of this section by a person other than an individual who is not the minimum age for purchase ~~an adult~~ is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and:

1. For a first violation of this section, the person shall be fined $1,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

2. For a second or subsequent violation of this section, the person shall be fined $5,000 or five times the retail value of the tobacco products involved in the violation, whichever is

greater.

(b) A person who is the minimum age for purchase ~~an adult~~ and knowingly submits a false certification under subsection (3) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For each offense, the person shall be fined $10,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

(e) A person who, in connection with a delivery sale, delivers tobacco products on behalf of a delivery service to an individual who is not the minimum age for purchase ~~an adult~~ commits a misdemeanor of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(g) An individual who is not the minimum age for purchase ~~an adult~~ and who knowingly violates any provision of this section commits a misdemeanor of the third degree, punishable as provided in s. 775.082 or s. 775.083.

Section 4. Subsection (1) of section 386.212, Florida Statutes, is amended to read:

386.212 Smoking prohibited near school property; penalty.—

(1) It is unlawful for any person under 18 years of age to smoke a cigar, or any person under 21 years of age to smoke any other tobacco product, in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. This section does not apply to any person occupying a moving vehicle or within a private residence.

Section 5. Present subsections (3) through (7) of section 569.002, Florida Statutes, are redesignated as subsections (4)

923616

through (8), respectively, a new subsection (3) is added to that section, and present subsection (7) is amended, to read:

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

(3) "The minimum age for purchase" means 18 years of age for cigars and 21 years of age for any other tobacco product.

(8) ~~(7)~~ "Any person under the minimum age of purchase ~~18~~" does not include any person under the minimum age of purchase ~~18~~ who:

~~(a) Has had his or her disability of nonage removed under chapter 743;~~

(a) ~~(b)~~ Is in the military reserve or on active duty in the Armed Forces of the United States; or

~~(c) Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or~~

(b) ~~(d)~~ Is acting in his or her scope of lawful employment with an entity licensed under the provisions of chapter 210 or this chapter.

Section 6. Subsections (1) and (2) of section 569.007, Florida Statutes, are amended to read:

569.007 Sale or delivery of tobacco products; restrictions.—

(1) In order to prevent persons under the minimum age of purchase ~~18 years of age~~ from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except:

(a) When under the direct control or line of sight of the dealer or the dealer's agent or employee; or

(b) Sales from a vending machine are prohibited under the

provisions of paragraph (1)(a) and are only permissible from a machine that is equipped with an operational lockout device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product. The lockout device must include a mechanism to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled, and a mechanism to ensure that only one tobacco product is dispensed at a time.

(2) The provisions of subsection (1) shall not apply to an establishment that prohibits persons under 21 ~~18~~ years of age on the licensed premises.

Section 7. Section 569.0075, Florida Statutes, is amended to read:

569.0075 Gift of sample tobacco products prohibited.—The gift of sample tobacco products to any person under the minimum age for purchase ~~age of 18~~ by an entity licensed or permitted under the provisions of chapter 210 or this chapter, or by an employee of such entity, is prohibited and is punishable as provided in s. 569.101.

Section 8. Subsections (1), (2), and (3) of section 569.008, Florida Statutes, are amended to read:

569.008 Responsible retail tobacco products dealers; qualifications; mitigation of disciplinary penalties; diligent management and supervision; presumption.—

(1) The Legislature intends to prevent the sale of tobacco products to persons under the minimum age for purchase ~~18 years of age~~ and to encourage retail tobacco products dealers to

comply with responsible practices in accordance with this section.

(2) To qualify as a responsible retail tobacco products dealer, the dealer must establish and implement procedures designed to ensure that the dealer's employees comply with the provisions of this chapter. The dealer must provide a training program for the dealer's employees which addresses the use and sale of tobacco products and which includes at least the following topics:

(a) Laws covering the sale of tobacco products.

(b) Methods of recognizing and handling customers under the minimum age for purchase ~~18 years of age~~.

(c) Procedures for proper examination of identification cards in order to verify that customers are not under the minimum age for purchase ~~18 years of age~~.

(d) The use of the age audit identification function on electronic point-of-sale equipment, where available.

(3) In determining penalties under s. 569.006, the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under the minimum age for purchase ~~18 years of age~~ if the following conditions are met:

(a) The dealer is qualified as a responsible dealer under this section.

(b) The dealer provided the training program required under subsection (2) to that employee before the illegal sale occurred.

(c) The dealer had no knowledge of that employee's violation at the time of the violation and did not direct,

approve, or participate in the violation.

(d) If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

Section 9. Section 569.101, Florida Statutes, is amended to read:

569.101 Selling, delivering, bartering, furnishing, or giving tobacco products to persons under the minimum age for purchase ~~18 years of age~~; criminal penalties; defense.—

(1) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under the minimum age for purchase ~~18 years of age~~, any tobacco product.

(2) Any person who violates subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any person who violates subsection (1) for a second or subsequent time within 1 year of the first violation, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person charged with a violation of subsection (1) has a complete defense if, at the time the tobacco product was sold, delivered, bartered, furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he was the minimum age for purchase ~~18 years of age~~ or older;

(b) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be the minimum age for purchase ~~18 years of age~~ or older; and

(c) Such person carefully checked a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and

acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was the minimum age for purchase ~~18 years of age~~ or older.

Section 10. Section 569.11, Florida Statutes, is amended to read:

569.11 Possession, Misrepresenting age or military service to purchase, and purchase of tobacco products by persons under the minimum age for purchase ~~18 years of age~~ prohibited; penalties; jurisdiction; disposition of fines.—

(1) It is unlawful for any person under the minimum age for purchase ~~18 years of age~~ to knowingly possess any tobacco product. Any person under the minimum age for purchase ~~18 years of age~~ who violates the provisions of this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available;

(b) For a second violation within 12 weeks of the first violation, a $25 fine; or

(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person’s driver license or driving privilege, as provided in s. 322.056.

Any second or subsequent violation not within the 12-week time

period after the first violation is punishable as provided for a first violation.

(2) It is unlawful for any person under the minimum age for purchase ~~18 years of age~~ to misrepresent his or her age or military service for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any tobacco product, or to purchase, or attempt to purchase, any tobacco product from a person or a vending machine. Any person under the minimum age for purchase ~~18 years of age~~ who violates a provision of this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco program, if available;

(b) For a second violation within 12 weeks of the first violation, a $25 fine; or

(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person’s driver license or driving privilege, as provided in s. 322.056.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(3) Any person under the minimum age for purchase ~~18 years of age~~ cited for committing a noncriminal violation under this

section must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.

(4) A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (1) or subsection (2). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.

(5)(a) If a person under the minimum age for purchase ~~18 years of age~~ is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (1)(a) or paragraph (2)(a), or attend a school-approved anti-tobacco program, if locally available, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.

(b) If a person under the minimum age for purchase ~~18 years of age~~ is found by the court to have committed a noncriminal

violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.

(6) Eighty percent of all civil penalties received by a county court pursuant to this section shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children. The remaining 20 percent of civil penalties received by a county court pursuant to this section shall remain with the clerk of the county court to cover administrative costs.

Section 11. Paragraph (b) of subsection (2) and subsection (3) of section 569.12, Florida Statutes, are amended to read:

569.12 Jurisdiction; tobacco product enforcement officers or agents; enforcement.—

(2)

(b) A tobacco product enforcement officer is authorized to issue a citation to a person under the minimum age for purchase ~~of 18~~ when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 386.212 or s. 569.11.

(3) A correctional probation officer as defined in s. 943.10(3) is authorized to issue a citation to a person under the minimum age for purchase ~~of 18~~ when, based upon personal investigation, the officer has reasonable cause to believe that

the person has committed a civil infraction in violation of s. 569.11.

Section 12. Section 569.14, Florida Statutes, is amended to read:

569.14 Posting of a sign stating that the sale of tobacco products to persons under the minimum age for purchase ~~18 years of age~~ is unlawful; enforcement; penalty.—

(1) A dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:

THE SALE OF CIGARS TO PERSONS UNDER THE AGE OF 18, OR ANY OTHER TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21, ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(2) A dealer that sells tobacco products and nicotine products or nicotine dispensing devices, as defined in s. 877.112, may use a sign that substantially states the following:

THE SALE OF TOBACCO PRODUCTS (EXCLUDING CIGARS), NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. THE SALE OF CIGARS TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

A dealer that uses a sign as described in this subsection meets the signage requirements of subsection (1) and s. 877.112.

923616

(3) The division shall make available to dealers of tobacco products signs that meet the requirements of subsection (1) or subsection (2).

(4) Any dealer that sells tobacco products shall provide at the checkout counter in a location clearly visible to the dealer or the dealer's agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase tobacco products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BE SOLD ANY CIGARS.

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BE SOLD ANY OTHER ~~BUY~~ TOBACCO PRODUCTS.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase tobacco products. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.006.

(5) The division, through its agents and inspectors, shall enforce this section.

(6) Any person who fails to comply with subsection (1) is guilty of a misdemeanor of the second degree, punishable as

provided in s. 775.082 or s. 775.083.

Section 13. Subsections (3) and (4) of section 569.19, Florida Statutes, are amended to read:

569.19 Annual report.—The division shall report annually with written findings to the Legislature and the Governor by December 31, on the progress of implementing the enforcement provisions of this chapter. This must include, but is not limited to:

(3) The number of violations for selling tobacco products to persons under the minimum age for purchase ~~18~~, and the results of administrative hearings on the above and related issues.

(4) The number of persons under the minimum age for purchase ~~18~~ cited for violations of s. 569.11 and sanctions imposed as a result of citation.

Section 14. Section 877.112, Florida Statutes, is amended to read:

877.112 Nicotine products and nicotine dispensing devices; prohibitions for persons under 21 years of age ~~minors~~; penalties; civil fines; signage requirements; preemption.—

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

(a) "Any person under 21 years of age" does not include any person under the age of 21 who:

1. Is in the military reserve or on active duty in the Armed Forces of the United States; or

2. Is acting in his or her scope of lawful employment with an entity that sells, manufactures, or distributes nicotine products or nicotine dispensing devices.

(b) ~~(a)~~ "Nicotine dispensing device" means any product that

923616

employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

(c) ~~(b)~~ "Nicotine product" means any product that contains nicotine, including liquid nicotine, that is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means, but does not include a:

1. Tobacco product, as defined in s. 569.002;

2. Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act; or

3. Product that contains incidental nicotine.

(d) ~~(c)~~ "Self-service merchandising" means the open display of nicotine products or nicotine dispensing devices, whether packaged or otherwise, for direct retail customer access and handling before purchase without the intervention or assistance of the retailer or the retailer's owner, employee, or agent. An open display of such products and devices includes the use of an open display unit.

(2) PROHIBITIONS ON SALE TO PERSONS UNDER 21 YEARS OF AGE ~~MINORS~~.—It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 21 ~~18~~ years of age, any nicotine product or a nicotine dispensing device.

923616

(3) PROHIBITIONS ON GIFTING SAMPLES TO PERSONS UNDER 21 YEARS OF AGE ~~MINORS~~.—The gift of a sample nicotine product or nicotine dispensing device to any person under the age of 21 ~~18~~ by a retailer of nicotine products or nicotine dispensing devices, or by an employee of such retailer, is prohibited.

(4) PENALTIES.—Any person who violates subsection (2) or subsection (3) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any person who violates subsection (2) or subsection (3) for a second or subsequent time within 1 year of the first violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) AFFIRMATIVE DEFENSES.—A person charged with a violation of subsection (2) or subsection (3) has a complete defense if, at the time the nicotine product or nicotine dispensing device was sold, delivered, bartered, furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he was 21 ~~18~~ years of age or older;

(b) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 ~~18~~ years of age or older; and

(c) Such person carefully checked a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States Armed Services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 ~~18~~ years of age or older.

(6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR

923616

NICOTINE DISPENSING DEVICES BY PERSONS UNDER 21 YEARS OF AGE ~~MINORS~~.—It is unlawful for any person under 21 ~~18~~ years of age to knowingly possess any nicotine product or a nicotine dispensing device. Any person under 21 ~~18~~ years of age who violates this subsection commits a noncriminal violation as defined in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco and nicotine program, if locally available;

(b) For a second violation within 12 weeks of the first violation, a $25 fine; or

(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person’s driver license or driving privilege, as provided in s. 322.056.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for any person under 21 ~~18~~ years of age to misrepresent his or her age or military service for the purpose of inducing a retailer of nicotine products or nicotine dispensing devices or an agent or employee of such retailer to sell, give, barter, furnish, or deliver any nicotine product or nicotine dispensing device, or to purchase, or attempt to purchase, any nicotine product or nicotine dispensing device from a person or a vending machine.

Any person under 21 ~~18~~ years of age who violates this subsection commits a noncriminal violation as defined in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco and nicotine program, if available;

(b) For a second violation within 12 weeks of the first violation, a $25 fine; or

(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(8) PENALTIES FOR PERSONS UNDER 21 YEARS OF AGE ~~MINORS~~.—

(a) A person under 21 ~~18~~ years of age cited for committing a noncriminal violation under this section must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco and nicotine program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.

(b) A person charged with a noncriminal violation under

this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (6) or subsection (7). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.

(c) If a person under 21 ~~18~~ years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (6)(a) or paragraph (7)(a), or attend a school-approved anti-tobacco and nicotine program, if locally available, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for 30 consecutive days.

(d) If a person under 21 ~~18~~ years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (6)(b) or paragraph (7)(b), the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for 45 consecutive days.

(9) DISTRIBUTION OF CIVIL FINES.—Eighty percent of all civil penalties received by a county court pursuant to subsections (6) and (7) shall be remitted by the clerk of the court to the Department of Revenue for transfer to the

923616

Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children. The remaining 20 percent of civil penalties received by a county court pursuant to this section shall remain with the clerk of the county court to cover administrative costs.

(10) SIGNAGE REQUIREMENTS FOR RETAILERS OF NICOTINE PRODUCTS AND NICOTINE DISPENSING DEVICES.—

(a) Any retailer that sells nicotine products or nicotine dispensing devices shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:

THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(b) A retailer that sells nicotine products or nicotine dispensing devices shall provide at the checkout counter in a location clearly visible to the retailer or the retailer's agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase nicotine products or nicotine dispensing devices. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BUY NICOTINE PRODUCTS OR

NICOTINE DISPENSING DEVICES.

In lieu of a calendar a retailer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase nicotine products or nicotine dispensing devices.

(11) SELF-SERVICE MERCHANDISING PROHIBITED.—

(a) A retailer that sells nicotine products or nicotine dispensing devices may not sell, permit to be sold, offer for sale, or display for sale such products or devices by means of self-service merchandising.

(b) A retailer that sells nicotine products or nicotine dispensing devices may not place such products or devices in an open display unit unless the unit is located in an area that is inaccessible to customers.

(c) Paragraphs (a) and (b) do not apply to an establishment that prohibits persons under 21 ~~18~~ years of age on the premises.

(12) RESTRICTIONS ON SALE OR DELIVERY OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES.—

(a) In order to prevent persons under 21 ~~18~~ years of age from purchasing or receiving nicotine products or nicotine dispensing devices, the sale or delivery of such products or devices is prohibited, except:

1. When under the direct control, or line of sight where effective control may be reasonably maintained, of the retailer of nicotine products or nicotine dispensing devices or such retailer’s agent or employee; or

2. Sales from a vending machine are prohibited under subparagraph 1. and are only permissible from a machine that is

923616

equipped with an operational lockout device which is under the control of the retailer of nicotine products or nicotine dispensing devices or such retailer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one nicotine product or nicotine dispensing device. The lockout device must include a mechanism to prevent the machine from functioning, if the power source for the lockout device fails or if the lockout device is disabled, and a mechanism to ensure that only one nicotine product or nicotine dispensing device is dispensed at a time.

(b) Paragraph (a) does not apply to an establishment that prohibits persons under 21 ~~18~~ years of age on the premises.

(c) A retailer of nicotine products or nicotine dispensing devices or such retailer's agent or employee may require proof of age of a purchaser of such products or devices before selling the product or device to that person.

Section 15. This act shall take effect October 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 the tobacco and nicotine products; providing a short title; creating s. 163.085, F.S.; defining terms; preempting the establishment of the minimum age for the sale or delivery of tobacco products, nicotine products, or nicotine dispensing

devices to the state; providing exceptions; amending s. 210.095, F.S.; deleting the definition of the term "adult"; defining the term "the minimum age for purchase"; conforming provisions to changes made by the act; amending s. 386.212, F.S.; revising the age under which it is unlawful to smoke in, on, or near school property; amending s. 569.002, F.S.; defining the terms "the minimum age for purchase" and "any person under the minimum age for purchase"; replacing the term "any person under the age of 18" with "any person under the minimum age for purchase"; amending s. 569.007, F.S.; providing that it is unlawful to sell or deliver tobacco products to persons under the minimum age for purchase; providing an exception; amending s. 569.0075, F.S.; revising the age under which the gift of tobacco products to a person by certain entities is prohibited; amending s. 569.008, F.S.; revising legislative intent to reflect that the Legislature intends to prevent the sale of certain tobacco products to persons under a specified age; conforming provisions to changes made by the act; amending s. 569.101, F.S.; revising the age limitation that applies to the sale, delivery, bartering, furnishing, or giving of certain tobacco products; conforming provisions to changes made by the act; amending s. 569.11, F.S.; revising the age limitation that applies to possessing tobacco products; revising the age limitation that applies to unlawful misrepresentation of age or military service for

923616

certain purposes; conforming provisions to changes made by the act; amending ss. 569.12, 569.14, and 569.19, F.S.; conforming provisions to changes made by the act; amending s. 877.112, F.S.; defining the term "any person under 21 years of age"; revising the age limitations relating to nicotine products and nicotine dispensing devices; conforming provisions to changes made by the act; providing an effective date.

By the Committee on Innovation, Industry, and Technology; and Senators Simmons, Cruz, Mayfield, and Broxson

580-03768-19 20191618c1

A bill to be entitled

An act relating to tobacco products; providing a short title; amending s. 210.095, F.S.; revising shipping documentation requirements for specified sales of tobacco products; providing criminal and noncriminal penalties; amending s. 322.056, F.S.; deleting provisions requiring driver license penalties for certain persons who commit tobacco-related offenses; amending s. 386.212, F.S.; revising the age under which it is unlawful to smoke in, on, or near school property; amending s. 569.002, F.S.; defining the terms "the minimum age for purchase" and "electronic smoking device"; redefining the term "tobacco products"; deleting exemptions relating to tobacco products for persons under a certain age who meet specified requirements related to disability of nonage, military service, emancipation by a court and release from parental care and responsibility, and acting within the scope of lawful employment with certain entities; amending s. 569.007, F.S.; conforming provisions relating to the sale of tobacco products to federal law; providing an exception to laws relating to the sale of tobacco products for establishments that prohibit persons under 21 years of age from being on the licensed premises; amending s. 569.0075, F.S.; revising the age under which the gift of tobacco products to a person by certain entities is prohibited; amending s. 569.008, F.S.; revising legislative intent to reflect that the Legislature

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580-03768-19 20191618c1

intends to prevent the sale of certain tobacco products to persons under a specified age; eliminating the division's authority to mitigate penalties imposed against a dealer for certain violations; amending s. 569.101, F.S.; revising the age limitation that applies to the sale, delivery, bartering, furnishing, or giving of certain tobacco products; revising penalties for violations; conforming the age specified in provisions related to a complete defense for persons charged with certain violations; amending s. 569.11, F.S.; deleting provisions prohibiting persons under 18 years of age from possessing tobacco products; conforming the age specified for misrepresentation of age to unlawfully acquire tobacco products; revising the penalties for certain persons who misrepresent their age; deleting a provision requiring a person participating in community service to be considered an employee of the state for certain purposes; conforming a provision to changes made by the act; amending ss. 569.12, 569.14, and 569.19, F.S.; conforming provisions to changes made by the act; repealing s. 877.112, F.S., relating to restrictions on the sale and delivery of nicotine products and nicotine dispensing devices; providing an effective date.

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

Section 1. This act may be cited as the "Tobacco 21 Act."

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Section 2. Subsection (5) and paragraphs (e) and (g) of subsection (8) of section 210.095, Florida Statutes, are amended to read:

210.095 Mail order, Internet, and remote sales of tobacco products; age verification.—

(5) Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale must:

(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping cigars to individuals under 18 years of age, and prohibits shipping any other tobacco product to individuals under 21 years of age and requires the payment of all applicable taxes."

(b) Use a method of mailing, shipping, or delivery which obligates the delivery service to require:

1. The individual submitting the order for the delivery sale or another adult who resides at the individual's address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 27 years of age.

2. Proof that the individual is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

(c) Provide to the delivery service, if such service is used, evidence of full compliance with subsection (7).

Any person who violates paragraph (a) commits a noncriminal violation and must serve at least 20 hours of community service. Any person who violates paragraph (a) a second or subsequent time within 1 year of the first violation commits a noncriminal violation and must serve at least 40 hours of community service ~~If the person accepting a purchase order for a delivery sale delivers the tobacco products without using a delivery service, the person must comply with all of the requirements of this section which apply to a delivery service. Any failure to comply with a requirement of this section constitutes a violation thereof~~.

(8)

(e) A person who, in connection with a delivery sale, delivers tobacco products on behalf of a delivery service to an individual who is not an adult commits a misdemeanor of the second ~~third~~ degree, punishable as provided in s. 775.082 or s. 775.083.

~~(g) An individual who is not an adult and who knowingly violates any provision of this section commits a misdemeanor of the third degree, punishable as provided in s. 775.082 or s. 775.083.~~

Section 3. Section 322.056, Florida Statutes, is amended to read:

322.056 Mandatory revocation or suspension of, or delay of eligibility for, driver license for persons under age 18 found guilty of certain alcohol or~~,~~ drug~~, or tobacco~~ offenses; prohibition.—

(1) Notwithstanding ~~the provisions of~~ s. 322.055, if a

person under 18 years of age is found guilty of or delinquent for a violation of s. 562.11(2), s. 562.111, or chapter 893, and:

(a) The person is eligible by reason of age for a driver license or driving privilege, the court shall direct the department to revoke or to withhold issuance of his or her driver license or driving privilege for a period of:

1. Not less than 6 months and not more than 1 year for the first violation.

2. Two years, for a subsequent violation.

(b) The person's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the department to extend the period of suspension or revocation by an additional period of:

1. Not less than 6 months and not more than 1 year for the first violation.

2. Two years, for a subsequent violation.

(c) The person is ineligible by reason of age for a driver license or driving privilege, the court shall direct the department to withhold issuance of his or her driver license or driving privilege for a period of:

1. Not less than 6 months and not more than 1 year after the date on which he or she would otherwise have become eligible, for the first violation.

2. Two years after the date on which he or she would otherwise have become eligible, for a subsequent violation.

However, the court may~~, in its sound discretion,~~ direct the department to issue a license for driving privileges restricted

to business or employment purposes only, as defined in s. 322.271, if the person is otherwise qualified for such a license.

~~(2) If a person under 18 years of age is found by the court to have committed a noncriminal violation under s. 569.11 or s. 877.112(6) or (7) and that person has failed to comply with the procedures established in that section by failing to fulfill community service requirements, failing to pay the applicable fine, or failing to attend a locally available school-approved anti-tobacco program, and:~~

~~(a) The person is eligible by reason of age for a driver license or driving privilege, the court shall direct the department to revoke or to withhold issuance of his or her driver license or driving privilege as follows:~~

~~1. For the first violation, for 30 days.~~

~~2. For the second violation within 12 weeks of the first violation, for 45 days.~~

~~(b) The person's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the department to extend the period of suspension or revocation by an additional period as follows:~~

~~1. For the first violation, for 30 days.~~

~~2. For the second violation within 12 weeks of the first violation, for 45 days.~~

~~(c) The person is ineligible by reason of age for a driver license or driving privilege, the court shall direct the department to withhold issuance of his or her driver license or driving privilege as follows:~~

~~1. For the first violation, for 30 days.~~

~~2. For the second violation within 12 weeks of the first violation, for 45 days.~~

~~Any second violation of s. 569.11 or s. 877.112(6) or (7) not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in this subsection.~~

~~(3) If a person under 18 years of age is found by the court to have committed a third violation of s. 569.11 or s. 877.112(6) or (7) within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to suspend or withhold issuance of his or her driver license or driving privilege for 60 consecutive days. Any third violation of s. 569.11 or s. 877.112(6) or (7) not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in subsection (2).~~

(2)~~(4)~~ A penalty imposed under this section shall be in addition to any other penalty imposed by law.

~~(5) The suspension or revocation of a person's driver license imposed pursuant to subsection (2) or subsection (3), shall not result in or be cause for an increase of the convicted person's, or his or her parent's or legal guardian's, automobile insurance rate or premium or result in points assessed against the person's driving record.~~

Section 4. Subsection (1) of section 386.212, Florida Statutes, is amended to read:

386.212 Smoking prohibited near school property; penalty.—

(1) It is unlawful for any person under 18 years of age to

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smoke a cigar, or any person under 21 years of age to smoke any other tobacco product, in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. This section does not apply to any person occupying a moving vehicle or within a private residence.

Section 5. Present subsections (3), (4), and (5) of section 569.002, Florida Statutes, are redesignated as subsections (5), (6), and (7), respectively, present subsections (6) and (7) of that section are amended, and new subsections (3) and (4) are added to that section, to read:

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

(3) "Electronic smoking device" means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. The term includes any component, part, or accessory of such a device, sold separately or with the device, and includes any substance intended to be aerosolized or vaporized during the use of the device. The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(4) "The minimum age for purchase" means 18 years of age for cigars and 21 years of age for any other tobacco product.

(8)~~(6)~~ "Tobacco products" means any product that is made from or derived from tobacco or that contains nicotine and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or

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ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. The term includes electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and liquids used in electronic smoking devices, whether or not they contain nicotine. The term does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act ~~includes loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.~~

~~(7) "Any person under the age of 18" does not include any person under the age of 18 who:~~

~~(a) Has had his or her disability of nonage removed under chapter 743;~~

~~(b) Is in the military reserve or on active duty in the Armed Forces of the United States;~~

~~(c) Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or~~

~~(d) Is acting in his or her scope of lawful employment with an entity licensed under the provisions of chapter 210 or this chapter~~.

Section 6. Subsections (3) through (5) of section 569.007, Florida Statutes, are redesignated as subsections (2) through (4), respectively, and subsection (1) and present subsection (2) of that section are amended, to read:

569.007 Sale or delivery of tobacco products; restrictions.—

(1) In order to prevent persons under the minimum age for purchase ~~18 years of age~~ from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except when the tobacco products are sold from behind a counter and are required to be retrieved and hand delivered by an employee to the consumer. Sales from a vending machine are prohibited. This section does not apply to an establishment that prohibits persons under 21 years of age on the licensed premises~~:~~

~~(a) When under the direct control or line of sight of the dealer or the dealer's agent or employee; or~~

~~(b) Sales from a vending machine are prohibited under the provisions of paragraph (1)(a) and are only permissible from a machine that is equipped with an operational lockout device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product. The lockout device must include a mechanism to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled, and a mechanism to ensure that only one tobacco product is dispensed at a time.~~

~~(2) The provisions of subsection (1) shall not apply to an establishment that prohibits persons under 18 years of age on the licensed premises~~.

Section 7. Section 569.0075, Florida Statutes, is amended to read:

569.0075 Gift of sample tobacco products prohibited.—The gift of sample tobacco products to any person under the minimum age for purchase ~~of 18~~ by an entity licensed or permitted under ~~the provisions of~~ chapter 210 or this chapter, or by an employee of such entity, is prohibited and is punishable as provided in s. 569.101.

Section 8. Subsections (1), (2), and (3) of section 569.008, Florida Statutes, are amended to read:

569.008 Responsible retail tobacco products dealers; qualifications; mitigation of disciplinary penalties; diligent management and supervision; presumption.—

(1) The Legislature intends to prevent the sale of tobacco products to persons under the minimum age for purchase ~~18 years of age~~ and to encourage retail tobacco products dealers to comply with responsible practices in accordance with this section.

(2) To qualify as a responsible retail tobacco products dealer, the dealer must establish and implement procedures designed to ensure that the dealer's employees comply with ~~the provisions of~~ this chapter. The dealer must provide a training program for the dealer's employees which addresses the use and sale of tobacco products and which includes at least the following topics:

(a) Laws covering the sale of tobacco products.

(b) Methods of recognizing and handling customers under the minimum age for purchase ~~18 years of age~~.

(c) Procedures for proper examination of identification cards in order to verify that customers are not under the minimum age for purchase ~~18 years of age~~.

(d) The use of the age audit identification function on electronic point-of-sale equipment, where available.

~~(3) In determining penalties under s. 569.006, the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 18 years of age if the following conditions are met:~~

~~(a) The dealer is qualified as a responsible dealer under this section.~~

~~(b) The dealer provided the training program required under subsection (2) to that employee before the illegal sale occurred.~~

~~(c) The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.~~

~~(d) If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.~~

Section 9. Section 569.101, Florida Statutes, is amended to read:

569.101 Selling, delivering, bartering, furnishing, or giving tobacco products to persons under the minimum age for purchase ~~18 years of age~~; criminal penalties; defense.—

(1) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under the minimum age for purchase ~~18 years of age~~, any tobacco product.

(2) Any person who violates subsection (1) commits a noncriminal violation punishable by a fine of not more than $500 ~~misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083~~. However, any person who violates subsection (1) for a second or subsequent time within 1 year of

the first violation~~,~~ commits a noncriminal violation punishable by a fine of not more than $1,000 ~~misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083~~.

(3) A person charged with a violation of subsection (1) has a complete defense if, at the time the tobacco product was sold, delivered, bartered, furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he was the minimum age for purchase ~~18 years of age~~ or older;

(b) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be the minimum age for purchase ~~18 years of age~~ or older; and

(c) Such person carefully checked a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 ~~18~~ years of age or older.

Section 10. Section 569.11, Florida Statutes, is amended to read:

569.11 ~~Possession,~~ Misrepresenting age ~~or military service~~ to purchase~~,~~ and purchasing ~~purchase of~~ tobacco products by persons under the minimum age for purchase ~~18 years of age~~ prohibited; penalties; jurisdiction~~; disposition of fines~~.—

~~(1) It is unlawful for any person under 18 years of age to knowingly possess any tobacco product. Any person under 18 years of age who violates the provisions of this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:~~

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Florida Senate - 2019 CS for SB 1618

580-03768-19 20191618c1

~~(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available;~~

~~(b) For a second violation within 12 weeks of the first violation, a $25 fine; or~~

~~(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.~~

~~Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.~~

(1)~~(2)~~ It is unlawful for any person under the minimum age for purchase ~~18 years of age~~ to misrepresent his or her age ~~or military service~~ for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any tobacco product, or to purchase, or attempt to purchase, any tobacco product from a person or a vending machine. ~~Any person under 18 years of age who violates a provision of this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:~~

~~(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco program, if available;~~

~~(b) For a second violation within 12 weeks of the first~~

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~~violation, a $25 fine; or~~

~~(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.~~

~~Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.~~

~~(3) Any person under 18 years of age cited for committing a noncriminal violation under this section must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.~~

(2)~~(4)~~ A person charged with a noncriminal violation under this section must appear before the county court ~~or comply with the requirement for paying the fine~~. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (3).

(3) Any person who violates subsection (1) commits a noncriminal violation and must serve at least 20 hours of community service. Any person who violates subsection (1) a

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second or subsequent time within 1 year of the first violation commits a noncriminal violation and must serve at least 40 hours of community service ~~(1) or subsection (2). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.~~

~~(5)(a) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (1)(a) or paragraph (2)(a), or attend a school-approved anti-tobacco program, if locally available, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.~~

~~(b) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.~~

~~(6) Eighty percent of all civil penalties received by a county court pursuant to this section shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children. The remaining 20 percent of civil penalties received by a county court pursuant to this section~~

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~~shall remain with the clerk of the county court to cover administrative costs~~.

Section 11. Paragraph (b) of subsection (2) and subsection (3) of section 569.12, Florida Statutes, are amended to read:

569.12 Jurisdiction; tobacco product enforcement officers or agents; enforcement.—

(2)

(b) A tobacco product enforcement officer is authorized to issue a citation to a person under the minimum age for purchase ~~of 18~~ when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 386.212 or s. 569.11.

(3) A correctional probation officer as defined in s. 943.10(3) is authorized to issue a citation to a person under the minimum age for purchase ~~of 18~~ when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 569.11.

Section 12. Section 569.14, Florida Statutes, is amended to read:

569.14 Posting of a sign stating that the sale of tobacco products to persons under the minimum age for purchase ~~18 years of age~~ is unlawful; enforcement; penalty.—

(1) A dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:

THE SALE OF CIGARS TO PERSONS UNDER THE AGE OF 18, OR ANY OTHER TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF

21, ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

~~(2) A dealer that sells tobacco products and nicotine products or nicotine dispensing devices, as defined in s. 877.112, may use a sign that substantially states the following:~~

~~THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.~~

~~A dealer that uses a sign as described in this subsection meets the signage requirements of subsection (1) and s. 877.112.~~

(2)~~(3)~~ The division shall make available to dealers of tobacco products signs that meet the requirements of subsection (1) ~~or subsection (2)~~.

(3)~~(4)~~ Any dealer that sells tobacco products shall provide at the checkout counter in a location clearly visible to the dealer or the dealer's agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to be sold ~~purchase~~ tobacco products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BE SOLD ANY CIGARS.

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BE SOLD ANY OTHER ~~BUY~~ TOBACCO PRODUCTS.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase tobacco products. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.006.

(4) ~~(5)~~ The division, through its agents and inspectors, shall enforce this section.

(5) ~~(6)~~ Any person who fails to comply with subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in ~~s. 775.082 or~~ s. 775.083.

Section 13. Subsection (4) of section 569.19, Florida Statutes, is amended to read:

569.19 Annual report.—The division shall report annually with written findings to the Legislature and the Governor by December 31, on the progress of implementing the enforcement provisions of this chapter. This must include, but is not limited to:

(4) The number of persons under the minimum age for purchase ~~18~~ cited for violations of s. 569.11 and sanctions imposed as a result of citation.

Section 14. Section 877.112, Florida Statutes, is repealed.

Section 15. This act shall take effect October 1, 2019.

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 3, 2019

I respectfully request that **Senate Bill 1618**, relating to Tobacco Products, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Thank you.

Senator David Simmons
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

SB 1618
Bill Number (if applicable)

Topic Tobacco Products

Amendment Barcode (if applicable)

Name Dr. Nancy Lawther

Job Title

Address 1747 Orlando Central Parkway
Street

Phone 407 855 7604

Orlando FL 32809
City *State* *Zip*

Email president@mdccpta.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1618
Bill Number (if applicable)

Topic Tobacco Regulation

Amendment Barcode (if applicable)

Name Rivers Buford

Job Title Gov Rel Dir

Address 2851 Remington Green Cir. #A
Street

Phone 850 566 9119

Tallahassee FL 32308
City *State* *Zip*

Email Rivers.Buford@heart.org

Speaking: ☐ For ☑ Against ☐ Information

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

Representing American Heart Assn

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 23, 2019
Meeting Date

SB 1618
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Tobacco Products

Name Ashley Lyerly

Job Title Director of Advocacy, American Lung Association

Address 1678 Montgomery Highway, Suite 104-355
Street

Hoover Alabama 35216
City *State* *Zip*

Phone (205) 968-2266

Email Ashley.Lyerly@lung.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Lung Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/23/2019 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SB 1618

Meeting Date *Bill Number (if applicable)*

Topic Tobacco 21 *Amendment Barcode (if applicable)*

Name Jennifer Cunningham

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 JUUL LABS

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1018
Bill Number (if applicable)

Topic Tobacco Products

Amendment Barcode (if applicable)

Name Melissa Villar

Job Title Executive Director

Address ~~Fe~~ PO Box 11254
Street

Phone 850 354-8424

TLH FL 32302
City *State* *Zip*

Email NORML Tallahassee @ gmail.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing NORML Tallahassee / The Holistic Cannabis Community

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-23
Meeting Date

1618
Bill Number (if applicable)

Topic Tobacco 21

Amendment Barcode (if applicable)

Name Matt Jordan

Job Title GRD

Address 1922 Dellwood Dr
Street

Tallahassee FL 32312
City *State* *Zip*

Phone 850-514-2801

Email matt.jordan@cancer

Speaking: ☐ For ☐ Against ☑ Information

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

Representing American Cancer

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1618/DCAS

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

04/23/19
Meeting Date

1618
Bill Number (if applicable)

923 616
Amendment Barcode (if applicable)

Topic Tobacco 21

Name Katherine Ungar

Job Title Executive Director

Address 5800 Dublin Rd
Street

Phone 216 346-8465

Columbus OH 43017
City *State* *Zip*

Email Katherine.Ungar@tobacco21.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Preventing Tobacco Addiction Foundation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

late/scan

THE FLORIDA SENATE

APPEARANCE RECORD

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

Tue Apr 23rd - 2019
Meeting Date

SB 1618
Bill Number (if applicable)

Topic SB 1618

Amendment Barcode (if applicable)

Name Austin Hopper

Job Title

Address 1433 Superior Ave
Street

Phone 949 228-2164

Newport Beach CA 92663
City *State* *Zip*

Email Austinhopper@Bclouds.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Smoke Free Alternative Trade Assoc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

late/scan

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

SB1618
Bill Number (if applicable)

Topic SB1618

Amendment Barcode (if applicable)

Name Robert Lorah

Job Title PRESIDENT, FLORIDA SMOKE FREE ASSOCIATION

Address 4001 CONWAY PLACE CIRCLE
Street

Phone 352-281-4973

ORLANDO FL 32817
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☑ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1622
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Montford
SUBJECT:	Public Records/Foster Parent and Foster Parent Applicant Names
DATE:	April 22, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Fav/CS**
2.	Hackett	McVaney	GO	**Favorable**
3.	Preston	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1622 amends s. 409.175, F.S., which contains a public records exemption for foster parents, applicants, their families, and their adult household members. The bill expands the exemptions to also protect the name of such applicant, licensee, spouse, minor child, and other adult household member. This information would be exempt from disclosure under s. 119.07(1), F.S., and Article 1, s. 24(a) of the State Constitution. Currently, the following information held by the Department of Children and Families (DCF or department) regarding a foster parent applicant and such applicant's spouse, minor child, and other adult household member is exempt:

- The home, business, work, child care, or school addresses and telephone numbers;
- Birth dates;
- Medical records;
- The floor plan of the home; and
- Photographs of those individuals.

The bill also provides that if a licensed foster partner or their spouse, minor child, or other adult household member is charged with committing a crime against a foster child who is in their care which results in the suspension or revocation of that foster parent's license, then the public records exemption that protects the names of such individuals does not apply, unless otherwise expressly made confidential or exempt by a different statute.

The bill subjects the exemption to review and repeal on October 2, 2024, unless it is reenacted, pursuant to s. 119.15, F.S., the Open Government Sunset Review Act. The bill also includes a public necessity statement as required by the State Constitution.

Because the bill expands a public records exemption, it requires a two-thirds vote of all members present and voting from each chamber for final passage.

The bill is not expected to have a fiscal impact on the state and takes effect July 1, 2019.

II. Present Situation:

Family Foster Homes and Foster Parents

The Florida Statutes do not define the term "foster parent," but foster parents are included in the definition of the term "other person responsible for a child's welfare." Included under this definition are specified individuals who are legally responsible for the child's welfare in a residential setting, as well as an adult sitter or relative entrusted with a child's care.[1] A family foster home means a licensed private residence in which children who are unattended by a parent or legal guardian receive 24-hour care.[2] Foster homes are classified by levels of licensure and inspected regularly.[3]

To qualify as a potential foster parent, applicants must complete a 20 to 30 hour training program, undergo a criminal and child abuse background check, participate in a home inspection and participate in a home study.[4] Foster parents are expected to:

- Provide parenting that consists of a loving commitment to the child and the child's safety and wellbeing;
- Provide opportunities to develop the child's interests and skills;
- Care for the child in light of the child's culture, religion, ethnicity, special physical or psychological needs and unique situations;
- Assist the biological parents in improving their ability to care for and protect their children and to provide continuity for the child;
- Assist the child in visitation and other forms of communication with his or her biological family;
- Obtain and maintain records that are important to the child's wellbeing, such as medical records and records of achievements;
- Advocate for children in their care with the child welfare system, the court, and community agencies, such as schools, child care, and health providers;

[1] Section 39.01(54), F.S.
[2] Section 409.175, F.S.
[3] *Id*.
[4] Florida Department of Children and Families, *How Do I Become a Foster Parent*?, *Available at*: http://www.dcf.state.fl.us/service-programs/foster-care/how-do-I.shtml (Last visited March 27, 2019).

- Participate fully in the child's medical, psychological, and dental care as they would for their biological child; and
- Support the child's school success by participating in school activities and meetings.[5]

Foster parents receive a monthly stipend to help cover costs associated with fostering a child, however, this funding will typically not cover everything a foster child needs. As of January 1, 2019, foster parents receive the following monthly room and board rates per child:[6]

- $466.65 for children ages zero to five;
- $478.60 for children ages six to twelve; and
- $560.19 for children ages thirteen to twenty-one.

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[7] This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.[8]

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.[9] Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.[10] The Public Records Act states that

> it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[11]

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[12] The Florida Supreme

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[5] Section 409.145, F.S. Also see Florida Department of Children and Families, *Partnership Plan for Children in Out-of-Home Care¸ Available at*: http://centerforchildwelfare.fmhi.usf.edu/kb/OOHPublications/PartnershipPlan.pdf (Last visited March 27, 2019).

[6] Florida Department of Children and Families, 2019 Foster Parent Cost of Living Allowance Increase, (January 14, 2019), available at http://www.centerforchildwelfare.org/kb/policymemos/2019-FP_CostOfLivingAllowance.pdf (Last visited March 28, 2019).

[7] FLA. CONST., art. I, s. 24(a).

[8] *Id*.

[9] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

[10] Public records laws are found throughout the Florida Statutes.

[11] Section 119.01(1), F.S.

[12] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean 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,

Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type."[13] A violation of the Public Records Act may result in civil or criminal liability.[14]

The Legislature may create an exemption to public records requirements.[15] An exemption must pass by a two-thirds vote of the House and the Senate.[16] In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.[17] A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.[18]

When creating a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[19] Records designated as "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as "exempt" are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.[20]

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[21] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[22]

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[23] An exemption serves an identifiable purpose if it meets one of the following purposes and the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

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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."

[13] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).

[14] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

[15] FLA. CONST., art. I, s. 24(c).

[16] *Id*.

[17] *Id*.

[18] *Halifax Hosp. Medical Center v. New-Journal Corp*., 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc*., 870 So. 2d 189 (Fla. 1st DCA 2004).

[19] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

[20] *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

[21] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

[22] Section 119.15(3), F.S.

[23] Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[24]
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[25]or
- It protects trade or business secrets.[26]

The OGSR also requires specified questions to be considered during the review process.[27] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[28] If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.[29]

Foster Parent Public Record Exemption

Legislation creating the original public records exemption for foster parents was enacted in 1998 and applied only to certain information contained in the licensing file for licensed foster parents.[30] The public necessity statement expressed concern that foster parents and their families may be threated, harassed, or harmed if personal information were released.[31] The bill analysis stated that according to the department, foster families report that they are occasionally contacted inappropriately by persons who pose a threat to their safety as a result of the release of information in the licensure file. The department also reported that public access to personal identifying information about foster parents discourages potential foster parents from applying for licensure.[32]

During the Open Government Sunset Review in 2003, the legislature expanded the exemption to include families who were pending licensure or had been denied, thus protecting their

[24] Section 119.15(6)(b)1., F.S.
[25] Section 119.15(6)(b)2., F.S.
[26] Section 119.15(6)(b)3., F.S.
[27] Section 119.15(6)(a), F.S. The specified questions are:
1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?
[28] FLA. CONST. art. I, s. 24(c).
[29] Section 119.15(7), F.S.
[30] Ch. 98-29, Laws of Fla. *Available at:* http://laws.flrules.org/1998/29 (Last visited March 29, 2019).
[31] *Id*.
[32] Florida House of Representatives, Final Bill Analysis and Economic Impact Statement, CS/CS/HB 1849, May 11, 1998. *Available at*: http://archive.flsenate.gov/data/session/1998/House/bills/analysis/pdf/HB1849S2Z.CFE.pdf (Last visited March 28, 2019).

information as well, and also expanded the exemption to include medical records.[33] The Legislature also removed the requirement that the information be in the licensing file to be protected and instead protected the information as long as it was held by the department.[34] The public necessity statement cited the private and confidential nature of personal health matters and the potential negative effect on recruitment.[35] The expansion of the public records exemption was reviewed in 2008 and resulted in the legislature saving the exemption from repeal with only minor amendments.[36]

Current law addresses multiple issues related to the licensure of family foster homes, including requirements and protections for foster parents and applicants. The following information held by the department relating to a foster parent applicant and the applicant's spouse, minor child, and other adult household members is exempt from public records:[37]

- Home, business, work, child care, or school addresses and telephone numbers;
- Birth dates;
- Medical records;
- Floor plans of the home; and
- Photographs of such persons.

If a foster parent applicant does not receive a license, this information becomes public five years after the date of application. However, medical records remain exempt regardless of licensure.[38]

For a licensed foster parent and the foster parent's spouse, minor child, and other adult household member, the same information is exempt.[39] If a foster parent's license is no longer active, this information becomes public five years after the license's expiration date, subject to two exceptions: medical records remain exempt regardless of the license's status and all of this information remains exempt if a licensed foster parent becomes an adoptive parent.[40]

III. Effect of Proposed Changes:

Section 1 amends s. 409.175, F.S., relating to licensure of family foster homes, residential child-caring agencies, and child-placing agencies and public records exemption, to expand the current public record exemption for a foster parent applicant, licensed foster parent, and the spouse, minor children, and other adult household members of the applicant or licensee to also protect the name of such applicant, licensee, spouse, minor child, and other adult household member. This information would be exempt from disclosure under s. 119.07(1), F.S., and Article 1, s. 24(a) of the Florida Constitution.

Section 1 also provides that if a licensed foster partner or their spouse, minor child, or other adult household member is charged with committing a crime against a foster child who is in their care

[33] Ch. 03-83, Laws of Fla.
[34] *Id*.
[35] *Id*.
[36] Ch. 08-169, Laws of Fla.
[37] Section 409.175(16)(a), F.S.
[38] *Id*.
[39] Section. 409.175(16)(b), F.S.
[40] *Id*.

which results in the suspension or revocation of that foster parent's license, then the public records exemption that protects the names of such individuals does not apply, unless otherwise expressly made confidential or exempt by a different statute.

Section 1 also provides the exemptions added are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides a statement of public necessity, as required by the State Constitution.

Because the bill expands a public records exemption, it requires a two-thirds vote of all members present and voting from each chamber for final passage.

Section 3 provides that the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. The bill expands an existing exemption. Therefore, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement identifies that protecting the identity of foster parents will encourage more applicants to the foster parent program, and thus better serve children in the foster system. The bill prevents the disclosure of the names of foster parents, foster parent applicants, and their families held by the department to protect their safety. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 409.175, F.S. 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 Children, Families, and Elder Affairs on April 1, 2019:

- Provides that if a licensed foster partner or their spouse, minor child, or other adult household member is charged with committing a crime against a foster child who is in their care which results in the suspension or revocation of that foster parent's license, then the public records exemption that protects the names of such individuals does not apply, unless otherwise expressly made confidential or exempt by a different statute.

- Clarifies exactly which individuals will have their names held confidential and exempt.
- Expands the public necessity statement to provide information that foster parents are concerned that their names being released and may not continue to foster as a result.
- Expands the public necessity statement by acknowledging that there is a need to maintain government accountability by balancing the public's right to know with protecting and recruiting foster parents.

B. Amendments:

None.

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

By the Committee on Children, Families, and Elder Affairs; and Senator Montford

586-03712-19 20191622c1

A bill to be entitled

An act relating to public records; amending s. 409.175, F.S.; providing an exemption from public records requirements for the names of foster parent applicants and licensed foster parents, and the names of the spouses, minor children, and adult household members of such applicants and foster parents, which are held by the Department of Children and Families; providing an exception, under specified circumstances, for certain individuals charged with certain crimes; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (16) of section 409.175, Florida Statutes, is amended to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.—

(16)(a)1. The following information held by the Department of Children and Families regarding a foster parent applicant and such applicant's spouse, minor child, and other adult household member is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Names;

b. The home, business, work, child care, or school addresses and telephone numbers;

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

586-03712-19 20191622c1

c.~~b.~~ Birth dates;

d.~~c.~~ Medical records;

e.~~d.~~ The floor plan of the home; and

f.~~e.~~ Photographs of such persons.

2. If a foster parent applicant does not receive a foster parent license, the information made exempt pursuant to this paragraph shall become public 5 years after the date of application, except that medical records shall remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. This exemption applies to information made exempt by this paragraph before, on, or after the effective date of the exemption.

(b)1. The following information held by the Department of Children and Families regarding a licensed foster parent and the foster parent's spouse, minor child, and other adult household member is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Names;

b. The home, business, work, child care, or school addresses and telephone numbers;

c.~~b.~~ Birth dates;

d.~~c.~~ Medical records;

e.~~d.~~ The floor plan of the home; and

f.~~e.~~ Photographs of such persons.

2. If a foster parent's license is no longer active, the information made exempt pursuant to this paragraph shall become public 5 years after the expiration date of such foster parent's foster care license except that:

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

a. Medical records shall remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. Exempt information regarding a licensed foster parent who has become an adoptive parent and exempt information regarding such foster parent's spouse, minor child, or other adult household member shall remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. If a licensed foster parent or the foster parent's spouse, minor child, or other adult household member is charged with committing a crime against a foster child who is in the care of the licensed foster parent and the Department of Children and Families suspends or revokes the foster parent's license as a result, the information in sub-subparagraph 1.a. regarding the charged individual is not exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise expressly made confidential or exempt by law.

4. This exemption applies to information made exempt by this paragraph before, on, or after the effective date of the exemption.

(c) The name, address, and telephone number of persons providing character or neighbor references regarding foster parent applicants or licensed foster parents held by the Department of Children and Families are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(d) Sub-subparagraphs (a)1.a. and (b)1.a. and subparagraph (b)3. are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds it is a public necessity that the following identifying information be exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

(a) The name of a foster parent applicant;

(b) The names of spouses, minor children, and other adult household members of such foster parent applicant;

(c) The name of a licensed foster parent; and

(d) The names of spouses, minor children, and other adult household members of such licensed foster parent.

(2) The Legislature is committed to ensuring the safety of all children. Among the state's most valued partners are foster parents who make the choice to bring a child into their home. There are instances where foster parents, by the nature of the service they provide, find themselves and their families in life-threatening situations, as was the case when a foster mother was harmed by the foster children's biological parents in August 2018. Consequently, the Legislature finds that the release of the names of a foster parent applicant, a foster parent, their minor children, or adult household members could lead to unwanted contact and harassment from disgruntled parents who react inappropriately due to their children being taken from them and placed in out-of-home care. Additionally, exempting these names helps to maintain the confidentiality of the foster children placed in the home. For example, if a foster parent has an unusual name, any person acquiring a list of the names of the foster parents and other members of the household could uncover information about the foster children living in the home.

(3) Foster parents provide a valuable service to the child

welfare system by providing a safe and nurturing environment for children who have been removed from their homes due to a parent's abandonment, abuse, or neglect. Following a public records request in 2018 for a list of names for all licensed foster parents and corresponding counties, the Department of Children and Families received numerous letters from current foster parents. In these letters, the foster parents expressed their concerns with having their names released to the public. Several expressed that if their names be released, they would no longer wish to serve as foster parents. Therefore, the Legislature finds that by exempting the names of foster parent applicants, foster parents, their minor children, or adult household members, the Department of Children and Families is assisted in its priority to recruit and retain foster parents. This in turn helps ensure that there are enough out-of-home placements for children within the child welfare system.

(4) The Legislature further finds that it is necessary to maintain government accountability by balancing the public's right to know with the Legislature's interest in protecting and recruiting foster parents. Therefore, an exception is created stating that if a licensed foster parent or his or her spouse, minor child, or adult household member is charged with committing a crime against a foster child who is in the care of the licensed foster parent which results in the suspension or revocation of that foster parent's license, the name of the charged individual is not exempt unless it is otherwise expressly made confidential or exempt by law.

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

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

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/23/19
Meeting Date

SB1622
Bill Number (if applicable)

Topic Public Records/Foster Parent and Foster Parent Applicant Names

Amendment Barcode (if applicable)

Name Celiena Hart

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Email chart@iamforkids.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Children's Campaign

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

SB 1622
Bill Number (if applicable)

Topic Pub. Rec. / Foster Parents

Amendment Barcode (if applicable)

Name Lindsey Zander

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Children & Families

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/23/19
Meeting Date

1627
Bill Number (if applicable)

Topic Public Recs / Foster Parents

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Coalition for Children

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1656
INTRODUCER:	Criminal Justice Committee and Senators Lee and Rouson
SUBJECT:	Criminal Statutes
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	**Favorable**
2.	Erickson	Jones	CJ	**Fav/CS**
3.	Stallard	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1656 creates a general savings statute for criminal statutes. Typically, a general savings statute prevents the repeal of a criminal statute from abating pending criminal prosecutions, unless the repealing act expressly provides for abatement. "Abatement" means no further prosecution for the criminal violation.

The bill defines a "criminal statute" as a statute, whether substantive or procedural, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime.

The bill specifies legislative intent to preclude:

- Application of the common law doctrine of abatement to a reenactment or an amendment of a criminal statute; and
- Construction of a reenactment or amendment as a repeal or an implied repeal of a criminal statute for purposes of Article X, Section 9 of the State Constitution (Florida's constitutional savings clause).

The bill also states that, except as expressly provided in an act of the Legislature or as provided in two specified exceptions, the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate any of the following:

- The prior operation of the statute or a prosecution or enforcement under the criminal statute;

- A violation of the criminal statute based on any act or omission occurring before the effective date of the act; and
- A prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute.

The first exception is a retroactive amelioration exception that provides that if a penalty, forfeiture, or punishment for a violation of a criminal statute is reduced by a reenactment or an amendment of a criminal statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.

The second exception relates to defenses and provides that the general savings statute does not limit the retroactive effect of any defense to a criminal statute enacted or amended by the Legislature to any criminal case that has not yet reached final judgment.

Finally, the bill provides that a reference to any other chapter, part, section, or subdivision of the Florida Statutes in a criminal statute or a reference within a criminal statute constitutes a general reference under the doctrine of incorporation by reference.

The bill is effective upon become a law.

II. Present Situation:

Common Law Doctrines of Abatement and Retroactive Amelioration

"At common law, the unqualified repeal of a criminal statute resulted in the abatement[1] of all prosecutions which had not been made final."[2] "Abatement by repeal included a statute's repeal and re-enactment with different penalties. And the rule applied even when the penalty was reduced. To avoid such results, legislatures frequently indicated an intention not to abate *pending prosecutions* by including in the repealing statute a specific clause stating that prosecutions of offenses under the repealed statute were not to be abated."[3] The absence of this "specific clause," which is referred to as a "savings clause," could result in actions contrary to legislative intent.[4] "To demonstrate that intent, a legislative body will rely upon an express savings clause and its progeny -- the general savings statute or the constitutional savings clause, or some

[1] "Abatement" means "no further prosecution for the [criminal] violation." *Landen v. U.S.*, 299 F. 75, 78 (6th. Cir. 1924).
[2] Comment, *Today's Law and Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. Pa. L. Rev. 120, 121 (1972) (footnote omitted).
[3] *Bradley v. U.S.*, 410 U.S. 605, 607-608 (1973) (citations omitted) (emphasis provided by staff). Further, savings clauses addressed an anomaly resulting from the interplay between the common law abatement doctrine and the constitutional prohibition against ex post facto laws, which are prohibited by the U.S. Constitution and Florida's Constitution. *See* U.S. CONST. art. 1, s. 9, cl. 3 and FLA. CONST. art. I, s. 10. "For a criminal law to be ex post facto it must be retrospective, that is, it must apply to events that occurred before its enactment; and it must alter the definition of criminal conduct or increase the penalty by which a crime is punishable." *Victorino v. State*, 241 So.3d 48, 50 (Fla. 2018) (citation omitted). The anomaly occurs when "the old statute in existence when the crime is committed is thereafter amended so as to increase the punishment, and there is no saving clause. The prosecution not reduced to final judgment is barred. This is so because the accused cannot be punished under the new law since to do so would be ex post facto, and he cannot be punished under the old law because it has been repealed without a saving clause." *In re Estrada*, 63 Cal.2d 740, 747 (1965) (citation omitted).
[4] "In the absence of a specific savings clause in the legislation that effectuates the repeal, the theory of abatement carries an obvious potential for injustice: the prospect that crimes committed before the effective date of a statutory amendment would go entirely unpunished even though (as evidenced by the terms of the new legislation) the legislature quite obviously had no intention of removing the conduct at issue from the ambit of criminal law." *State v. Carpentino*, 166 N.H. 9, 14 (2014).

combination of the three."[5] As a result of this savings legislation, there was a "shifting of the legislative presumption from one of abatement to one of non-abatement in the absence of contrary legislative intent."[6]

Retroactive ameliorations of penalties may be provided by law,[7] or otherwise construed to be authorized by some courts,[8] but "[t]he majority of general savings statutes do not account explicitly for ameliorative changes" and "[m]ost courts have interpreted this omission to eliminate the common law amelioration doctrine."[9] Until recently, Article X, Section 9 of the State Constitution (Florida's constitutional savings clause) expressly prohibited any repeal or amendment of a criminal statute that affected prosecution or punishment for any crime previously committed, and therefore, the Florida Legislature was "powerless to lessen penalties for past transgressions; to do so would require constitutional revision."[10]

Savings clauses have been described as "but a canon of statutory construction to aid in interpreting statutes to ascertain legislative intent" and "not an end in itself"[11] or as "intended only as a rule of construction, which must give way if the legislature has unambiguously expressed an intent contrary to the statutory 'default' position it establishes."[12] However, the "more favored view" in applying general savings statutes is to "construe the provisions not merely as 'rules of construction to be applied only to resolve a question of the legislative intent,' but as 'positive legislation which should be given effect as though they were incorporated into every future enactment involving a substantive right.'"[13]

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[5] S. David Mitchell, *In with the New, Out with the Old: Expanding the Scope of Retroactive Amelioration*, 37 Am J. Crim. L. 1, 6-7 (2009) (citations omitted).
[6] Comment, *Today's Law and Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. Pa. L. Rev. 120, 127 (1972).
[7] *See, e.g.*, Ohio Rev. Code s. 1.58(B) ("[i]f the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended") and W.Va. Code s. 2-2-8 ("if any penalty or punishment be mitigated by the new law, such new law may, with the consent of the party affected thereby, be applied to any judgment pronounced after it has taken effect").
[8] *See, e.g.*, *People v. Oliver*, 1 N.Y.2d 152 (1956) (finding legislative intent for a retroactive amelioration, notwithstanding New York's general savings statute precluding such amelioration and the fact that retroactive application was not specified in the legislation).
[9] Eileen L. Morrison, *Resurrecting the Amelioration Doctrine: A Call to Action for Courts and Legislatures*, 95 Boston U. L. Rev. 335, 349 (footnotes omitted). "When a legislature engages in legislative retroactive amelioration, it attaches an ameliorative amendment exception to the general savings statute to give retroactive effect to ameliorative sentencing changes[.]" S. David Mitchell, *In with the New, Out with the Old: Expanding the Scope of Retroactive Amelioration*, 37 Am J. Crim. L. 1, 9 (2009) (footnote omitted). An example of a retroactive ameliorative change is retroactive application of a reduced penalty.
[10] Comment, *Today's Law and Yesterday's Crime: Retroactive Application of Ameliorative Criminal Legislation*, 121 U. Pa. L. Rev. 120, 129 (1972).
[11] *State v. Cummings*, 386 N.W.2d 468, 471 (1986).
[12] *State v. Carpentino*, 166 N.H. at 14.
[13] *Iowa Dept. of Transp. v. Iowa Dist. Court for Scott County Supreme Court of Iowa*, 587 N.W.2d 781, 788 (1998), quoting 1A Norman J. Singer, *Sutherland Statutory Construction* s. 23.37, at 432 (5th ed.1993). A general savings statute can "save the necessity of the burdensome formality of attaching an identical saving clause to all repealing legislation." *State v. Shepherd*, 202 Iowa 437 (1926).

The History of Florida's Constitutional Savings Clause

Florida and two other states have a constitutional savings clause.[14] However, prior to 1885, Florida did not have one. In 1885, Florida adopted Article III, Section 32 of the State Constitution. This constitutional amendment was the predecessor to Article X, Section 9 of the State Constitution.[15] Article III, Section 32 provided:

> The repeal or amendment of any criminal statute shall not affect the prosecution or punishment of any crime committed before such repeal or amendment.[16]

The Florida Supreme Court has discussed the origin of this savings clause:

> [In *Ex parte Pells*, 28 Fla. 67 (1891),] [w]e explained that article III, section 32 originated after the Court decided the case of *Higgenbotham v. State*, 19 Fla. 557 (1882). In *Higgenbotham*, the Court invalidated a conviction of assault with intent to commit murder because the assault statute was repealed after the crime was committed but before prosecution took place, and there was no savings clause in the statute to allow the then-pending prosecution to proceed. Under those circumstances, we reasoned, "no further proceedings can, after the repealing law takes effect, be taken under the law so repealed." *Ex parte Pells*, 28 Fla. at 73, 9 So. at 834. We then inferred that the people of Florida approved article III, Section 32, in 1885 to provide a constitutional savings clause, thereby negating the effect of the *Higgenbotham* holding. *See also Sigsbee v. State*, 43 Fla. 524, 529, 30 So. 816, 817 (1901).[17]

In 1968, Florida adopted Article X, Section 9 of the State Constitution, which was substantially similar to Article III, Section 32, and provided:

> Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.

In 2018, Florida adopted the following amendment to Article X, Section 9 of the State Constitution:

> Repeal ~~or amendment~~ of a criminal statute shall not affect prosecution ~~or punishment~~ for any crime ~~previously~~ committed <u>before such repeal</u>.

Revised Article X, Section 9 of the State Constitution only prohibits applying the repeal of a criminal statute to any crime committed before such repeal if this retroactive application "affects

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[14] Oklahoma and New Mexico. *See* OKLA. CONST. art. V, s. 54 and N.M. CONST. art. IV, s. 33.

[15] *State v. Watts*, 558 So.2d 994, 999 (Fla. 1990). It appears that at various times Florida had a general savings statute for criminal laws. *See Reynolds v. State*, 33 Fla. 301, 303 (Fla. 1894) (describing Section 2523, Rev. Stat.) and *Castle v. State*, 330 So.2d 10, 11 (Fla. 1976) (describing s. 775.12, F.S. (1973)).

[16] "The effect of this constitutional provision is to give to all criminal legislation a prospective effectiveness; that is to say, the repeal or amendment, by subsequent legislation, of a pre-existing criminal statute, does not become effective, either as a repeal or as an amendment of such pre-existing statute, in so far as offenses are concerned that have already been committed prior to the taking effect of such repealing or amending law." *Raines v. State*, 42 Fla. 141, 145 (1900). "Courts have interpreted this section the same as its successor provision in the 1968 revision." *State v. Watts*, 558 So.2d at 999 n. 5.

[17] *State v. Watts*, 558 So.2d at 999.

prosecution." The revised constitutional savings clause does not expressly prohibit retroactive application of a repeal that does not affect prosecution, a repeal that affects punishment, or an amendment of a criminal statute that affects prosecution or punishment.

The elimination of the expressed prohibition on certain retroactive applications is not a directive to the Legislature to retroactively apply what was formerly prohibited. As the Florida Supreme Court recently stated: "… [T]here will no longer be any provision in the Florida Constitution that would prohibit the Legislature from applying an amended criminal statute retroactively to pending prosecutions or sentences. However, nothing in our constitution does or will require the Legislature to do so, and the repeal of the prohibition will not require that they do so."[18]

Terms Used in Florida's Constitutional Savings Clause

For purposes of the constitutional savings clause, the Florida Supreme Court has defined the term "criminal statute" broadly: "In *Washington v. Dowling*, 92 Fla. 601, 109 So. 588 (1926), this Court provided the following definition for the words 'criminal statute': '[A]n act of the Legislature as an organized body relating to crime or punishment … defining crime, treating of its nature, or providing for its punishment.' *Id.*, 109 So. at 591."[19]

In regard to Article X, Section 9 of the State Constitution, the Florida Supreme Court does not appear to have ever clearly indicated whether a "criminal statute" also includes its parts or provisions and whether an amendment can "repeal" those parts or provisions. An amendment can modify a part or provision of a statute but it can also eliminate or nullify it. In several cases unrelated to Article X, Section 9 of the State Constitution, the Court and several Florida appellate courts have described amendments repealing or effectively repealing subsections or paragraphs of statutes.[20] However, courts do not always describe an amendment deleting a provision as a repeal or causing a repeal.[21]

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[18] *Jimenez v. Jones*, 261 So.3d 502, 504 (Fla. 2018).
[19] *Smiley v. State*, 966 So. 2d 330, 337 (Fla. 2007).
[20] *See, e.g., In re Rogers' Estate*, 171 So.2d 428, 429-430 (Fla. 2d DCA 1965) (court noting that, in 1959, subsection (3) of s. 731.35, F.S., "the dower statute," was "repealed"); *State v. Lindsay*, 284 So.2d 377, 378 n. 1 (Fla. 1973) (Florida Supreme Court noting that ch. 72-179, L.O.F., "repealed Subsections (2) and (3) of Section 39.01"); *Smith v. Smathers*, 372 So.2d 427, 429 (Fla. 1979) (Florida Supreme Court holding that "Sections 13 and 66 of Chapter 77-175, Laws of Florida, are [constitutionally] invalid only to the extent they repeal the write-in voting procedure contained in Sections 99.203, 101.011(2), and 101.151(5)(a) and (b), Florida Statutes (1975)"*); L. Ross, Inc. v. R.W. Roberts Constr. Co., Inc.,* 466 So.2d 1096, 1097 (Fla. 5th DCA 1985) (footnote omitted), *approved*, 481 So.2d 484 (Fla. 1986) (court stating that "[t]his case involves the retroactive application of a statutory amendment which repealed a limitation in the amount of attorney's fees made recoverable by statute in certain actions"); *Clayton v. Willis*, 489 So.2d 813, 818 (Fla. 5th DCA 1986), *review denied*, 500 So.2d 546 (Fla. 1986) (court noting that "[i]n 1979, the legislature repealed subsection (c). Chapter 79–163, s. 10, Laws of Florida"); *State v. Richardson*, 915 So.2d 86, 89 (Fla. 2005) (Florida Supreme Court noting that in its previous decision it "held that the Legislature had effectively repealed the sequential conviction rule because the then current version of the statute, which had recently been significantly amended in 1988, did not contain the sequential conviction requirement"); *Image Data, L.L.C. v. Sullivan*, 739 So. 2d 725, 727 n. 6 (Fla. 5th DCA 1999) (court describing HB 1015 (1999) as "repealing subsections (5) and (6) of section 322.142, Florida Statutes"); and *Gabriele, v. Sch. Bd. of Manatee County*, 114 So.3d 477, 479 n. 1 (Fla. 2d DCA 2013) (court noting that "[t]he legislature repealed paragraphs (a), (b), and (c) of subsection (3) of section 1012.33 effective July 1, 2011. Ch. 2011–37, s. 19, at 504, Laws of Fla.").
[21] *See, e.g., Macchione v. State*, 123 So. 3d 114 (Fla. 2013) (describing various amendments to s. 836.10, F.S., including the deletion of language, without describing any of the changes as a repeal).

If an amendment can repeal a part or provision of a criminal statute than questions may arise regarding retroactive applications of some amendments. Provided are three examples:

- *Retroactive application of an amendment that eliminates any criminal penalty attached to prohibited conduct*. Retroactive application of this type of amendment appears to "affect prosecution" because there is no longer any "crime" to prosecute.
- *Retroactive application of an amendment that eliminates some criminal penalties for a crime but does not decriminalize prohibited conduct.* An example of this type of amendment is an amendment that eliminates mandatory minimum terms or mandatory fines for drug trafficking but retains criminal penalties provided for the felony degree of the drug trafficking offense.
- *Retroactive application of an amendment modifying an element of an offense that is tied to the criminal penalty provided for that offense*. An example of this type of amendment is an amendment that increases the threshold amount for charging grand theft or charging drug trafficking. Applied prospectively, this type of amendment precludes charging offenders who do not meet the amended threshold, though they may have met the threshold under the law before its amendment. It is unclear if retroactive application of this type of amendment would have a similar impact on pending prosecutions or uncharged offenses for acts committed before the effective date of the amendment.[22]

There is little guidance on what retroactive repeals "affect prosecution" in violation of Article X, Section 9 of the State Constitution, other than the Florida Supreme Court indicating that purely procedural changes do not "affect prosecution." The Court has construed the constitutional savings clause as "saving" substantive rights and liabilities. "Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes."[23] However, "a statute that achieves 'remedial purpose by creating substantive new rights or imposing new legal burdens' is treated as a substantive change in the law."[24]

III. Effect of Proposed Changes:

The bill creates s. 775.022, F.S., which is a general savings statute for criminal statutes. Typically, a general savings statute prevents the repeal of a criminal statute from abating pending criminal prosecutions, unless the repealing act expressly provides for abatement. "Abatement" means no further prosecution for the criminal violation.

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[22] In *State v. Sampson*, 120 N.H. 251, 254 (1980), the New Hampshire Supreme Court noted that if the court adopted the defendant's theory that an amendment increasing the theft threshold should be retroactively applied to him, it "would not just be holding that the legislature intended to retroactively impose a less severe punishment for acts still criminal, but as in this case, to excuse the conduct altogether." In *Rushing v. State*, 192 So.2d 1113, 1116 (2016), a Mississippi appellate court stated that legislation's "new 'tiers' of punishment are inextricably tied to the new or amended elements of the offenses." "That is, we cannot retroactively apply the amendment to sentences without also retroactively applying the amendments to the elements of the offenses. For a defendant convicted of selling cocaine, we cannot determine which new sentencing range would apply without first determining how much cocaine the defendant sold." *Id.*

[23] *City of Lakeland v. Catinella*, 129 So.2d 133, 136 (Fla. 1961).

[24] *Smiley v. State*, 966 So.2d at 334, quoting *Arrow Air v. Walsh*, 645 So.2d 422, 424 (Fla. 1994).

The bill defines a "criminal statute" as a statute, whether substantive or procedural, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime. This definition is similar to the broad definition of "criminal statute" provided by the Florida Supreme Court in *Washington v. Dowling*.[25] The definition also indicates legislative intent to provide the provisions of the general savings statute to substantive and procedural changes to criminal statutes.

The bill specifies legislative intent to preclude:

- Application of the common law doctrine of abatement to a reenactment or an amendment of a criminal statute; and
- Construction of a reenactment or amendment as a repeal or an implied repeal[26] of a criminal statute for purposes of Article X, Section 9 of the State Constitution (Florida's constitutional savings clause).

The bill also states that, except as expressly provided in an act of the Legislature or as provided in two specified exceptions, the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate any of the following:

- The prior operation of the statute or a prosecution or enforcement under the criminal statute;
- A violation of the criminal statute based on any act or omission occurring before the effective date of the act; and
- A prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute.

The first exception is a retroactive amelioration exception that provides that if a penalty, forfeiture, or punishment for a violation of a criminal statute is reduced by a reenactment or an amendment of a criminal statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended. This means the penalty, forfeiture, or punishment reduction must be imposed retroactively if the sentence has not been imposed, including the situation in which the sentence is imposed after the effective date of the amendment. However, nothing in the general savings statute precludes the Legislature from providing for a more extensive retroactive application either to legislation in the future or legislation that was enacted prior to the effective date of the general savings statute. This is because the general savings statute specifically provides for a legislative exception to the default position of prospectivity. The Legislature only has to "expressly provide" for this retroactive application.

The first exception is similar to the retroactive amelioration exception in the general savings statutes of Iowa, Ohio, and Texas.[27] Florida courts will be able to look at the jurisprudence of these states to determine how the courts of these states have interpreted their retroactive amelioration exception.

[25] 109 So. at 591. *See* "Present Situation" section of this analysis for a discussion of terms in the constitutional savings clause.
[26] The Florida Supreme Court has previously indicated that the "standard [is] that implied repeals are disfavored and should only be found in cases where there is a 'positive repugnancy' between the two statutes or 'clear legislative intent' indicating that the Legislature intended the repeal[.]" *Flo-Sun, Inc. v. Kirk*, 783 So.2d 1029, 1036 (Fla. 2001).
[27] Iowa Code s. 4.13, Ohio Rev. Code s. 1.58, and Tex. Gov't Code s. 311.031.

The second exception relates to defenses and provides that the general savings statute does not limit the retroactive effect of any defense to a criminal statute enacted or amended by the Legislature to any criminal case that has not yet reached final judgment.

Finally, the bill provides that a reference to any other chapter, part, section, or subdivision of the Florida Statutes in a criminal statute or a reference within a criminal statute constitutes a general reference under the doctrine of incorporation by reference. Therefore, future changes to these criminal statutes will automatically apply to statutes that cross-reference these statutes.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, Section 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 775.022 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on April 1, 2019:
The Committee Substitute:

- Modifies and broadens the definition of "criminal statute" for purposes of the general savings statute created by the bill;
- Provides legislative intent to preclude application of the common law doctrine of abatement to a reenactment or amendment to a criminal statute;
- Provides legislative intent to preclude construction of a reenactment or amendment as a repeal or an implied repeal of a criminal statute for purposes of Article X, Section 9 of the State Constitution;
- Provides for retroactive application of a penalty reduction to cases in which the sentence was not imposed before the effective date of the act;
- Provides that the general savings statute does not limit the retroactive effect of any defense to a criminal statute enacted or amended by the Legislature to any criminal case that has not yet reached final judgment; and
- Provides that a reference to any other chapter, part, section, or subdivision of the Florida Statutes in a criminal statute or a reference within a criminal statute constitutes a general reference under the doctrine of incorporation by reference.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senators Lee and Rouson

591-03685-19 20191656c1

A bill to be entitled

An act relating to criminal statutes; creating s. 775.022, F.S.; providing legislative intent; defining the term "criminal statute"; specifying that the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate specified circumstances; providing exceptions; providing that a reference to any other chapter, part, section, or subdivision of the Florida Statutes in a criminal statute or a reference within a criminal statute constitutes a general reference under the doctrine of incorporation by reference; providing an effective date.

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

Section 1. Section 775.022, Florida Statutes, is created to read:

775.022 Effect of reenactment or amendment of criminal statutes; references in criminal statutes.—

(1) It is the intent of the Legislature that:

(a) This section preclude the application of the common law doctrine of abatement to a reenactment or an amendment of a criminal statute; and

(b) An act of the Legislature reenacting or amending a criminal statute not be considered a repeal or an implied repeal of such statute for purposes of s. 9, Art. X of the State Constitution.

(2) As used in this section, the term "criminal statute" means a statute, whether substantive or procedural, dealing in any way with a crime or its punishment, defining a crime or a defense to a crime, or providing for the punishment of a crime.

(3) Except as expressly provided in an act of the Legislature or as provided in subsections (4) and (5) the reenactment or amendment of a criminal statute operates prospectively and does not affect or abate any of the following:

(a) The prior operation of the statute or a prosecution or enforcement thereunder.

(b) A violation of the statute based on any act or omission occurring before the effective date of the act.

(c) A prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute.

(4) If a penalty, forfeiture, or punishment for a violation of a criminal statute is reduced by a reenactment or an amendment of a criminal statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.

(5) This section shall not apply to limit the retroactive effect of any defense to a criminal statute enacted or amended by the Legislature to any criminal case that has not yet reached final judgment.

(6) A reference to any other chapter, part, section, or subdivision of the Florida Statutes in a criminal statute or a reference within a criminal statute constitutes a general reference under the doctrine of incorporation by reference.

Section 2. This act shall take effect upon becoming a law.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 3, 2019

I respectfully request that **Senate Bill #1656**, relating to Criminal Statutes, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Tom Lee

Senator Tom Lee
Florida Senate, District 20

File signed original with committee office

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 728
INTRODUCER:	Infrastructure and Security Committee and Senator Lee
SUBJECT:	Community Development Districts
DATE:	April 22, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	**Favorable**
2.	Price	Miller	IS	**Fav/CS**
3.	Peacock	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 728 authorizes Community Development Districts (CDDs) of less than 2,500 acres and solely in one county or municipality to include a list of parcels in the CDD's establishment petition that the CDD expects to add within the next 10 years. A parcel may only be included with the consent of the landowner. The bill provides a process for expanding the boundaries of the CDD to include these additional parcels. The bill also provides that the expansion of CDD boundaries to include these parcels does not alter the time period for transition from a landowner board to a board composed of qualified electors under s. 190.006, F.S., and states that the parcels may be added even if the resulting CDD is greater than 2,500 acres.

The bill provides that a CDD may also merge with another type of special district created by special act under certain circumstances.

II. Present Situation:

Overview

In general terms, a community development district (CDD) is a "local unit of special-purpose government"[1] which is often created to facilitate the funding and management of new housing developments.

[1] Section 190.003(6), F.S.

Expanding a CDD involves a somewhat different process depending on its original size. For CDDs that began as less than 2,500 acres in size, a person must file a petition with the county. For larger CDDs, a person must file a petition, along with a $1,500 filing fee, with the Florida Land and Water Adjudicatory Commission (FLWAC). Then, in either case, a public hearing must be held.
However, special requirements apply if someone is seeking a particularly large expansion of a CDD. Any expansion of more than 50 percent of the initial size of the CDD or more than 1,000 acres must be processed according to the statute that governs creation of a new CDD.

CDDs in General

Chapter 190, F.S., the "Uniform Community Development District Act of 1980,"[2] sets forth the exclusive and uniform procedures for establishing and operating a community development district (CDD).[3] This type of independent special district[4] is an alternative method to manage and finance basic services for community development.[5] There are currently 685 active CDDs in Florida.[6]

A CDD must act within the constraints of applicable comprehensive plans, ordinances, and regulations of the local general-purpose government.[7] CDDs have certain general powers, including the authority to:

- Assess and impose ad valorem taxes upon lands in the CDD;
- Bring lawsuits (and be sued);
- Participate in the state retirement system;
- Contract for services;
- Borrow money;
- Accept gifts;
- Adopt rules and orders pursuant to the Administrative Procedure Act (APA);[8]
- Maintain an office;
- Lease;
- Issue bonds;
- Raise money by user charges or fees; and
- Levy and enforce special assessments.[9]

[2] Section 190.001, F.S.
[3] Sections 190.004 and 190.005, F.S.
[4] A "special district" is "a unit of local government created for a special purpose… within a limited geographic boundary … created by general law, special act, local ordinance, or by rule of the Governor and Cabinet." Section 189.012(6), F.S. An "independent special district" is a special district that does not meet any of the criteria listed in s. 189.012(2), F.S. Additionally, any special district including more than one county is an independent special district, unless the district lies wholly within a single municipality. Section 189.012(3), F.S.
[5] Section 190.003(6), F.S.
[6] Department of Economic Opportunity, *Official List of Special Districts Online – Directory*, *available at* http://specialdistrictreports.floridajobs.org/webreports/mainindex.aspx (last visited March 8, 2019).
[7] Section 190.004(3), F.S.
[8] Ch. 120, F.S.
[9] Section 190.011, F.S.

The statutes also authorize additional special powers pertaining to public improvements and community facilities, such as systems for water management, water supply, sewer, and wastewater management, as well as roads, bridges, culverts, street lights, buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, signage, environmental contamination, conservation areas, mitigation areas, and wildlife habitat.[10] With the consent of the applicable local general-purpose government with jurisdiction over the affected area, a CDD may plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for:

- Parks and facilities for indoor and outdoor recreational, cultural, and educational uses;
- Fire prevention and control;
- School buildings and related structures and site improvements;
- Security;
- Control and elimination of mosquitoes and other arthropods of public health importance; and
- Waste collection and disposal.[11]

Establishing a CDD

Petition for Rulemaking by the Florida Land and Water Adjudicatory Commission

The process for establishing a CDD depends upon its size. CDDs of 2,500 acres or more are established by petitioning the Florida Land and Water Adjudicatory Commission (FLWAC)[12] to adopt an administrative rule creating the district.[13] The statute requires each petition to contain specified information, including the written consent to establishing the CDD by all landowners[14] of real property to be included in the district.[15] Prior to filing, the petitioner must submit copies of the petition and pay separate filing fees of $15,000 each to the county and any municipality in which the proposed CDD will be located and also to each municipality contiguous with or containing a portion of the land proposed for inclusion in the district.[16] The counties and municipalities required to receive copies of the petition may conduct public hearings and express support or objection to the proposed district by resolution and by stating their position before the FLWAC.[17] Additionally, a public hearing on the petition must be held in the county where the CDD will be located; these hearings are conducted under the requirements of the Administrative

[10] Section 190.012(1), F.S. The rule or ordinance establishing the CDD may restrict the special powers authorized in this subsection. Sections 190.005(1)(f) and (2)(d), F.S.
[11] Section 190.012(2), F.S.
[12] Created by s. 380.07, F.S., the FLWAC is comprised of the Administration Commission, which in turn is created by s. 14.202, F.S., and is composed of the Governor and Cabinet (Section 20.03, F.S., provides that "Cabinet" means the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture). This distinction affects the requirements for an affirmative vote by the FLWAC. Unless otherwise provided in law, the statutory voting requirements for the Administration Commission apply and affirmation by the FLWAC requires approval by the Governor and at least two Cabinet members.
[13] Section 190.005(1), F.S.
[14] "Landowner" means the owner of a freehold estate as appears by the deed record, including a trustee, a private corporation, and an owner of a condominium unit; it does not include a reversioner, remainderman, mortgagee, or any governmental entity, who shall not be counted and need not be notified of proceedings under this act. Landowner shall also mean the owner of a ground lease from a governmental entity, which leasehold interest has a remaining term, excluding all renewal options, in excess of 50 years. Section 190.003(14), F.S.
[15] Section 190.005(1)(a), F.S.
[16] Section 190.005(1)(b), F.S.
[17] Section 190.005(1)(c), F.S.

Procedure Act (APA)[18] before an administrative law judge.[19] Once the hearing process is complete, the entire record is submitted to the FLWAC, reviewed by staff, and placed on the FLWAC meeting agenda for final consideration with the petition.[20] If the petition is approved, staff of the FLWAC initiates proceedings to adopt the rule creating the CDD.

Petition for Ordinance Creating a CDD

CDDs of less than 2,500 acres are generally established by ordinance of the county having jurisdiction over the majority of land in the area in which the CDD is to be located.[21] A petition to establish a CDD is filed with the county commission.[22] After conducting a local public hearing before a hearing officer,[23] the commission may adopt an ordinance creating the CDD.[24] If any of the land proposed for inclusion in the CDD lies within the area of a municipality, the county cannot create the district without approval of the affected municipality.[25]

However, if all the land proposed for inclusion in the CDD lies within the territorial jurisdiction of a municipality, the petition is filed with that municipality which then exercises the duties otherwise performed by the county commission.[26] In this case, the CDD would be created by municipal ordinance. Within 90 days after receiving the petition, the county commission (or municipality, as applicable) may transfer the petition to the FLWAC.[27] Finally, if all the land of the proposed CDD lies within the territorial jurisdiction of two or more municipalities or two or more counties, the petition must be filed with the FLWAC even if the total area is less than 2,500 acres.[28]

Requirements for Notice, Meeting, and Vote of Landowners in a CDD

The powers of a CDD are exercised by the board of supervisors elected by the landowners of the district.[29] The board must have five members serving two- or 4-year terms.[30] The initial members of the board are designated in the original petition to create the CDD and serve until new members are elected after the district is established.[31] A meeting of landowners for the purpose of electing the board must be held within 90 days after the effective date of the rule or ordinance

[18] *See* ch. 120, F.S. The general hearing requirements are stated in ss. 120.569 and 120.57(1), F.S.
[19] Section 190.005(1)(d), F.S.; Rules 42-1.009 & 42-1.012, F.A.C. Chapter 42-1, F.A.C., the procedural rules of the FLWAC, remains substantially unchanged since its adoption in 1982.
[20] Section 190.005(1)(e), F.S. A similar process is followed when the FLWAC considers a proposed merger of existing CDDs. *See* FLWAC Agenda Item 1 dated Aug. 16, 2011, *available at* http://www.myflorida.com/myflorida/cabinet/agenda11/0816/FLWAC0816.pdf (last visited March 8, 2019).
[21] Section 190.005(2), F.S.
[22] Section 190.005(2)(a), F.S. The petition must contain the same information as required for submission to the FLWAC.
[23] Section 190.005(2)(b), F.S. The hearing must follow the same notice and procedural requirements as the local hearing for petitions before the FLWAC.
[24] *See* s. 190.005(2)(d), F.S.
[25] Section 190.005(2)(e), F.S.
[26] *Id*.
[27] Section 190.005(2)(f), F.S.
[28] Section 190.005(2)(e), F.S.
[29] Section 190.006(1), F.S.
[30] *Id*.
[31] Sections 190.005(1)(a)3., and 190.006(2)(a), F.S.

creating the district.[32] Each landowner is entitled to one vote for each acre owned.[33] The top two candidates are elected to four-year terms, while the next three candidates are elected to two-year terms.[34] A new board election, held among the qualified electors of the district, occurs when either the board proposes to exercise its ad valorem taxing authority or six years after the formation of the district (ten years for districts exceeding 5,000 acres).[35] Elections of board members by qualified electors are non-partisan general elections conducted by the supervisor of elections.[36]

Financial Reporting by a CDD

CDDs are subject to the financial reporting requirements of Chs., 189, 190, and 218, F.S.[37] The district manager is responsible for drafting a proposed budget on or before June 15 of each year.[38] The board of the CDD considers the proposed budget, makes amendments as necessary, and adopts the budget by resolution.[39] After the board adopts the budget, a public hearing on the budget is held and the board may make further changes as it deems necessary.[40] At least 60 days prior to adoption, the district is required to submit its budget to the local government entities having jurisdiction over the area.[41] This submission is for the purposes of disclosure and information only, but the local government entities may submit written comments to the CDD board.[42] CDDs are also required to take affirmative steps to provide full disclosure of information related to public financing and maintenance of improvements constructed by the district.[43] The district must provide any developer of residential property in the district with sufficient copies of this information to be able to provide a copy to each prospective initial purchaser of property.[44] Districts must file disclosures of this information in the property records of each county in which the district is located.[45] The Department of Economic Opportunity (DEO) is required to keep a current list of districts and their disclosures of public financing.[46]

CDDs, like other special districts, also must comply with the annual financial reporting and financial audit reporting requirements of Ch. 218, F.S.[47] A CDD with revenues or total expenditures or expenses in excess of $100,000 is required to have an annual audit conducted by

[32] Section 190.006(2)(a), F.S.
[33] Section 190.006(2)(b), F.S.
[34] *Id*.
[35] Sections 190.006(3)(a)1.-2., F.S. For CDDs with less than certain minimum numbers of qualified electors after 6 or 10 years, as applicable, the district landowners shall continue to elect the board members (s. 190.006(3)(a)2.a., F.S.) until the number of qualified electors in the district exceeds the statutory minimum (s. 190.006(3)(a)2.b., F.S.).
[36] Section 190.006(3)(b), F.S. The statute does not specify which supervisor of elections conducts the board election if the district encompasses property in more than one county.
[37] Sections 189.016 and 190.008(1), F.S.
[38] Section 190.008(2)(a), F.S.
[39] *Id*.
[40] *Id*.
[41] Section 190.008(2)(b), F.S.
[42] Section 190.008(2)(b)-(c), F.S.
[43] Section 190.009(1), F.S.
[44] *Id*.
[45] *Id*.
[46] Section 190.009(2), F.S.
[47] Sections 189.016(9), F.S. and 190.008(1), F.S.

an independent certified public accountant.[48] The auditor shall review the financial accounts and records of the district, reports on compliance and internal control, management letters, and financial statements, as required by rules adopted by the Auditor General.[49] The auditor must present these findings to the chair of the district's governing board and submit a copy of the report to the Auditor General.[50] The audit report is a public record once the report is submitted by the auditor to the district.[51] All CDDs are required to file an annual financial report with the Department of Financial Services.[52]

Expansion or Contraction of a CDD

A landowner or the board of a CDD may petition for the boundaries of the district to be expanded or contracted.[53] If the petition seeks to expand the district boundaries, the petition must include a proposed timetable for the construction of any district services in the new area, the estimated cost of constructing the proposed services, and the designation of the future land use plan for the area from the relevant local government local comprehensive plan.[54] If the petition seeks to contract the district boundaries, the petition must include a list of services and facilities currently provided by the district to the removed area, as well as the future land use plan for the area from the relevant local government local comprehensive plan.[55]

For districts established by county ordinance, the petition for expansion or contraction must be filed with the county commission, but there is no filing fee requirement.[56] The county commission then conducts a public hearing on the petition in the same manner as for other ordinance amendments. For districts established by FLWAC rule, the petitioner must pay a $1,500 filing fee to each county or municipality in which the proposed resulting CDD will be located and also to each municipality contiguous with or containing a portion of the land proposed for inclusion in the district, and the required public meeting is conducted by the board of the CDD instead of a hearing officer.[57]

The amount of land that can be added to a CDD is restricted. Whether a district was initially established by FLWAC rule or county or municipal ordinance, the cumulative additions to the district may not be greater than the lesser of 50 percent of the land area of the initial district or 1,000 acres.[58]

[48] Section 218.39(1), F.S. An entity is exempt from this requirement if it is informed by the first day of the fiscal year that the Auditor General will be conducting an audit of the entity for that fiscal year.
[49] Section 218.39(2), F.S. The rules of the Auditor General are Rules 10.550, 10.650, 10.700, 10.800, and 10.850, F.A.C. *See* Rule 61H1-20.0093, F.A.C.
[50] Sections 218.39(5) and (7), F.S.
[51] *See* s. 119.0713(2)(b), F.S.
[52] Section 218.32(1)(a), F.S.
[53] Section 190.046(1), F.S.
[54] Section 190.046(1)(a), F.S.
[55] *Id.*
[56] Section 190.046(1)(b), F.S.
[57] Section 190.046(1)(d)1.-4., F.S.
[58] Section 190.046(1)(e), F.S.

Merger of a CDD

A CDD may be merged with another CDD with the filing of a petition for merger that states the elements for establishing a new CDD, including being evaluated by the criteria for creating a new district and the submission of the filing fee.[59] A CDD may also be merged with other types of special districts using the process for creating a new district, with the CDD inheriting the rights and associated obligations of property and creditors of the merged special district(s).[60] A CDD merging with another type of special district is required to enter a merger agreement to allocate indebtedness to be assumed by the new CDD and the process for retiring the debt.[61] The approval of the merger agreement and the petition by the board of supervisors of the CDD is deemed to constitute the consent of the district landowners.[62]

A CDD may also be merged with up to four other CDDs created by the same local general-purpose government, as long as the membership of each board of directors is composed entirely of qualified electors.[63] This method may be used even if the merged district would have been required to receive FLWAC approval if the CDD was being newly created. The filing of a petition approved by the board of each CDD applying constitutes consent of the landowners within each district.

Before filing the merger petition, each CDD must hold a public hearing to take comments on the proposed merger, the merger agreement, and the assignment of board seats.[64] The hearing must be noticed at least 14 days beforehand. If any CDD withdraws after the public hearing, the remaining districts considering merger must hold a public hearing on a revised merger agreement between the remaining parties. The petition may not be filed for at least 30 days after the last public hearing.

III. Effect of Proposed Changes:

Section 1 amends s. 190.046, F.S., to provide that a petition to establish a new CDD of less than 2,500 acres located solely in one county or municipality may identify "sufficiently contiguous" lands beyond the CDD's boundaries which the petitioner anticipates expanding the CDD to include within ten years after the effective date of the ordinance establishing the district. However, these additional lands must be within the same county or municipality as the CDD. Additionally, the petition must include a legal description of each additional parcel within the sufficiently contiguous land, the current owner of the parcel, the acreage of each additional parcel, and the current land use designation of each parcel. The petitioner must provide notice to the current owner of each such parcel of the filing of the petition, the date and time of the public hearing on the petition, and the name and address of the petitioner at least 14 days before the public hearing pursuant to s. 190.005(2)(b), F.S., concerning the creation of the CDD. A parcel may only be included with written consent of the landowner.

[59] Section 190.046(3), F.S.
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] Section 190.046(4)(a), F.S.
[64] Section 190.046(4)(c), F.S.

After the district is established, a person may then petition the county or municipality to amend the boundaries of the CDD to include the previously identified parcel that was a proposed addition to the CDD before its establishment. A filing fee may not be charged for this petition. Additionally, each petition must include:

- A legal description by metes and bounds of the parcel to be added;
- A new legal description by metes and bounds of the district;
- Written consent of all landowners of the parcels to be added;
- A map of the district including the parcel to be added;
- A description of the development proposed on the additional parcel; and
- A copy of the original petition identifying the parcel to be added.

Before filing the petition with the county or municipality, the person must provide the petition to the district and to the owner of the proposed additional parcel, if the owner is not the petitioner.

Once the petition is determined to be sufficient and complete, the county or municipality must process the addition of the parcel to the CDD as an amendment to the ordinance that establishes the district. The county or municipality may process all petitions to amend the ordinance, even if, after adding such parcels, the district exceeds 2,500 acres.

The petitioner must publish a notice of the intent to amend the ordinance that establishes the district in a newspaper of general circulation in the proposed district. This notice is in addition to any notice required for the adoption of the ordinance amendment. The notice must be published at least ten days before the scheduled hearing on the ordinance amendment and may be published in the section of the newspaper reserved for legal notices. The notice must include a general description of the land to be added to the district and the data and the time of the scheduled hearing to amend the ordinance. The petitioner must mail or hand-deliver the notice of the hearing on the ordinance amendment to the owner of the parcel and to the district at least 14 days before the scheduled hearing.

The amendment of a district by the addition of a parcel does not alter the transition from landowner voting to qualified elector voting pursuant to s. 190.006, F.S., even if the total size of the district after the addition exceeds 5,000 acres. After adoption of the ordinance expanding the district, the petitioner must cause to be recorded a notice of boundary amendment which reflects the new boundaries of the district.

The bill provides that this new method of adding lands to a district does not preclude the addition of lands using procedures in other provisions of s. 190.046, F.S.

The bill also provides that a CDD may also merge with another type of special district created by special act pursuant to the terms of that special act or by filing a petition for establishment of a new district in accordance with s. 190.005, F.S.

Section 2 provides that the bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Line 71 states that "a person" may petition the county or municipality to amend the boundaries of the CDD to include a previously identified parcel that was a proposed addition to the district before its establishment. It is unclear if this provision could be exercised by persons other than the board of the district or the landowner of the property to be added.

Similarly, line 88 states that the "person" must provide the petition to the CDD and to the owner of the proposed additional parcel before filing the county or municipality if the owner is not the petitioner.

VIII. Statutes Affected:

This bill substantially amends section 190.046 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 Infrastructure and Security on March 26, 2019:
The committee substitute changes the title of the bill from an act relating to "Growth Management" to an act relating to "Community Development Districts."

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

455636

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2019	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Between lines 45 and 46
insert:

Section 1. Subsection (1) of section 190.016, Florida Statutes, is amended to read:

190.016 Bonds.—

(1) SALE OF BONDS.—Bonds may be sold in blocks or installments at different times, or an entire issue or series may be sold at one time. Bonds may be sold at public or private sale after such advertisement, if any, as the board may deem

advisable but not in any event at less than 90 percent of the par value thereof, together with accrued interest thereon. Any bond sold in accordance with s. 189.051(2) and this section, where applicable, must be issued in denominations of not less than $500,000 each and in integral multiples of not less than $5,000 above such amount, provided that if a bond is partially redeemed by the district and the unredeemed portion is less than $500,000, such unredeemed portion must remain in the largest possible denomination of less than $500,000, in integral multiples of not less than $5,000. Any bond that has been assigned a rating by Moody's Investor Services, Standard & Poor's, or Fitch Ratings may be transferred in denominations of not less than $5,000 increments. Bonds may be sold or exchanged for refunding bonds. Special assessment and revenue bonds may be delivered by the district as payment of the purchase price of any project or part thereof, or a combination of projects or parts thereof, or as the purchase price or exchange for any property, real, personal, or mixed, including franchises or services rendered by any contractor, engineer, or other person, all at one time or in blocks from time to time, in such manner and upon such terms as the board in its discretion shall determine. The price or prices for any bonds sold, exchanged, or delivered may be:

(a) The money paid for the bonds;

(b) The principal amount, plus accrued interest to the date of redemption or exchange, or outstanding obligations exchanged for refunding bonds; and

(c) In the case of special assessment or revenue bonds, the amount of any indebtedness to contractors or other persons paid

455636

with such bonds, or the fair value of any properties exchanged for the bonds, as determined by the board.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Between lines 2 and 3

insert:

amending s. 190.016, F.S.; providing requirements under which specified bonds must be sold; authorizing the sale of certain bonds in denominations of specified increments;

By the Committee on Infrastructure and Security; and Senator Lee

596-03787-19 2019728c1

A bill to be entitled

An act relating to community development districts; amending s. 190.046, F.S.; authorizing sufficiently contiguous lands located within the county or municipality which a petitioner anticipates adding to the boundaries of a new community development district to also be identified in a petition to establish the new district under certain circumstances; providing requirements for the petition; providing notification requirements for the petition; prohibiting a parcel from being included in the district without the written consent of the owner of the parcel; authorizing a person to petition the county or municipality to amend the boundaries of the district to include a certain parcel after establishment of the district; prohibiting a filing fee for such petition; providing requirements for the petition; requiring the person to provide the petition to the district and to the owner of the proposed additional parcel before filing the petition with the county or municipality; requiring the county or municipality to process the addition of the parcel to the district as an amendment to the ordinance that establishes the district once the petition is determined sufficient and complete; authorizing the county or municipality to process all such petitions even if the addition exceeds specified acreage; providing notice requirements for the intent to amend the ordinance establishing the district; providing that the amendment of a district by the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

596-03787-19 2019728c1

addition of a parcel does not alter the transition from landowner voting to qualified elector voting; requiring the petitioner to cause to be recorded a certain notice of boundary amendment upon adoption of the ordinance expanding the district; providing construction; authorizing community development districts to merge with another type of special district created by special act or by filing a petition for establishment of a new district; authorizing a community development district merging with another type of district to enter into merger agreements for certain purposes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (h) is added to subsection (1) of section 190.046, Florida Statutes, and subsection (3) of that section is amended, to read:

190.046 Termination, contraction, or expansion of district.—

(1) A landowner or the board may petition to contract or expand the boundaries of a community development district in the following manner:

(h) For a petition to establish a new community development district of less than 2,500 acres on land located solely in one county or one municipality, sufficiently contiguous lands located within the county or municipality which the petitioner anticipates adding to the boundaries of the district within 10

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

years after the effective date of the ordinance establishing the district may also be identified. If such sufficiently contiguous land is identified, the petition must include a legal description of each additional parcel within the sufficiently contiguous land, the current owner of the parcel, the acreage of the parcel, and the current land use designation of the parcel. At least 14 days before the hearing required under s. 190.005(2)(b), the petitioner must give the current owner of each such parcel notice of filing the petition to establish the district, the date and time of the public hearing on the petition, and the name and address of the petitioner. A parcel may not be included in the district without the written consent of the owner of the parcel.

1. After establishment of the district, a person may petition the county or municipality to amend the boundaries of the district to include a previously identified parcel that was a proposed addition to the district before its establishment. A filing fee may not be charged for this petition. Each such petition must include:

a. A legal description by metes and bounds of the parcel to be added;

b. A new legal description by metes and bounds of the district;

c. Written consent of all owners of the parcel to be added;

d. A map of the district including the parcel to be added;

e. A description of the development proposed on the additional parcel; and

f. A copy of the original petition identifying the parcel to be added.

2. Before filing with the county or municipality, the person must provide the petition to the district and to the owner of the proposed additional parcel, if the owner is not the petitioner.

3. Once the petition is determined sufficient and complete, the county or municipality must process the addition of the parcel to the district as an amendment to the ordinance that establishes the district. The county or municipality may process all petitions to amend the ordinance for parcels identified in the original petition, even if, by adding such parcels, the district exceeds 2,500 acres.

4. The petitioner shall cause to be published in a newspaper of general circulation in the proposed district a notice of the intent to amend the ordinance that establishes the district. The notice must be in addition to any notice required for adoption of the ordinance amendment. Such notice must be published at least 10 days before the scheduled hearing on the ordinance amendment and may be published in the section of the newspaper reserved for legal notices. The notice must include a general description of the land to be added to the district and the date and time of the scheduled hearing to amend the ordinance. The petitioner shall deliver, including by mail or hand delivery, the notice of the hearing on the ordinance amendment to the owner of the parcel and to the district at least 14 days before the scheduled hearing.

5. The amendment of a district by the addition of a parcel pursuant to this paragraph does not alter the transition from landowner voting to qualified elector voting pursuant to s. 190.006, even if the total size of the district after the

addition of the parcel exceeds 5,000 acres. Upon adoption of the ordinance expanding the district, the petitioner must cause to be recorded a notice of boundary amendment which reflects the new boundaries of the district.

6. This paragraph is intended to facilitate the orderly addition of lands to a district under certain circumstances and does not preclude the addition of lands to any district using the procedures in the other provisions of this section.

(3) The district may merge with other community development districts upon filing a petition for merger, which petition shall include the elements set forth in s. 190.005(1) and which shall be evaluated using the criteria set forth in s. 190.005(1)(e). The filing fee shall be as set forth in s. 190.005(1)(b). In addition, the petition shall state whether a new district is to be established or whether one district shall be the surviving district. A community development district may also merge with another type of special district created by special act pursuant to the terms of that special act or by filing a petition for establishment of a new ~~The district may merge with any other special districts upon filing a petition for establishment of a community development~~ district pursuant to s. 190.005. The government formed by a merger involving a community development district pursuant to this section shall assume all indebtedness of, and receive title to, all property owned by the preexisting special districts, and the rights of creditors and liens upon property are ~~shall~~ not ~~be~~ impaired by such merger. Any claim existing or action or proceeding pending by or against any district that is a party to the merger may be continued as if the merger had not occurred, or the surviving

district may be substituted in the proceeding for the district that ceased to exist. Prior to filing a ~~the~~ petition, the districts desiring to merge shall enter into a merger agreement and shall provide for the proper allocation of the indebtedness so assumed and the manner in which such debt shall be retired. The approval of the merger agreement and the petition by the board of supervisors of the district shall constitute consent of the landowners within the district. A community development district merging with another type of district may also enter into a merger agreement to address issues of transition, including the allocation of indebtedness and retirement of debt.

Section 2. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 3, 2019

I respectfully request that **Senate Bill #728**, relating to Growth Management, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Tom Lee

Senator Tom Lee
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

23 April 19
Meeting Date

728
Bill Number (if applicable)

455636
Amendment Barcode (if applicable)

Topic CDDs

Name Cheryl Stuart

Job Title Attorney - Hopping Green & Sams

Address 119 S Monroe St Ste 300
Street

Phone 2227500

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing 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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

23 April 19
Meeting Date

728
Bill Number (if applicable)

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Amendment Barcode (if applicable)

Name Cheryl Stuart

Job Title Attorney - Hopping Green & Sams

Address 119 S Monroe Ste 300
Street

Phone 222 7500

Tallahassee FL 32301
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Speaking: ☒ For ☐ Against ☐ Information

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(The Chair will read this information into the record.)

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This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1638
INTRODUCER:	Rules Committee, Infrastructure and Security Committee and Senator Lee
SUBJECT:	Commercial Motor Vehicles
DATE:	April 24, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Miller	IS	**Fav/CS**
2.	McKay	McKay	CM	**Favorable**
3.	Proctor	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1638 revises numerous provisions relating to commercial motor vehicles (CMV). The bill:

- Updates various CMV regulations to address compatibility concerns with federal regulations;
- Removes exceptions regarding the visibility of headlamps and turn signals by waste collection vehicles under specified circumstances;
- Provides an effective date for certain requirements relating to the use of electronic logging devices and hours of service support documents;
- Removes language requiring intrastate CMVs that are not carrying hazardous materials to comply with certain federal regulations providing maximum drive time requirements;
- Removes a duplicative $100 fine for falsifying hours of service records;
- Amends a provision to correct a federal regulations reference that allows a short-haul driver, not transporting hazardous materials requiring a placard, to be exempt from maintaining records of duty status;
- Conforms to federal regulation by adding the terms “gross vehicle weight rating” and “gross combined vehicle weight rating” for determining which vehicles, not transporting hazardous materials, meet the 26,001 pound threshold requirement for select intrastate commerce exemptions;
- Removes an exemption from federal regulations regarding transporting petroleum products due to the inclusion of flammable liquids that could require a hazardous material placard;
- Requires charter buses operating interstate to register as apportionable vehicles;

- Authorizes the transport of general freight on a return trip by an automobile transporter, as long as the vehicle still complies with Interstate System weight restrictions;
- Prohibits the state from imposing a length limitation of less than 80 feet and extends the front bumper overhang allowance on a stinger-steered automobile transporter from the current three feet to the federal allowance of four feet;
- Creates a definition for "towaway trailer transporter combinations" that is consistent with provisions contained in the Fixing America's Surface Transportation (FAST) Act; and
- For an unlawful weight and load calculation, allows the fine to be calculated by reducing the actual gross vehicle weight by the certified weight difference between the electric battery system and fueling system and a comparable diesel tank and fueling system

The bill may have an indeterminate impact to the CMV industry associated with changes to the CMV regulations. In addition, failure to adopt statutory changes to comply with federal regulations may jeopardize federal funding for the state's motor carrier safety program.

The effect date of the bill is October 1, 2019.

II. Present Situation:

Federal Motor Carrier Safety Administration Compatibility

The primary mission of the Federal Motor Carrier Safety Administration (FMCSA), within the United States Department of Transportation, is to prevent commercial motor vehicle-related fatalities and injuries.[1] In 2007, the FMCSA presented to Florida a Motor Carrier Safety Assistance Program (MSCAP) review, which concluded that Florida Statutes have multiple compatibility concerns with federal CMV safety regulations.[2]

Section 316.003(13), F.S. defines "commercial motor vehicle" as any self-propelled or towed vehicle used on public highways in commerce to transport passengers or cargo, if such vehicle:
- Has a gross vehicle weight rating of 10,000 pounds or more;
- Is designed to transport more than 15 passengers, including the driver; or
- Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act[3], as amended.

Section 316.302(1)(a), F.S., provides that all owners and drivers of CMVs operating on the state's public highways while engaged in interstate commerce are subject to the following parts of 49 C.F.R.:
- 382 Controlled Substance and Alcohol Use Testing;
- 385 Safety Fitness Procedures;
- 390 Federal Motor Carrier Safety Regulations; General;
- 391 Qualifications of Drivers and Longer Combination Vehicle Driver Instructors;
- 392 Driving of Commercial Motor Vehicles;

[1] Federal Motor Carrier Safety Administration, *available at:* https://www.fmcsa.dot.gov/mission/about-us (last visited April 5, 2019).
[2] 2007 Florida State MSCAP Review (Copy on file with Senate Committee on Infrastructure and Security).
[3] 49 U.S.C. ss. 1801 *et seq.*

- 393 Parts and Accessories Necessary for Safe Operation;
- 395 Hours of Service for Drivers;
- 396 Inspection, Repair, and Maintenance; and
- 397 Transportation of Hazardous Materials; Driving and Parking Rules.

Section 316.302(1)(b), F.S., provides that, with certain exceptions, all owners or drivers of CMVs engaged in intrastate commerce are subject to the following parts of 49 C.F.R. except as it relates to the definition of bus, as those rules and regulations existed on December 31, 2012:

- 382 Controlled Substance and Alcohol Use Testing;
- 383 Commercial Driver's License Standards; Requirements and Testing;
- 385 Safety Fitness Procedures;
- 390 Federal Motor Carrier Safety Regulations; General;
- 391 Qualifications of Drivers and Longer Combination Vehicle Driver Instructors;
- 392 Driving of Commercial Motor Vehicles;
- 393 Parts and Accessories Necessary for Safe Operation;
- 395 Hours of Service for Drivers;
- 396 Inspection, Repair, and Maintenance; and
- 397 Transportation of Hazardous Materials; Driving and Parking Rules.

Federal regulations define "bus" as "any motor vehicle designed, constructed, and/or used for the transportation of passengers, including taxicabs."[4] In its 2007 review, the FMCSA found that Florida's exemption for taxicabs was not compatible with federal regulations, which include taxicabs in the definition of "bus."[5]

The FMCSA also found that the statutory provision exempting trucks transporting solid waste and recyclable materials with specified mechanisms operating at speeds of less than 20 miles per hour from certain lighting provisions is incompatible with federal regulations,[6] which do not contain a similar exemption, and that federal regulations expressly prohibit lamps and reflectors from being obscured.[7]

Federal regulations provide that with some exceptions, CMV drivers are required to be at least 21 years of age.[8] Federal regulations also provide maximum drive time requirements for property carrying vehicles.[9] Section 316.302(2)(a), F.S., provides that a person operating a CMV solely in intrastate commerce and not transporting any hazardous material in amounts that require placarding[10] is not required to comply with the above-referenced federal regulations.

[4] 49 C.F.R. s. 390.5T.
[5] 2007 Florida State MSCAP Review, at p. 2.
[6] 49 C.F.R. 393 Subpart B.
[7] 2007 Florida State MSCAP Review, at p. 4.
[8] 49 C.F.R. s. 391.11(b)(1).
[9] 49 C.F.R. s. 395.3(a) and (b).
[10] Placarding is required pursuant to 49 C.F.R. part 172. In this analysis, everywhere there is a discussion regarding the transportation of hazardous materials, it is assumed to be in amounts that require placarding.

Federal regulations provide hours of service rules for CMV drivers.[11] Florida law also provides that, except as provided in federal regulations, a person operating a CMV solely in intrastate commerce and not transporting any hazardous material may not drive:

- More than 12 hours following 10 consecutive hours off duty; or
- For any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty.[12]

These provisions do not apply to drivers of utility service vehicles.[13]

Section 316.302(2)(c), F.S., specifies that, except as provided in the federal hours of service rules[14], a person operating a CMV solely in intrastate commerce not transporting any hazardous material may not drive after having been on duty more than 70 hours in any period of seven consecutive days, or more than 80 hours in any period of eight consecutive days if the motor carrier operates every day of the week. Upon request of the Department of Highway Safety and Motor Vehicles (HSMV), motor carriers are required to furnish time records or other written verification so that the HSMV can determine compliance with the hours of service requirements. Falsification of time records is subject to a civil penalty not to exceed $100.

Section 316.302(2)(d), F.S., provides that a person operating a CMV solely in intrastate commerce not transporting any hazardous material within a 150 air-mile radius is not required to comply with federal provisions regarding a driver's record of duty status[15] if the requirements of certain federal rules regarding short-haul operations[16] are met. If a driver is not released from duty within 12 hours after the driver arrives for duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period.

Section 316.302(2)(f), F.S., provides that a person who is operating a CMV having a declared gross vehicle weight of less than 26,001 pounds operating solely in intrastate commerce and who is not transporting hazardous materials or who is transporting petroleum products[17] is exempt from s. 316.302(1), F.S. However, such person must comply with 49 C.F.R. parts 382, 392, and 393, and with 49 C.F.R. ss. 396.3(a)(1) and 396.9.

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[11] 49 C.F.R. s. 395.

[12] Section 316.302(2)(b), F.S.

[13] 49 C.F.R. s. 395.2, defines "utility service vehicle" as any commercial motor vehicle:

(1) Used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;

(2) While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and

(3) Except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

[14] 49 C.F.R. s. 395.1.

[15] 49 C.F.R. 395.8.

[16] 49 C.F.R. s. 395.1(e)(1)(iii) and (v) are various rules relating to short-haul operations.

[17] Section 376.301(33), F.S., defines "petroleum product" as "any liquid fuel commodity made from petroleum, including, but not limited to, all forms of fuel known or sold as diesel fuel, kerosene, all forms of fuel known or sold as gasoline, and fuels containing a mixture of gasoline and other products, excluding liquefied petroleum gas and American Society for Testing and Materials grades no. 5 and no. 6 residual oils, bunker C residual oils, intermediate fuel oils used for marine bunkering with a viscosity of 30 and higher, asphalt oils, and petrochemical feedstocks."

In its 2007 findings, the FMCSA determined that s. 316.302(2)(f), F.S., is not compatible with federal regulations since it exempts vehicles transporting petroleum products and the state definition of petroleum products includes liquids that could require placarding, while federal regulations do not allow drivers of vehicles requiring placarding to be exempt from applicable requirements.[18]

Length and Load Requirements for Automobile Transporters and Towaway Trailers

On December 4, 2015, the FAST Act was signed into law.[19] The FAST Act revises the definition of the term "automobile transporter" to allow for the transport of general freight on a return trip ("backhaul"), so long as the vehicle still complies with Interstate System weight restrictions. The FAST Act also prohibits states from imposing a length limitation of less than 80 feet and adjusts allowable front and rear overhangs on certain automobile transporters.[20]

The FAST Act provides that a state may not prohibit a towaway trailer transporter combination of less than 82 feet from traveling on the National Network. A "towaway trailer transporter combination" is a combination of vehicles consisting of a trailer transporter towing unit and two trailers or semitrailers with the total weight of the property and combination not exceeding 26,000 pounds.[21]

Florida law defines a "stinger-steered automobile or boat transporter" as "an automobile or boat transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame located behind and below the rearmost axle of the power unit." An automobile or boat transporter semitrailer may not exceed 50 feet in length, exclusive of the load; however, the load may extend up to an additional six feet beyond the rear of the trailer. The 50-feet length limitation does not apply to non-stinger-steered automobile or boat transporters that are 65 feet or less in overall length, exclusive of the load carried thereon, or to stinger-steered automobile or boat transporters that are 75 feet or less in overall length, exclusive of the load carried thereon.[22]

Section 316.515(3), F.S., provides that the load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, may not extend more than three feet beyond the front wheels of the vehicle or the front bumper of the vehicle if it is equipped with a bumper.

Motor Vehicle Weights and Overweight Penalties

The rate of damage to roads and bridges generally increases as vehicle weight increases, resulting in higher maintenance and replacement costs and potentially creating unsafe conditions. Maximum legal vehicle weights are established for all public roads and bridges and allow compliant vehicles to travel most public highways of the state without causing excessive road damage or bridge failures. However, some roads and bridges have lower weight limits due to their age, condition, or design, and these facilities have posted weight limits; *i.e.*, their lower

[18] 2007 Florida State MSCAP Review, at p. 3.
[19] 49 U.S.C. § 31111.
[20] 49 U.S.C. § 31111(a)(1) and (b)(1)(G).
[21] 49 U.S.C. § 31111(a)(6)-(7) and (b)(1)(H).
[22] Section 316.515(3), F.S.

weight limits are identified through signage at the facility. Vehicles exceeding the maximum weight limits on a facility, including posted facilities, are presumed to have damaged the highways of the state and are subject to fines.[23]

Gross vehicle weight is the total weight of a vehicle (or combination of vehicles) and any cargo carried by the vehicle.[24] Federal and state laws generally provide that gross vehicle weight may not exceed 80,000 pounds for both the interstate and non-interstate highway system, [25] or the maximum allowed by the Federal Bridge Formula.[26] In Florida, the maximum weight limit is 22,000 pounds on a single axle, and 44,000 pounds on a tandem axle.[27] These limits do not apply to those vehicles and loads that cannot be easily dismantled or divided (*i.e.*, "non-divisible"), or to other vehicles exceeding the maximum weight limits, if a special permit has been issued in accordance with applicable state laws.[28]

However, the vehicle's number of axles and the distance between the axles in part controls a vehicle's maximum allowable weight. Thus, a vehicle's maximum allowable gross weight may be reduced because the concentration of weight on a particular axle may reach unacceptable limits. For example, pavement and bridge stress is greater for a 30-foot truck with two axles and a gross vehicle weight of 50,000 pounds than a 54-foot tractor-trailer combination of the same weight because the tractor-trailer distributes the load over a greater area. Therefore, the 30-foot truck will have a lower maximum allowable weight.

For weight violations, including violations of weight criteria contained in a special permit, the penalty is as established in s. 316.545(3)(a), F.S., *i.e.*, $10 for 200 pounds or less and 5 cents per pound for each pound over 200 pounds. Unlawful axle weights are penalized at $10 for the first 600 pounds, if the gross weight of the vehicle (or vehicle combination) does not exceed the maximum allowable gross weight.[29]

For each violation of the operational or safety restrictions established in a special permit, *e.g.*, using a restricted bridge, the penalty may be as high as $1,000. However, the cumulative total for multiple violations may not exceed $1,000.[30]

These penalties are deposited into the State Transportation Trust Fund and used for roadway maintenance and repair.[31]

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[23] *See* ss. 316.545 and 316.555, F.S.
[24] Section 316.003(28), F.S.
[25] *See* 23 U.S.C. 127 (2015) and s. 316.535, F.S.
[26] This formula is used to determine the maximum allowable weight that any set of axles on a motor vehicle may carry on the Interstate Highway System. For further detail, see the Federal Highway Administration website: http://ops.fhwa.dot.gov/freight/sw/brdgcalc/calc_page.htm (last visited April 23, 2019).
[27] *See* the Florida Highway Patrol *Commercial Motor Vehicle Manual,* July 2016, at p. 8, available at: https://www.flhsmv.gov/fhp/CVE/2015truckingmanual.pdf (last visited April 23, 2019).
[28] 23 U.S.C. 127(a) (2015) and s. 316.550, F.S.
[29] Section 316.545(3)(a), F.S.
[30] 316.550(10)(c), F.S.
[31] Section 316.545(6), F.S.

Cargo Capacity of Vehicles Fueled by Electricity Compared to Gasoline or Diesel-Fueled Vehicles

According to the U.S. Department of Energy, electricity can be used to power plug-in electric vehicles (PEVs), including all-electric vehicles and plug-in hybrid electric vehicles. These vehicles can draw electricity directly from the grid and other off-board electrical power sources and store it in batteries. In contrast, hybrid electric vehicles are fueled with liquid fuels, like gasoline, but use batteries to recapture energy otherwise lost during braking (ultimately boosting fuel economy). Using electricity to power vehicles can have significant energy security and emissions benefits.[32] Electric vehicles are reported to be similar to gasoline or diesel-fueled vehicles with respect to power, acceleration, and cruising speed; and the use of PEV's provides additional advantages, such as its domestic availability, its relative low cost, and significant emissions benefits.[33] However, these advantages may be offset by displacement of cargo capacity, due to the heavier weight of electrical battery systems relative to gasoline or diesel systems.

FAST Act Natural Gas Vehicle Weight Allowance

The FAST Act, which authorized Federal surface transportation programs for fiscal years 2016-2020, contained a number of incentives for natural gas. In apparent recognition of the potential displacement of cargo capacity due to the heavier weight of Natural Gas Vehicles, the FAST Act authorized a vehicle, if operated by an engine fueled primarily by natural gas, to exceed any (single axle, tandem axle and bridge formula) weight limit (up to a maximum gross vehicle weight of 82,000 pounds) by an amount that is equal to the difference between:

- The weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle, and
- The weight of a comparable diesel tank and fueling system.[34]

The Federal Highway Administration (FHWA) has advised states to review state statutes, regulations, and procedures, as well as load rating and posting calculations and enforcement practices, for necessary updating.[35] Further, the FHWA noted that while the federally increased weight allowance does not preempt a state from enforcing *state* weight limits on all highways, it does "prevent[] the FHWA from imposing funding sanctions if a state authorizes the additional weight limit on its Interstate system."[36]

Florida law has long adhered to the general maximum weight limits contained in the Federal law,[37] and the Department of Transportation issues special permits for vehicles transporting non-divisible loads and for other vehicles exceeding maximum weight limits.[38] Florida law currently

[32] *See* the U.S. Department of Energy Alternative Fuels Data Center website available at: https://afdc.energy.gov/fuels/electricity.html (last visited April 23, 2019).
[33] *Id.* at: https://afdc.energy.gov/fuels/electricity_benefits.html (last visited April 23, 2019).
[34] P.L. 114-94, s. 1410 (2015). *See also* the Federal Highway Administration Memorandum dated February 24, 2016, *Information: Fixing America's Surface Transportation Act (FAST Act) Truck Size and Weight Provisions* available at https://ops.fhwa.dot.gov/freight/pol_plng_finance/policy/fastact/tswprovisions/#questions (last visited April 23, 2019).
[35] *Id.*, Questions and Answers 16.
[36] *Id.*, Questions and Answers 14.
[37] *See* s. 316.535, F.S.
[38] *See* s. 316.550, F.S.

grants a 550-pound weight allowance for idle reduction technology[39] consistent with federal law, but does not authorize additional weight for electric battery systems.

III. Effect of Proposed Changes:

Federal Motor Carrier Safety Administration Compatibility

The bill amends various provisions of ss. 316.302(1) and (2), F.S., addressing issues related to Florida's CMV regulations and their incompatibility with federal regulation.

The bill amends s. 316.302(1)(a), F.S., to provide that all owners and drivers of commercial motor vehicle that are operated on the public highways of Florida while engaged in interstate commerce are subject to parts 383 and 386 of 49 C.F.R.

The bill amends s. 316.302(1)(b), F.S., removing the exception for the federal definition of a bus and updating the date of adoption to December 31, 2018, which updates the state law referencing the applicable federal rules applicable to intrastate CMVs.

The bill amends s. 316.302(1)(d), F.S., removing exceptions regarding headlamps and turn signals by waste collection vehicles under specified circumstances.

The bill creates s. 316.302(1)(e), F.S., providing that the requirement for electronic logging devices and hours of service support documents[40] do not go into effect for motor carriers engaged in intrastate commerce, and not carrying hazardous materials in amounts requiring placarding, until December 31, 2019.

The bill amends s. 316.302(2)(a), F.S., no longer requiring intrastate CMVs that are not carrying hazardous materials to comply with certain federal regulations providing maximum drive time requirements. Therefore, these vehicles will not be required to comply with 49 C.F.R. 395.3, documenting the maximum driving time for operators of property carrying vehicles. These drivers continue to be subject to the maximum driving times required by state law.

The bill amends s. 316.302(2)(c), F.S., by removing the $100 fine for falsifying hours of service records, because it is duplicative of the fine provided in the CMV penalties statute.[41]

The bill amends s. 316.302(2)(d), F.S., to update and correct a reference to federal regulations, 49 C.F.R. 395.1(e)(1)(ii) and (iii)(A) and (C) and (v), that allow a short-haul driver, not transporting hazardous materials requiring a placard, to be exempt from maintaining documentation of the driver's driving times. In order to be exempt, a driver must return to the work reporting location and be released from work within 12 consecutive hours and have either 10 or 8 hours off.

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[39] Section 316.545(3)(b), F.S.
[40] Electronic Logging Devices and Hours of Service Supporting Documents, 80 Fed. Reg. 78291 (Dec. 16, 2015), https://www.federalregister.gov/documents/2015/12/16/2015-31336/electronic-logging-devices-and-hours-of-servicesupporting-documents (last visited April 5, 2019).
[41] Section 316.3025(3)(b)1., F.S.

The bill amends s. 316.302(2)(f), F.S., to remove specific exemptions from federal regulations for drivers transporting petroleum products due to the inclusion of flammable liquids that could require a hazardous material placard. The paragraph is also amended to refer to the federal criteria for the exemption: CMVs having a *gross vehicle weight*, *gross vehicle weight rating*, and *gross combined weight rating* of less than 26,001 pounds, instead of a declared gross vehicle weight.

The bill deletes s. 316.302(2)(j), F.S., removing the requirement that a qualified driver who operates a CMV in intrastate commerce only, and who does not transport hazardous materials in amounts that require placarding, be exempt from the diabetes requirement for medical examination of 49 C.F.R. part 391, subpart E, ss. 391.41(b)(3) and 391.41(c).

Length and Load Requirements for Automobile Transporters and Towaway Trailers

The bill amends s. 316.515, F.S., to provide for the transport of general freight on a return trip by an automobile transporter, as long as the vehicle still complies with Interstate System weight restrictions. It prohibits the state from imposing a length limitation of less than 80 feet and extends the front bumper overhang allowance on a stinger-steered automobile transporter from the current three feet to the federal allowance of four feet. The transport still has to comply with existing weight limitations. Finally, the bill creates a definition for "towaway trailer transporter combinations" that is consistent with provisions contained in the FAST Act.

Motor Vehicle Weights and Overweight Penalties

The bill amends s. 316.545(3), F.S., to provide for a specified reduction in the actual gross weight of a vehicle fueled by electric batteries, when calculating the penalty for exceeding maximum weight limits, so long as the actual gross weight of the vehicle does not exceed 82,000 pounds, exclusive of the existing 550-pound weight allowance for idle reduction technology.

If a vehicle fueled by electric batteries is found to be overweight, then the penalty will be calculated by reducing the actual gross vehicle weight by the certified difference in weight between the electric battery system and fueling system carried by that vehicle, and a comparable diesel tank and fueling system, before applying the currently applicable penalty. If the actual gross weight of a vehicle fueled by electric batteries exceeds 80,000 pounds plus the certified weight difference, a penalty of $.05 per pound of excess weight could be assessed.

If a vehicle fueled by electric batteries is also equipped with idle reduction technology, the penalty will be calculated by reducing the actual gross vehicle weight by the certified difference in weight between the electric battery system and fueling system carried by that vehicle and a comparable diesel tank and fueling system, and by an additional 550 pounds. If the actual gross weight of a vehicle fueled by electric batteries with idle reduction technology exceeds 80,550 pounds plus the certified weight difference, a penalty of $.05 per pound of excess weight could be assessed.

The bill contains a proof requirement; *i.e.,* the vehicle operator must present a written certification that identifies the weight of the electric battery system and fueling system, and the difference in weight of a comparable diesel tank and fueling system, upon request of a weight

inspector or a law enforcement officer. The certification must originate from the vehicle manufacturer or the installer of the electric battery system and fueling system.

The bill excludes vehicles described in s. 316.535(6), F.S., from qualifying for the reduced calculation. These vehicles, typically called straight trucks, include dump trucks, concrete mixing trucks, trucks engaged in waste collection and disposal, and fuel oil and gasoline trucks designed and constructed for special type work. The cargo unit and the power unit on these trucks sit on the same frame,[42] meaning that the concentration of weight is greater than, for example, a combination vehicle with an axle configuration that distributes the weight over a greater area. These vehicles continue to be limited to a gross weight of 70,000 pounds.[43]

The effective date of the bill is October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There is a potential impact to the CMV industry associated with changes to the CMV regulations contained in the bill; however, the impact is indeterminate at this time.

[42] *See* s. 316.003(80), F.S.
[43] Section 316.535(6), F.S.

The CMV industry may realize an insignificant positive fiscal impact resulting from the additional weight allowance for a vehicle fueled by electric batteries due to potentially fewer overweight citations.

C. Government Sector Impact:

According to the FMCSA, failure to adopt regulations to comply with federal compatibility requirements by February 16, 2019, may jeopardize federal funding for the state's motor carrier safety program for federal fiscal year 2019.[44] Federal funding for the state's motor carrier safety program for Fiscal Year 2018-2019 totaled $12,778,315, and when matched with state funds in the amount of $2,254,997, totaled $15,033,312.[45]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 316.302, 316.515 and 316.545 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on April 23, 2019:

- Authorizes the transport of general freight on a return trip by an automobile transporter, as long as the vehicle still complies with Interstate System weight restrictions;
- Prohibits the state from imposing a length limitation of less than 80 feet and extends the front bumper overhang allowance on a stinger-steered automobile transporter from the current three feet to the federal allowance of four feet;
- Creates a definition for "towaway trailer transporter combinations" that is consistent with provisions contained in the FAST Act; and
- For an unlawful weight and load calculation, allows the fine to be calculated by reducing the actual gross vehicle weight by the certified weight difference between the electric battery system and fueling system and a comparable diesel tank and fueling system.

[44] William A. Quade, Associate Administrator for Enforcement (Federal Motor Carrier Safety Administration), letter to Colonel Gene Spaulding, Director (Florida Highway Patrol), August 10, 2018 TS (on file with the Committee on Infrastructure and Security).
[45] Email from Kevin Jacobs, Deputy Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, MCSAP funds, (February 7, 2019).

CS by Infrastructure and Security on April 2, 2019:

- The CS makes a technical change to conform to federal requirements, using the word "and" instead of "or" in order to use gross vehicle weight, gross vehicle weight rating, and gross combined weight rating to determine eligibility for an exemption of certain federal requirements.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

614976

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/24/2019	.	
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The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Between lines 25 and 26

insert:

Section 1. Present subsections (55) through (101) of s. 316.003, Florida Statutes, are redesignated as subsections (56) through (102), respectively, new subsection (55) is added to that section, and present subsection (59) of that section is amended, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively

614976

ascribed to them in this section, except where the context otherwise requires:

(55) PLATOON.—A group of no more than two trucks that do not require placards, either laden or unladen, traveling in a unified manner using wireless vehicle-to-vehicle communications that electronically coordinate speeds and following distances of the trucks.

(60) ~~(59)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (82)(b) ~~(81)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Section 2. Section 316.0896, Florida Statutes, is repealed.

Section 3. Section 316.0897, Florida Statutes, is created to read:

316.0897 Platoons.—

(1) Section 316.0895 does not apply to the operator of a nonlead vehicle in a platoon.

(2) A platoon may be operated on a roadway in this state after an operator provides notification to the Department of Transportation and the Department of Highway Safety and Motor Vehicles.

Section 4. Subsection (3) of section 316.303, Florida Statutes, is amended to read:

316.303 Television receivers.—

(3) This section does not prohibit the use of an electronic display used in conjunction with a vehicle navigation system; an electronic display used by an operator of a vehicle equipped with autonomous technology, as defined in s. 316.003(3); or an

electronic display used by an operator of the nonlead ~~a~~ vehicle in a platoon operating on a roadway in this state ~~equipped and operating with driver-assistive truck platooning technology, as defined in s. 316.003~~.

Section 5. Subsection (24) of section 320.01, Florida Statutes, is amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(24) "Apportionable vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, ~~buses used in transportation of chartered parties,~~ and government-owned vehicles, which is used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and:

(a) Is a power unit having a gross vehicle weight in excess of 26,000 pounds;

(b) Is a power unit having three or more axles, regardless of weight; or

(c) Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Vehicles, or combinations thereof, having a gross vehicle weight of 26,000 pounds or less and two-axle vehicles may be proportionally registered.

Section 6. Paragraph (b) of subsection (1) of section 320.06, Florida Statutes, is amended to read:

614976

320.06 Registration certificates, license plates, and validation stickers generally.—

(1)

(b)1. Registration license plates bearing a graphic symbol and the alphanumeric system of identification shall be issued for a 10-year period. At the end of the 10-year period, upon renewal, the plate shall be replaced. The department shall extend the scheduled license plate replacement date from a 6-year period to a 10-year period. The fee for such replacement is $28, $2.80 of which shall be paid each year before the plate is replaced, to be credited toward the next $28 replacement fee. The fees shall be deposited into the Highway Safety Operating Trust Fund. A credit or refund may not be given for any prior years' payments of the prorated replacement fee if the plate is replaced or surrendered before the end of the 10-year period, except that a credit may be given if a registrant is required by the department to replace a license plate under s. 320.08056(8)(a). With each license plate, a validation sticker shall be issued showing the owner's birth month, license plate number, and the year of expiration or the appropriate renewal period if the owner is not a natural person. The validation sticker shall be placed on the upper right corner of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The registration period is 12 months, the extended registration period is 24 months, and all expirations occur based on the applicant's appropriate registration period.

2. A vehicle that has an apportioned registration shall be issued an annual license plate and a cab card denoting ~~that~~

~~denote~~ the declared gross vehicle weight for each apportioned jurisdiction ~~in which the vehicle is authorized to operate~~. This subparagraph expires January 1, 2023.

3. Upon implementation of a new operating system for apportioned vehicle registration, a vehicle registered in accordance with the International Registration Plan shall be issued a license plate for a 5-year period, an annual cab card denoting the declared gross vehicle weight for each apportioned jurisdiction, and an annual validation sticker showing the month and year of expiration. The validation sticker shall be placed in the center of the license plate. The license plate and validation sticker shall be issued based on the applicant's appropriate renewal period. The registration period is 12 months. The fee for the initial validation sticker and any renewed validation sticker is $28. This fee shall be deposited into the Highway Safety Operating Trust Fund. A damaged or worn license plate may be replaced at no charge by applying to the department and surrendering the current license plate.

4.~~2.~~ In order to retain the efficient administration of the taxes and fees imposed by this chapter, the 80-cent fee increase in the replacement fee imposed by chapter 2009-71, Laws of Florida, is negated as provided in s. 320.0804.

Section 7. Subsection (5) of section 320.0607, Florida Statutes, is amended to read:

320.0607 Replacement license plates, validation decal, or mobile home sticker.—

(5) Upon the issuance of an original license plate, the applicant shall pay a fee of $28 to be deposited in the Highway Safety Operating Trust Fund. Upon implementation of a new

operating system for apportioned vehicle registrations, this subsection does not apply to a vehicle registered under the International Registration Plan.

Section 8. Subsection (10) is added to section 320.131, Florida Statutes, to read:

320.131 Temporary tags.—

(10) The department may partner with a county tax collector to conduct a Fleet Vehicle Temporary Tag Pilot Program to provide temporary tags to fleet companies to allow them to operate fleet vehicles awaiting a permanent registration and title.

(a) The department shall enter into a memorandum of understanding that allows up to 10 companies to participate in the pilot program and to receive multiple temporary tags for company fleet vehicles.

(b) To participate in the program, a fleet company must have at least 3,500 fleet vehicles registered in this state which qualify to be registered as fleet vehicles pursuant to s. 320.0657.

(c) The department, upon the request of an eligible fleet company, may issue up to 50 temporary tags per request to such company.

(d) A temporary tag issued under this subsection is for exclusive use on a vehicle purchased for the company’s fleet and may not be used on any other vehicle.

(e) Each temporary tag may be used on only one vehicle, and each vehicle may use only one temporary tag.

(f) Upon issuance of the vehicle’s permanent license plate and registration, the temporary tag becomes invalid and must be

614976

removed from the vehicle and destroyed.

(g) Upon a finding by the department that a temporary tag has been misused by a fleet company under the program, the department may terminate the memorandum of understanding with the company, invalidate all temporary tags issued to the company under the program, and require such company to return any unused temporary tags.

(h) The issuance of a tag using this method must be reported to the department within 2 business days, not including weekends or state holidays, after the issuance of the tag. The county tax collector shall keep a record of each temporary tag issued. The record must include the date of issuance, tag number issued, vehicle identification number, and vehicle description.

(i) This subsection is repealed October 1, 2022, unless saved from repeal through reenactment by the Legislature.

Section 9. Subsection (1) of section 322.61, Florida Statutes, is amended to read:

322.61 Disqualification from operating a commercial motor vehicle.—

(1) A person who, for offenses occurring within a 3-year period, is convicted of two of the following serious traffic violations or any combination thereof, arising in separate incidents committed in a commercial motor vehicle shall, in addition to any other applicable penalties, be disqualified from operating a commercial motor vehicle for a period of 60 days. A holder of a commercial driver license or commercial learner's permit who, for offenses occurring within a 3-year period, is convicted of two of the following serious traffic violations, or any combination thereof, arising in separate incidents committed

614976

in a noncommercial motor vehicle shall, in addition to any other applicable penalties, be disqualified from operating a commercial motor vehicle for a period of 60 days if such convictions result in the suspension, revocation, or cancellation of the licenseholder's driving privilege:

(a) A violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a crash resulting in death.~~;~~

(b) Reckless driving, as defined in s. 316.192.~~;~~

(c) Unlawful speed of 15 miles per hour or more above the posted speed limit.;

(d) Improper lane change, as defined in s. 316.085.~~;~~

(e) Following too closely, as defined in s. 316.0895.~~;~~

(f) Driving a commercial vehicle without obtaining a commercial driver license.~~;~~

(g) Driving a commercial vehicle without the proper class of commercial driver license or commercial learner's permit or without the proper endorsement.~~; or~~

(h) Driving a commercial vehicle without a commercial driver license or commercial learner's permit in possession, as required by s. 322.03.

(i) Texting while driving a commercial motor vehicle as prohibited by 49 C.F.R. s. 392.80.

(j) Using a hand-held mobile telephone while driving a commercial motor vehicle, as prohibited by 49 C.F.R. s. 392.82.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Between lines 2 and 3

614976

insert:

s. 316.003, F.S.; revising and defining terms; conforming a cross-reference; repealing s. 316.0896, F.S., relating to the assistive truck platooning technology pilot project; creating s. 316.0897, F.S.; exempting the operator of a nonlead vehicle in a platoon from provisions relating to following too closely; authorizing a platoon to be operated on a roadway in this state after an operator provides notification to the Department of Transportation and the Department of Highway Safety and Motor Vehicles; amending s. 316.303, F.S.; exempting an operator of a certain platoon vehicle from the prohibition on the active display of television or video; amending s. 320.01, F.S.; redefining the term "apportionable vehicle"; amending s. 320.06, F.S.; providing for future repeal of requirements for vehicles that have apportioned registrations; providing requirements for certain vehicles that have apportioned registrations upon implementation of a certain operating system; providing a specified fee for an initial validation sticker and any renewed validation sticker; requiring that the fee be deposited into the Highway Safety Operating Trust Fund; authorizing certain license plates to be replaced at no charge; amending s. 320.0607, F.S.; providing applicability; amending s. 320.131, F.S.; authorizing the department to partner with a county tax collector to conduct a Fleet Vehicle Temporary Tag Pilot Program for certain purposes;

614976

providing program requirements; providing for future repeal; amending s. 322.61, F.S.; adding violations that disqualify a person from operating a commercial motor vehicle; amending

828292

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2019	.	
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The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Between lines 123 and 124
insert:

Section 2. Subsections (3) and (4) of section 316.515, Florida Statutes, are amended, and subsection (16) is added to that section, to read:

316.515 Maximum width, height, length.—

(3) LENGTH LIMITATION.—Except as otherwise provided in this section, length limitations apply solely to a semitrailer or trailer, and not to a truck tractor or to the overall length of

828292

a combination of vehicles. No combination of commercial motor vehicles coupled together and operating on the public roads may consist of more than one truck tractor and two trailing units. Unless otherwise specifically provided for in this section, a combination of vehicles not qualifying as commercial motor vehicles may consist of no more than two units coupled together; such nonqualifying combination of vehicles may not exceed a total length of 65 feet, inclusive of the load carried thereon, but exclusive of safety and energy conservation devices approved by the department for use on vehicles using public roads. Notwithstanding any other provision of this section, a truck tractor-semitrailer combination engaged in the transportation of automobiles or boats may transport motor vehicles or boats on part of the power unit; and, except as may otherwise be mandated under federal law, an automobile or boat transporter semitrailer may not exceed 50 feet in length, exclusive of the load; however, the load may extend up to an additional 6 feet beyond the rear of the trailer. The 50-feet length limitation does not apply to non-stinger-steered automobile or boat transporters that are 65 feet or less in overall length, exclusive of the load carried thereon, ~~or~~ to stinger-steered ~~automobile or~~ boat transporters that are 75 feet or less in overall length, exclusive of the load carried thereon, or to stinger-steered automobile transporters that are 80 feet or less in overall length, exclusive of the load carried thereon. For purposes of this subsection, a "stinger-steered automobile or boat transporter" is an automobile or boat transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame located behind and below the rearmost axle of the

828292

power unit. Automobile transporters operating under this subsection may backhaul cargo or general freight if the weight of such cargo or freight does not exceed the limits imposed under s. 316.535. Notwithstanding paragraphs (a) and (b), any straight truck or truck tractor-semitrailer combination engaged in the transportation of horticultural trees may allow the load to extend up to an additional 10 feet beyond the rear of the vehicle, provided the ~~said~~ trees are resting against a retaining bar mounted above the truck bed so that the root balls of the trees rest on the floor and to the front of the truck bed and the tops of the trees extend up over and to the rear of the truck bed, and provided the overhanging portion of the load is covered with protective fabric.

(a) *Straight trucks.*—A straight truck may not exceed a length of 40 feet in extreme overall dimension, exclusive of safety and energy conservation devices approved by the department for use on vehicles using public roads. A straight truck may attach a forklift to the rear of the cargo bed, provided the overall combined length of the vehicle and the forklift does not exceed 50 feet. Except as otherwise provided in this section, a straight truck may tow no more than one trailer, and the overall length of the truck-trailer combination may not exceed 68 feet, including the load thereon. Notwithstanding any other provisions of this section, a truck-trailer combination engaged in the transportation of boats, or boat trailers whose design dictates a front-to-rear stacking method may not exceed the length limitations of this paragraph exclusive of the load; however, the load may extend up to an additional 6 feet beyond the rear of the trailer.

828292

(b) *Semitrailers.*—

1. A semitrailer operating in a truck tractor-semitrailer combination may not exceed 48 feet in extreme overall outside dimension, measured from the front of the unit to the rear of the unit and the load carried thereon, exclusive of safety and energy conservation devices approved by the department for use on vehicles using public roads, unless it complies with subparagraph 2. A semitrailer which exceeds 48 feet in length and is used to transport divisible loads may operate in this state only if issued a permit under s. 316.550 and if such trailer meets the requirements of this chapter relating to vehicle equipment and safety. Except for highways on the tandem trailer truck highway network, public roads deemed unsafe for longer semitrailer vehicles or those roads on which such longer vehicles are determined not to be in the interest of public convenience shall, in conformance with s. 316.006, be restricted by the Department of Transportation or by the local authority to use by semitrailers not exceeding a length of 48 feet, inclusive of the load carried thereon but exclusive of safety and energy conservation devices approved by the department for use on vehicles using public roads. Truck tractor-semitrailer combinations shall be afforded reasonable access to terminals; facilities for food, fuel, repairs, and rest; and points of loading and unloading.

2. A semitrailer which is more than 48 feet but not more than 57 feet in extreme overall outside dimension, as measured pursuant to subparagraph 1., may operate on public roads, except roads on the State Highway System which are restricted by the Department of Transportation or other roads restricted by local

828292

authorities, if:

a. The distance between the kingpin or other peg that locks into the fifth wheel of a truck tractor and the center of the rear axle or rear group of axles does not exceed 41 feet, or, in the case of a semitrailer used exclusively or primarily to transport vehicles in connection with motorsports competition events, the distance does not exceed 46 feet from the kingpin to the center of the rear axles; and

b. It is equipped with a substantial rear-end underride protection device meeting the requirements of 49 C.F.R. s. 393.86, "Rear End Protection."

(c) *Tandem trailer trucks.*—

1. Except for semitrailers and trailers of up to 28 1/2 feet in length which existed on December 1, 1982, and which were actually and lawfully operating on that date, no semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination may exceed a length of 28 feet in extreme overall outside dimension, measured from the front of the unit to the rear of the unit and the load carried thereon, exclusive of safety and energy conservation devices approved by the Department of Transportation for use on vehicles using public roads.

2. Tandem trailer trucks conforming to the weight and size limitations of this chapter and in immediate transit to or from a terminal facility as defined in this chapter may operate on the public roads of this state except for residential neighborhood streets restricted by the Department of Transportation or local jurisdictions. In addition, the Department of Transportation or local jurisdictions may restrict

these vehicles from using streets and roads under their maintenance responsibility on the basis of safety and engineering analyses, provided that the restrictions are consistent with ~~the provisions of~~ this chapter. The Department of Transportation shall develop safety and engineering standards to be used by all jurisdictions when identifying public roads and streets to be restricted from tandem trailer truck operations.

3. Except as otherwise provided in this section, within 5 miles of the Federal National Network for large trucks, tandem trailer trucks shall be afforded access to terminals; facilities for food, fuel, repairs, and rest; and points of loading and unloading.

4. Notwithstanding ~~the provisions of~~ any general or special law to the contrary, all local system tandem trailer truck route review procedures must be consistent with those adopted by the Department of Transportation.

5. Tandem trailer trucks employed as household goods carriers and conforming to the weight and size limitations of this chapter shall be afforded access to points of loading and unloading on the public streets and roads of this state, except for streets and roads that have been restricted from use by such vehicles on the basis of safety and engineering analyses by the jurisdiction responsible for maintenance of the streets and roads.

(d) *Maxi-cube vehicles.*—Maxi-cube vehicles shall be allowed to operate on routes open to tandem trailer trucks under the same conditions applicable to tandem trailer trucks as specified by this section.

828292

(4) LOAD EXTENSION LIMITATION.—The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, may not extend more than 3 feet beyond the front wheels of the vehicle or the front bumper of the vehicle if it is equipped with a bumper. However, the load upon any stinger-steered automobile transporter may not extend more than 4 feet beyond the front bumper of the vehicle.

(a) The limitations of this subsection do not apply to bicycle racks carrying bicycles on public sector transit vehicles.

(b) ~~The provisions of~~ This subsection does ~~shall~~ not apply to a front-end loading collection vehicle, when:

1. The front-end loading mechanism and container or containers are in the lowered position;

2. The vehicle is engaged in collecting solid waste or recyclable or recovered materials;

3. The vehicle is being operated at speeds less than 20 miles per hour with the vehicular hazard-warning lights activated; and

4. The extension does not exceed 8 feet 6 inches.

(16) TOWAWAY TRAILER TRANSPORTER COMBINATIONS.—An unladen power unit may tow two trailers or semitrailers when the combination is not used to carry property, the overall combination length does not exceed 82 feet, and the total gross weight of the combination does not exceed 26,000 pounds. The trailers or semitrailers must constitute inventory property of a manufacturer, distributor, or dealer of such trailers or semitrailers.

Section 3. Paragraph (c) of subsection (3) of section

828292

316.545, Florida Statutes, is amended to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(3)

(c)1. For a vehicle fueled by natural gas or electric batteries, the fine is calculated by reducing the actual gross vehicle weight by the certified weight difference between the natural gas tank or electric battery system and fueling system and a comparable diesel tank and fueling system. Upon request by any weight inspector or law enforcement officer, the vehicle operator must present written certification that identifies the weight of the natural gas tank or electric battery system and fueling system and the difference in weight of a comparable diesel tank and fueling system. The written certification must originate from the vehicle manufacturer or the installer of the natural gas tank or electric battery system and fueling system.

2. The actual gross vehicle weight for vehicles fueled by natural gas or electric batteries may not exceed 82,000 pounds, excluding the weight allowed for idle-reduction technology under paragraph (b).

3. This paragraph does not apply to those vehicles described in s. 316.535(6).

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Between lines 21 and 22

insert:

amending s. 316.515, F.S.; revising length and load extension limitations for stinger-steered automobile

828292

transporters; authorizing automobile transporters to backhaul certain cargo or freight under certain circumstances; authorizing an unladen power unit to tow a certain combination of trailers or semitrailers under certain circumstances; amending s. 316.545, F.S.; providing for the calculation of specified fines for vehicles fueled by electric batteries;

By the Committee on Infrastructure and Security; and Senator Lee

596-03788-19 20191638c1

A bill to be entitled

An act relating to commercial motor vehicles; amending s. 316.302, F.S.; revising regulations applicable to owners and drivers of commercial motor vehicles; exempting persons who operate a commercial motor vehicle solely in intrastate commerce which does not transport hazardous materials in amounts that require placarding from certain requirements related to electronic logging devices and hours of service supporting documents until a specified date; deleting a limitation on a civil penalty for falsification of certain time records; deleting a requirement that a motor carrier maintain certain documentation of driving times; extending an exemption from specified commercial motor vehicle requirements for a commercial vehicle having a certain gross vehicle weight rating and gross combined weight rating, under certain circumstances; deleting such exemption for a person transporting petroleum products; deleting an exemption from specified regulations relating to diabetes for certain drivers of commercial motor vehicles; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) and paragraphs (a), (c), (d), (f), and (j) of subsection (2) of section 316.302, Florida Statutes, are amended to read:

316.302 Commercial motor vehicles; safety regulations;

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transporters and shippers of hazardous materials; enforcement.—

(1)(a) All owners and drivers of commercial motor vehicles that are operated on the public highways of this state while engaged in interstate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 383, 385, 386, and 390-397.

(b) Except as otherwise provided in this section, all owners or drivers of commercial motor vehicles that are engaged in intrastate commerce are subject to the rules and regulations contained in 49 C.F.R. parts 382, 383, 385, 386, and 390-397, ~~with the exception of 49 C.F.R. s. 390.5 as it relates to the definition of bus,~~ as such rules and regulations existed on December 31, 2018 ~~2012~~.

(c) The emergency exceptions provided by 49 C.F.R. s. 392.82 also apply to communications by utility drivers and utility contractor drivers during a Level 1 activation of the State Emergency Operations Center, as provided in the Florida Comprehensive Emergency Management plan, or during a state of emergency declared by executive order or proclamation of the Governor.

(d) Except as provided in ~~s. 316.215(5), and except as provided in~~ s. 316.228 for rear overhang lighting and flagging requirements for intrastate operations, the requirements of this section supersede all other safety requirements of this chapter for commercial motor vehicles.

(e) A person who operates a commercial motor vehicle solely in intrastate commerce which does not transport hazardous materials in amounts that require placarding pursuant to 49 C.F.R. part 172 need not comply with the requirements of

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electronic logging devices and hours of service supporting documents as provided in 49 C.F.R. parts 385, 386, 390, and 395 until December 31, 2019.

(2)(a) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 need not comply with 49 C.F.R. ss. 391.11(b)(1) and 395.3 ~~49 C.F.R. ss. 391.11(b)(1) and 395.3(a) and (b)~~.

(c) Except as provided in 49 C.F.R. s. 395.1, a person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 may not drive after having been on duty more than 70 hours in any period of 7 consecutive days or more than 80 hours in any period of 8 consecutive days if the motor carrier operates every day of the week. Thirty-four consecutive hours off duty shall constitute the end of any such period of 7 or 8 consecutive days. This weekly limit does not apply to a person who operates a commercial motor vehicle solely within this state while transporting, during harvest periods, any unprocessed agricultural products or unprocessed food or fiber that is subject to seasonal harvesting from place of harvest to the first place of processing or storage or from place of harvest directly to market or while transporting livestock, livestock feed, or farm supplies directly related to growing or harvesting agricultural products. Upon request of the Department of Highway Safety and Motor Vehicles, motor carriers shall furnish time records or other written verification to that department so that the Department of Highway Safety and Motor Vehicles can

determine compliance with this subsection. These time records must be furnished to the Department of Highway Safety and Motor Vehicles within 2 days after receipt of that department's request. Falsification of such information is subject to a civil penalty ~~not to exceed $100~~. ~~The provisions of~~ This paragraph does ~~do~~ not apply to operators of farm labor vehicles operated during a state of emergency declared by the Governor or operated pursuant to s. 570.07(21) or~~, and do not apply~~ to drivers of utility service vehicles as defined in 49 C.F.R. s. 395.2.

(d) A person who operates a commercial motor vehicle solely in intrastate commerce not transporting any hazardous material in amounts that require placarding pursuant to 49 C.F.R. part 172 within a 150 air-mile radius of the location where the vehicle is based need not comply with 49 C.F.R. s. 395.8~~,~~ if the requirements of 49 C.F.R. s. 395.1(e)(1)(ii), (iii)(A) and (C), and (v) ~~49 C.F.R. s. 395.1(e)(1)(iii) and (v)~~ are met. ~~If a driver is not released from duty within 12 hours after the driver arrives for duty, the motor carrier must maintain documentation of the driver's driving times throughout the duty period.~~

(f) A person who operates a commercial motor vehicle having a ~~declared~~ gross vehicle weight, gross vehicle weight rating, and gross combined weight rating of less than 26,001 pounds solely in intrastate commerce and who is not transporting hazardous materials in amounts that require placarding pursuant to 49 C.F.R. part 172~~, or who is transporting petroleum products as defined in s. 376.301,~~ is exempt from subsection (1). However, such person must comply with 49 C.F.R. parts 382, 392, and 393~~,~~ and ~~with~~ 49 C.F.R. ss. 396.3(a)(1) and 396.9.

~~(j) A person who is otherwise qualified as a driver under 49 C.F.R. part 391, who operates a commercial motor vehicle in intrastate commerce only, and who does not transport hazardous materials in amounts that require placarding pursuant to 49 C.F.R. part 172, is exempt from the requirements of 49 C.F.R. part 391, subpart E, ss. 391.41(b)(3) and 391.43(c), relating to diabetes.~~

Section 2. This act shall take effect October 1, 2019.

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The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 9, 2019

I respectfully request that **Senate Bill #1638**, relating to Commercial Motor Vehicles, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Tom Lee

Senator Tom Lee
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/CS/SB 1730
INTRODUCER:	Rules Committee; Infrastructure and Security Committee; Community Affairs Committee; and Senator Lee
SUBJECT:	Community Development and Housing
DATE:	April 24, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Yeatman	CA	**Fav/CS**
2.	Price	Miller	IS	**Fav/CS**
3.	Peacock	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1730 amends various statutes relating to community development and housing. The bill authorizes local inclusionary housing ordinances that require developers to make affordable housing contributions, but a county or municipality must provide incentives to fully offset all costs to developers for their affordable housing contributions.

After receiving an application for approval of a development permit or order, the bill requires a county and municipality to review the application for completeness and issue a response to an applicant within a specified period of time. The bill applies certain provisions of current law applicable to development permits to development orders.

The bill requires a local government to credit certain contributions, constructions, expansions, or payments toward any other impact fee or exaction imposed by local ordinance for public educational facilities, based on the total impact fee assessed and not on the fee for any particular type of school.

The bill requires municipal comprehensive plans adopted after January 1, 2019, and all land development regulations adopted to implement such plans, to incorporate each development order existing before the plan's effective date.

The bill also requires the collection of an impact fee to occur no earlier than the issuance of the building permit for the property that is subject to the fee. The bill also codifies the 'dual rational nexus test' for impact fees as articulated in case law.

Other requirements of the bill include:

- Earmarking impact fees for capital facilities that benefit new users.
- Prohibiting the use of impact fee revenues to pay existing debt unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new construction, residential or nonresidential.
- Requiring a local government to credit against an impact fee any contributions related to public educational facilities.
- Providing that if a local government increases its impact fee rates, the holder of any impact fee credits which were in existence prior to the increase is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established.
- Placing the burden of proof on the government in an action challenging the government's failure to provide dollar-for-dollar credits for payment of impact fees association with public education facilities.
- Applying certain provisions governing impact fees to mobility fees.
- Authorizing a county, municipality, or special district to provide an exception or waiver for the impact fee for the development or construction of affordable housing and providing that such local governments or special districts are not required to use any revenue to offset the impact.

Lastly, the bill revises the definition of the term "mortgage loan," which allows residential loans made for a business purpose to be subject to regulation by the Office of Financial Regulation.

The bill takes effect upon becoming law.

II. Present Situation:

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[2] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[3]
Unlike counties or municipalities, independent special districts do not possess home rule power. Therefore, the powers possessed by independent special districts are those expressly provided by, or which can be reasonably implied from, the special district's charter or by general law.[4]

[1] FLA. CONST. art. VIII, s. 1(f).
[2] FLA. CONST. art. VIII, s. 1(g).
[3] FLA. CONST. art. VIII, s. 2(b). See also s. 166.021(1), F.S.
[4] Section 189.031, 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).

Local Government Revenue Sources Based on Home Rule Authority[5]

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,[6] regulatory fees, and special assessments[7] 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."[8]

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.[9] "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."[10]

Impact Fees

Impact fees, one type of regulatory fee, are "charges imposed by local governments against new development to provide for capital facilities' costs made necessary by such growth."[11] Examples of such capital facilities include the provision of additional water and sewer systems, schools,[12] 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 cities reported impact fee revenues of $279.7 million, and 28 school districts reported impact fee revenues of 329.7 million.[13]

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.[14] In 2009, the Act was amended to impose new restrictions on impact fees by requiring local governments to

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[5] 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/lgfih18.pdf (last visited March 18, 2019).
[6] Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees. *Id.* at p. 9.
[7] Special assessments are typically used to construct and maintain capital facilities or to fund certain services. *Id.*
[8] *Id.*
[9] *Id.*.
[10] *Id.*
[11] S*upra* note 5 at p. 13.
[12] 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. *Id.*
[13] 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 March 18, 2019).
[14] Chapter 2009-49, L.O.F. and s. 163.31801, F.S.

bear 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.[15]

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.[16]

Dual Rational Nexus Test

While s. 163.31801, F.S., outlines the 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.[17] A number of court decisions have addressed the dual rational nexus test and challenges to the legality of impact fees.[18]

In *Hollywood, Inc. v. Broward County*,[19] 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 acquisition of capital assets that will benefit the residents of the new development.[20] 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.[21]

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

[15] 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.
[16] A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee. Secction 163.31801(3)(d), F.S.
[17] *Supra* note 4.
[18] *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).
[19] *Hollywood, Inc. v. Broward County*, 431 So.2d 606 (Fla. 4th DCA 1983).
[20] *Id.* at 611.
[21] *Id.* at 611-12.

may not be imposed.[22] 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.[23]

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.[24]

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.[25] 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.[26] In contrast, in Volusia County, impact fees are due before the issuance of a certificate of occupancy or business tax receipt.[27]

Concurrency and Proportionate Share

Concurrency requires public facilities and services to be available concurrent with the impacts of new development. Concurrency was formerly required for transportation, schools, and parks and recreation, but in 2011, the Legislature made concurrency for these facilities optional with the

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[22] *Volusia County v. Aberdeen at Ormond Beach*, 760 So.2d 126, 134 (Fla. 2000).
[23] *City of Zephyrhills v. Wood*, 831 So.2d 223, 225 (Fla. 2d DCA 2002).
[24] 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 (last visited March 18, 2019).
[25] 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 (last visited March 18, 2019).
[26] Orange County Government, Florida, *Residential Impact Fees, available at* http://www.orangecountyfl.net/PermitsLicenses/Permits/ResidentialImpactFees.aspx#.WgnLs0kUmUl. (last visited March 18, 2019).
[27] 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 March 18, 2019).

passage of the Community Planning Act (CPA).[28] Concurrency on a statewide basis is required only for sanitary sewer, solid waste, drainage, and potable water. However, any local government is authorized to extend the concurrency requirement to additional public facilities within its jurisdiction.[29]

Many local governments continue to exercise the option to impose concurrency on transportation and school facilities. If a local government elects to apply concurrency to either transportation or school facilities, or both, its comprehensive plan must provide principles, guidelines, standards, and strategies, including adopted levels of service,[30] to guide its application of concurrency requirements.[31] Concurrency is tied to provisions requiring local governments to adopt level-of-service (LOS) standards, address existing deficiencies, and provide infrastructure to accommodate new growth reflected in the comprehensive plan.[32] Local governments are charged with setting LOS standards within their jurisdictions. The local comprehensive plan must demonstrate, for required or optional concurrency requirements, that the adopted LOS standards can be reasonably met, and infrastructure needed to ensure that the LOS standards are achieved and maintained for a five-year period must be identified.[33] Generally, if the LOS standards are not met, development permits may not be issued without an applicable exception.

Proportionate share is a tool local governments may use to require developers to help mitigate the impacts of their development notwithstanding a failure to achieve and maintain the adopted LOS standards.[34] Proportionate share generally requires developers to contribute to costs, or build facilities, necessary to offset a new development's impacts.[35] Local governments may require proportionate share contributions from developers for both transportation and school impacts.[36]

With respect to school concurrency applied by a local government, when a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a specified charter school is used as proportionate-share mitigation, the local government is required to credit such contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by a local ordinance for the same need, on a dollar-for-dollar basis.[37]

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[28] Chapter 2011-139, s. 15, Laws of Fla.
[29] Section 163.3180(1), F.S.
[30] "Level of service" is defined in s. 163.3164(28), F.S., to mean "an indicator of the extent or degree of service provided by, or proposed to be provided by, a facility based on and related to the operational characteristics of the facility. Level of service shall indicate the capacity per unit of demand for each public facility."
[31] *See* ss. 163.3180(5) and (6), F.S., with respect to concurrency applied to transportation facilities and to public education facilities, respectively.
[32] Section 163.3180, F.S.
[33] Section 163.3180(1)(b), F.S.
[34] Florida Department of Community Affairs (now Department of Economic Opportunity), *Transportation Concurrency: Best Practices Guide*, pg. 64 (2007), retrieved from http://www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf (last visited March 18, 2019).
[35] *Id.*
[36] Sections 163.3180(5) and 163.3180(6), F.S.
[37] Section 163.3180(6)(h)2.b., F.S.

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)[38] 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:

- Very-low-income households, i.e., total annual gross household income does not exceed 50 percent of the median annual income for the area;[39]
- Low-income households, i.e., total annual gross household income does not exceed 80 percent of the median annual income for the area;[40]
- Moderate-income households, i.e., total annual gross household income does not exceed 120 percent of the median annual income for the area.[41]

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.[42]

The Florida Housing Finance Corporation administers the SHIP Program that 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[43] and the State Apartment Incentive Loan (SAIL) Program that provides low-interest loans on a competitive basis to affordable housing developers each year.

Inclusionary Housing

In 2001, the Legislature created ss. 125.01055[44] and 166.04151, F.S.,[45] respectively authorizing a county or municipality, notwithstanding any other provision of law, a to "adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances."

"Inclusionary housing ordinances (sometimes called inclusionary zoning ordinances) are land use regulations that require affordable housing units to be provided in conjunction with the development of market rate units. The intent of these ordinances is to increase the production of

[38] *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.
[39] Section 420.9071(28), F.S.
[40] Section 420.9071(19), F.S.
[41] Section 420.9071(20), F.S.
[42] *See* ss. 420.9071(19), (20), and (28), F.S.
[43] See ss. 420.907-420.9089, F.S.
[44] Ch. 2001-252, s. 16, Laws of Fla.
[45] Ch. 2001-252, s. 15, Laws of Fla.

affordable housing in general and to increase the production in specific geographic areas that might otherwise not include affordable housing."[46]

Elements of an inclusionary zoning ordinance typically include a minimum project size, a percentage set aside, density bonus, and costs offsets.[47] The threshold size must be large enough to contribute to the financial feasibility of the required affordable units. The share of affordable units varies, and requirements for developers to set aside ten to 25 percent of their new housing developments as affordable are most common. A density bonus allows a developer to construct a certain number of additional market rate units beyond what is normally allowed under the current zoning ordinance, in exchange for providing a specified number of affordable units. To enable the construction of affordable housing, developers may be given waivers from certain development standards and receive waivers for fees, such as demolition, water and sewer charge, and utility connection fees. Developers may be eligible for reduced parking requirements and other benefits, such as expedited permitting.[48]

Development Permit Process

A development permit is defined to mean 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.[49] When local governments are reviewing applications for such permits, current law specifically excludes building permits from this definition. [50] A "development order" is "any order granting, denying, or granting with conditions an application for a development permit.[51]

Sections 125.022(1) and 163.033(1), F.S., provide that when reviewing an application for a development permit, counties and municipalities cannot request additional information from an applicant more than three times, unless the applicant waives the limitation in writing. Prior to the third request for information, the county or the municipality is directed to offer a meeting to try to resolve outstanding issues. With one exception discussed below, if the applicant believes the request for additional information is not authorized by ordinance, rule, statute or other legal authority, the county or municipality, at the applicant's request, must proceed with processing the application.

When a county or municipality denies an application for a development permit, the county or municipality must give written notice to the applicant. The notice must include a citation to the applicable portions of ordinance, rule, statute or other legal authority for the denial of the permit.[52]

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[46] *Ross, J.* and *Outka, U.*, The Florida Housing Coalition, *Inclusionary Housing: A Challenge Worth Taking*, *available at* https://www.flhousing.org/wp-content/uploads/2012/05/Inclusionary-Housing-A-Challenge-Worth-Taking.pdf (last visited March 18, 2019).
[47] *See* Florida Housing Coalition, *Affordable Housing Incentive Strategies: A Guidebook for Affordable Housing Advisory Committee Members and Local Government Staff*, at p. 36, available at http://www.flhousing.org/wp-content/uploads/2012/03/AHAC-Guidebook-2017.pdf (last viewed April 4, 2019).
[48] *Id.*
[49] Section 163.3164(16), F.S.
[50] Sections 125.022(3) and 166.033(3), F.S.
[51] Section 163.3164(15), F.S.
[52] Sections 125.022(2) and 166.033(2), F.S.

For any development permit application filed with a county or municipality after July 1, 2012, that county or municipality is prohibited from requiring, as a condition of processing or issuing a development permit, that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county or municipality action on the local development permit.[53] The issuance of a development permit by a county or municipality does not create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the local government for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.[54] A county or municipality must attach such a disclaimer to the issuance of a development permit and must include a permit condition that all other applicable state or federal permits be obtained prior to commencement of the development.[55]

Establishment of Municipalities

The Florida Constitution provides that "municipalities may be established or abolished and their charters amended pursuant to general or special law."[56] Chapter 165 of the Florida Statutes lays out the local government formation process and provides standards, direction, and procedures for the formation of municipalities in the state.[57] The provisions of this act are the exclusive procedure for forming or dissolving municipalities in Florida, except in those counties operating under a home rule charter which provides for an exclusive method as authorized by Article VIII, section 6(e) of the Florida Constitution.[58] A charter for incorporation of a municipality shall be adopted only by a special act of the Legislature upon determination that the standards provided in ch. 165, F.S., are met.[59] To inform the Legislature on the feasibility of a proposed incorporation of a municipality, a feasibility study shall be completed and submitted to the Legislature.[60]

A municipality established after the effective date of the Community Planning Act must within one year after incorporation, establish a local planning agency[61] pursuant to s. 163.3174, F.S., and prepare and adopt a comprehensive plan within three years after the date of incorporation.[62] A county comprehensive plan is deemed controlling until the municipality adopts a comprehensive plan.[63]

[53] *See* ss. 125.022(4) and 166.033(4), F.S.
[54] *See* ss. 125.022(5) and 166.033(5), F.S.
[55] *Id*.
[56] FLA. CONST. art. VIII, s. 2.
[57] Section 165.021, F.S.
[58] Section 165.022, F.S.
[59] Section 165.041(1)(a), F.S. The procedure for a municipal incorporation by merger is also included in this section.
[60] Section 165.041(1)(b), F.S. The study must be submitted no later than the first Monday after September 1 of the year before the regular session of the Legislature during which the municipal charter would be enacted.
[61] Section 163.3164(30), F.S., defines "local planning agency" as the agency designated to prepare the comprehensive plan or plan amendments required by the Community Planning Act.
[62] Section 163.3167(3), F.S.
[63] *Id*.

Land Development Regulations

Counties and municipalities are required to adopt or amend land development regulations within one year after submitting its comprehensive or revised comprehensive plan for review.[64] Section 163.3202(2), F.S., outlines the minimum provisions that counties and municipalities should include in their local government land development regulations. These provisions include:

- Regulating the subdivision of land;
- Regulating the use of land and water;
- Providing for protection of potable water wellfields;
- Regulating areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensuring the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulating signage;
- Addressing concurrency;
- Ensuring safe and convenient onsite traffic flow; and
- Maintaining the existing density of residential properties or recreational vehicle parks.

Under certain circumstances, the Department of Economic Opportunity (DEO) may require a local government to submit one or more land development regulations for the agency's review.[65] The DEO is required to adopt rules for review and schedules for adoption of land development regulations.[66]

Federal Oversight of Mortgage Brokerage Industry

Secure and Fair Enforcement for Mortgage Licensing Act of 2008

On July 30, 2008, the federal Housing and Economic Recovery Act of 2008 was enacted.[67] Title V of this act is titled the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or the "S.A.F.E. Mortgage Licensing Act of 2008" (SAFE Act). The SAFE Act establishes minimum standards for state licensure of residential mortgage loan originators in order to increase uniformity, improve accountability of loan originators, combat fraud, and enhance consumer protections. The act required all states to adopt a system of licensure meeting minimum standards for mortgage loan originators by August 1, 2009, or be subject to federal regulation. The act establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators.

Pursuant to the SAFE Act, states are required to participate in a national licensing registry, the Nationwide Mortgage Licensing System and Registry (registry), which contains employment history as well as disciplinary and enforcement actions against loan originators. Applicants are subject to licensure by the state regulator.[68]

[64] Section 163.3202(1), F.S.
[65] Section 163.3202(4), F.S.
[66] Section 163.3202(5), F.S.
[67] Pub. L. No. 110-289.
[68] NLMS Resource Center, *available at* http://mortgage.nationwidelicensingsystem.org/about/Pages/default.aspx (last visited March 20, 2019).

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) created the Consumer Financial Protection Bureau (CFPB) and provided sweeping changes to the regulation of financial services, including changes to federal mortgage loan origination and lending laws.[69] The Dodd-Frank Act authorizes the CFPB to have rulemaking, enforcement, and supervisory powers over many consumer financial products and services, as well as the entities that sell them. Some of the consumer laws under the CFPB include the Truth in Lending Act (TILA)[70] and the Real Estate Settlement Procedures Act (RESPA).[71] The TILA is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms, and is implemented by Regulation Z. The RESPA requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process, and is implemented by Regulation X.

Both TILA and RESPA exempt from their regulations a mortgage loan made "primarily for a business, commercial or agricultural purpose."[72] Therefore, TILA and RESPA do not cover "business purpose" mortgage loans but rather only "consumer purpose" mortgage loans. When determining whether credit is for a consumer purpose, the creditor must evaluate all of the following factors:

- Any statement obtained from the consumer describing the purpose of the proceeds;
- The primary occupation of the consumer and how it relates to the use of the proceeds;
- Personal management of the assets purchased from proceeds;
- The size of the transaction; and
- The amount of income derived from the property acquired by the loan proceeds relative to the borrower's total income.

The Dodd-Frank Act mandated that the CFPB adopt an integrated disclosure form for use by lenders and creditors to comply with the disclosure requirements of RESPA and TILA,[73] and the CFPB issued final rules in 2015.[74] The integrated rule applies to most closed-end consumer mortgages secured by real property. It does not apply to home equity lines of credit (HELOCs), reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to real property (i.e., land). *The Small Entity Guide* published by the CFPB does not specify whether loans for business purposes or for investment properties are exempt from the rule. However, the guide does provide that creditors are not prohibited from using the integrated disclosure forms on loans that are not covered by the rule.[75]

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[69] Pub. L. No. 111-203.
[70] 15 U.S.C. 1601, *et. seq.*
[71] 12 U.S.C. 2601, *et. seq.*
[72] Consumer Financial Protection Bureau, *2013 Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, *available at* https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/2013-integrated-mortgage-disclosure-rule-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/ (last visited March 20, 2019).
[73] 12 U.S.C. ss. 5532(f) and 2603; 15 U.S.C. s. 1604(b).
[74] 78 Fed Reg 79730.
[75] *See* CFPB, *TILA-RESPA Integrated Disclosure Rule: Small Entity Compliance Guide*, *available at* http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/kbyo_smallentitycomplianceguide_v4_10072016.pdf (last visited March 20, 2019).

State Regulation of Mortgage Loans

The Office of Financial Regulation (OFR) regulates a wide range of financial activities, such as state-chartered banks, credit unions, and non-depository loan originators, mortgage brokers and mortgage lenders. In 2009, the Florida Legislature implemented the minimum standards of the SAFE Act, which increased licensure requirements and required licensure through the registry.[76] Section 494.001(24), F.S., defines the term "mortgage loan" to mean a:

- Residential loan primarily for personal, family, or household use which is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in s. 103(v) of the federal TILA,[77] or for the purchase of residential real estate upon which a dwelling is to be constructed;
- Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor; or
- Loan on improved real property consisting of five or more dwelling units if the borrower is an individual or the lender is a noninstitutional investor.

Licensure of Loan Originators, Mortgage Brokers, and Mortgage Lenders

An individual who acts as a loan originator must obtain a loan originator license.[78] A "loan originator" means an individual who, directly or indirectly:

- Solicits or offers to solicit a mortgage loan;
- Accepts or offers to accept an application for a mortgage loan;
- Negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender; or
- Negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.[79]

The term "loan originator" includes an individual who is required to be licensed as a loan originator under the SAFE Act. The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower.[80]

A "mortgage broker" means a person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as an independent contractor to the mortgage broker[81] and such persons are required to be licensed as mortgage brokers.[82]

A "mortgage lender" means any person making a mortgage loan or servicing a mortgage loan for others, or, for compensation or gain, directly or indirectly, selling or offering to sell a mortgage

[76] Chapter 2009-241, Laws of Fla.
[77] The term "dwelling" means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives. Current law inadvertently references the definition of "material disclosure" under s. 103(v), rather than the term "dwelling," which is defined under s. 103(w). *See* 15 U.S.C. 1602.
[78] Section 494.00312, F.S.
[79] Section 494.001(17), F.S.
[80] *Id.*
[81] Section 494.001(22), F.S.
[82] Section 494.00321, F.S.

loan to a noninstitutional investor,[83] and such persons are required to be licensed as mortgage lenders.[84] "Making a mortgage loan" means closing a mortgage loan in a person's name, advancing funds, offering to advance funds, or making a commitment to advance funds to an applicant for a mortgage loan.[85]

Section 494.00015, F.S., provides several exemptions from regulation under the general provisions of part I of ch. 494, F.S., as well as under parts II and III, relating to mortgage brokers and mortgage lenders, respectively. The party claiming the benefit of an exemption has the burden of establishing a right to that exemption.

Examination Authority, Administrative Penalties and Fines

The OFR may conduct investigations, examinations, and investigate complaints.[86] The OFR may take disciplinary action against a person licensed or subject to licensure under parts II or III of ch. 494, F.S., for a variety of acts, including but not limited to violation of any provision of RESPA, TILA, or any regulations adopted under such acts, during the course of any mortgage transaction.[87]

III. Effect of Proposed Changes:

Sections 1 and 8 amend ss. 125.01055 and 166.04151, F.S., respectively, to authorize an inclusionary housing ordinance that requires a developer to provide a specified number or percentage of affordable housing units to be included in a development or allow a developer to contribute to a housing fund or other alternatives in lieu of building the affordable housing units. In exchange, however, a county or municipality must provide incentives to fully offset all costs to the developer of its affordable housing contribution. Such incentives may include, but are not limited to:

- Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designation or zoning,
- Reducing or waiving fees, such as impact fees or water and sewer charges, or
- Granting other incentives.

The current authorization of a county or municipality to adopt inclusionary housing ordinances for the purpose of increasing the supply of affordable housing is restricted by the requirement that local government incentives fully offset all costs to the developer of its affordable housing contribution by way of the authorized incentives.

Sections 2 and 7 amend s. 125.022 and 166.033, F.S., respectively, to require a county or municipality to review an application for a development permit or development order for completeness and issue a letter indicating that all required information is submitted or specifying with particularity any areas that are deficient within 30 days after receiving such application.

[83] Section 494.001(23), F.S.
[84] Section 494.00611, F.S.
[85] Section 494.001(20), F.S.
[86] Section 494.0012, F.S.
[87] S*ee* s. 494.00255, F.S.

If the application is deficient, the applicant has 30 days to address the deficiencies by submitting the required additional information. Within 120 days after the county or municipality has deemed the application complete, or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing, the county or municipality must approve, approve with conditions, or deny the application for a development permit or development order. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force majeure or other extraordinary circumstances. An approval, approval with conditions, or denial of the application for a development permit or development order must include written findings supporting the county's decision.

The bill inserts "development order" throughout both sections of law currently relating to development permits, thereby applying all of the provisions of each section to such orders as they relate to respective county and municipal action on such orders.

Section 3 amends s. 163.3167, F.S., to require municipal comprehensive plans adopted after January 1, 2019, and all land development regulations adopted to implement the plan, to incorporate each development order existing before the plan's effective date. The comprehensive plan may not impair completion of a development order in accordance with the order and must vest the density and intensity approved by such development order existing on the effective date of the comprehensive plan without limitation or modification.

Section 4 amends s. 163.3180, F.S., with respect to school concurrency and proportionate share mitigation, to require a local government to credit certain contributions, constructions, expansions, or payments toward any other impact fee or exaction imposed by local ordinance for public educational facilities on a dollar-for-dollar basis at fair market value. The credit must be based on the total impact fee assessed and not upon the impact fee for any particular type of school.

The bill specifies that all provisions governing impact fees in s. 163.31801, F.S., also apply to mobility fees.

Section 5 amends s. 163.31801, F.S., to prohibit any local government from collecting an impact fee any time prior to the date of issuance of the building permit for the property that is subject to the fee.

The bill codifies the requirement for impact fees to be proportional and 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.

The bill also requires the impact fee to be proportional and reasonably connected to, or have a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.

The local government must specifically earmark funds collected under the impact fee for use in acquiring, constructing, or improving capital facilities to benefit new users.

Revenues generated by the impact fee may not be used, in whole or in part, to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction.

The local government must credit against the collection of the impact fee any contributions related to public educational facilities, including, but not limited to, land dedication, site planning and design, and construction, whether provided in a proportionate share agreement or any other form of exaction. Any such contributions must be applied to reduce any education-based impact fees on a dollar-for-dollar basis at fair market value.

If a local government increases its impact fee rates, the holder of any impact fee credits granted by a local government, whether granted under this section, s. 380.06, F.S. (developments of regional impact), or otherwise, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established.

In any action challenging the government's failure to provided required dollar-for-dollar credits for the payment of impact fees as provided in s. 163.3180(6)(h)2.b, F.S., (school concurrency), the government has the burden of proving by a preponderance of the evidence that the amount of the credit meets the requirements of state legal precedent and the provisions of this section of law. The bill prohibits the court from using a deferential standard for the benefit of the government.

A county, municipality, or special district may provide an exception or waiver for the impact fee for the development or construction of housing that is affordable, as defined in s. 420.9071, F.S. If a county, municipality, or special district provides such an exception or waiver, it is not required to use any revenues to offset the impact.

The bill also clarifies that water and sewer connection fees are not treated as impact fees.

Section 6 amends s. 163.3202, F.S., to require land development regulations to incorporate preexisting development orders identified in municipal comprehensive plans adopted after January 1, 2019.

Section 9 amends the definition of the term, "mortgage loan" in s. 494.001(24), F.S., by removing the requirement that residential loans be used primarily for personal, family, or household purposes. As a result, the bill allows residential loans made for a business purpose, for dwellings or for real estate used to construct a dwelling, to fall under the definition of a "mortgage loan" and therefore be subject to regulation by the OFR. The bill may require persons originating, brokering, or lending such loans to obtain licensure under ch. 494, F.S., unless they fall within an exemption under s. 494.00115, F.S. The bill also corrects the federal law reference to the term "dwelling," which is defined under s. 103(w) of the TILA.

Section 10 provides the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference reviewed the impact of the timing of the collection of impact fees in section 5 of the bill and determined the change will have a positive or negative indeterminate, recurring fiscal impact.[88]

B. Private Sector Impact:

Developers who provide the authorized affordable housing contributions pursuant to an inclusionary housing ordinance would have the costs of such contributions fully offset by the required incentives. Developers will receive dollar-for-dollar credit at fair market value relating to their expenditures for public education facilities, land dedication, site planning and design, and construction.

Implementation of the bill would allow borrowers obtaining residential mortgage for business purposes (not primarily for personal, family, or household use) greater consumer protections provided under ch. 494, F.S., which requires compliance with RESPA and TILA. All residential mortgage loans for dwellings or for real estate used to construct a dwelling, regardless of the purpose, would be subject to the provisions of ch. 494, F.S.

[88] 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/page29-34.pdf (last visited April 24, 2019).

Persons making residential mortgage loans for business purposes and who are not licensed would be required to obtain licensure under ch. 494, F.S., in order to continue such lending activity.

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. There may be a reduction in the amount of impact fees imposed as the bill requires local governments to provide credits to developers at a dollar-for-dollar fair market value regarding expenditures for public education facilities and associated costs. If a county or municipality adopts an inclusionary housing ordinance, it must fully offset a developer's costs for such contributions through the authorized incentives. If a county, municipality, or special district provides an affordable housing impact fee waiver, such county, municipality, or special district may need to find other revenue sources to replace any waived fees. The fiscal impact is indeterminate.

The OFR may need additional staff to perform licensing and regulatory functions for entities that make residential mortgage loans for business purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A violation of RESPA, TILA, or any regulations adopted thereunder committed in any mortgage transaction, is a ground for disciplinary action under ch. 494, F.S. Both RESPA and TILA exclude business purpose loans from the scope of their regulation. Therefore, a person may be subject to licensure under ch. 494, F.S., but would not necessarily be required to provide the disclosures required under RESPA and TILA if the residential mortgage loan is made for business purposes.

VIII. Statutes Affected:

The bill substantially amends sections 125.01055, 125.022, 163.3167, 163.3180, 163.31801, 163.3202, 166.033, 166.04151, and 494.001 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Rules on April 23, 2019:
The committee substitute:

- Extends processing timeframe for county or municipal applications for development permits or orders that require final action through quasi-judicial or public hearing to

180 days and authorizes both parties to extend timeframe for processing such applications under extraordinary circumstances;
- Requires a comprehensive plan adopted by a municipality after January 1, 2019, and all land development regulations adopted to implement such plan, to incorporate the terms of preexisting development orders;
- Prohibits comprehensive plan from impairing completion of a preexisting development order and requires such plan to vest the density and intensity approved by each development order existing on the effective date of the comprehensive plan without limitation or modification;
- Clarifies a provision relating to education-based impact fee credits;
- Entitles the holder of any impact fee credits granted by a local government to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established if the local government increases its impact fee rates; and
- Provides that water and sewer connection fees are not treated as impact fees.

CS/CS by Infrastructure and Security on April 9, 2019:
The committee substitute:
- Authorizes counties and municipalities to adopt an inclusionary housing ordinance that requires developers to make affordable housing contributions, but requires the local government to provide incentives to fully offset all costs to the developer of its affordable housing contribution;
- Extends from 90 to 120 days after an application is deemed complete the time within which a county or municipality is required to act on an application for approval of a development permit or development order; and
- Provides that if a local government increases its impact fee rates, the holder of any impact fee credits which were in existence prior to the increase is entitled to a proportionate increase in the credit balance.

CS by Community Affairs on March 20, 2019:
The committee substitute:
- Provides requirements for basis of impact fee credits;
- Removes provision that awards attorney fees and costs in action challenging local government failure to provide required credits for impact fees;
- Authorizes, instead of requiring, a local government to waive impact fees for development or construction of affordable housing; and
- Amends the definition of the term "mortgage loan" in s. 494.001(24), F.S.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2019	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 346 and 347
insert:

Section 5. Paragraph (a) of subsection (4) of section 163.3194, Florida Statutes, is amended to read:

163.3194 Legal status of comprehensive plan.—

(4)(a)1. A court, in reviewing local governmental action or development regulations under this act, may consider, among other things, the reasonableness of the comprehensive plan, or element or elements thereof, relating to the issue justiciably

944856

raised or the appropriateness and completeness of the comprehensive plan, or element or elements thereof, in relation to the governmental action or development regulation under consideration. The court may consider the relationship of the comprehensive plan, or element or elements thereof, to the governmental action taken or the development regulation involved in litigation, but private property shall not be taken without due process of law and the payment of just compensation.

2. A court shall award reasonable attorney fees to a local government that prevails in a challenge to a development order or a local comprehensive plan amendment, including on appeal, if such fees are incurred by the local government while defending the approval of the order or amendment.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 48

and insert:

offset the impact; amending s. 163.3194, F.S.; requiring a court to award reasonable attorney fees to a local government that prevails in a challenge to a development order or a local comprehensive plan amendment if such fees are incurred by the local government while defending the approval of the order or amendment; amending s. 166.033, F.S.;

356486

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2019	.	
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	.	
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The Committee on Rules (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete lines 433 - 447.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 65 - 66

and insert:

providing an effective date.

817794

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2019	.	
	.	
	.	
	.	

The Committee on Rules (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete lines 104 - 365

and insert:

application complete, or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing, the county must approve, approve with conditions, or deny the application for a development permit or development order. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force majeure or other extraordinary circumstance. An approval, approval with

817794

conditions, or denial of the application for a development permit or development order must include written findings supporting the county's decision.

(2) ~~(1)~~ When reviewing an application for a development permit or development order that is certified by a professional listed in s. 403.0877, a county may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Before a third request for additional information, the applicant must be offered a meeting to attempt to resolve outstanding issues. Except as provided in subsection (5) ~~(4)~~, if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the county, at the applicant's request, shall proceed to process the application for approval or denial.

(3) ~~(2)~~ When a county denies an application for a development permit or development order, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit or order.

(4) ~~(3)~~ As used in this section, the terms ~~term~~ "development permit" and "development order" have ~~has~~ the same meaning as in s. 163.3164, but do ~~does~~ not include building permits.

(5) ~~(4)~~ For any development permit application filed with the county after July 1, 2012, a county may not require as a condition of processing or issuing a development permit or development order that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a

817794

final agency action that denies the federal or state permit before the county action on the local development permit.

(6)~~(5)~~ Issuance of a development permit or development order by a county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county shall attach such a disclaimer to the issuance of a development permit and shall include a permit condition that all other applicable state or federal permits be obtained before commencement of the development.

(7)~~(6)~~ This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.

Section 3. Paragraph (i) of subsection (5) and paragraph (h) of subsection (6) of section 163.3180, Florida Statutes, are amended to read:

163.3180 Concurrency.—

(5)

(i) If a local government elects to repeal transportation concurrency, it is encouraged to adopt an alternative mobility funding system that uses one or more of the tools and techniques identified in paragraph (f). Any alternative mobility funding system adopted may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional

817794

equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government. The revenue from the funding mechanism used in the alternative system must be used to implement the needs of the local government's plan which serves as the basis for the fee imposed. A mobility fee-based funding system must comply with s. 163.31801 governing ~~the dual rational nexus test applicable to~~ impact fees. An alternative system that is not mobility fee-based shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h).

(6)

(h)1. In order to limit the liability of local governments, a local government may allow a landowner to proceed with development of a specific parcel of land notwithstanding a failure of the development to satisfy school concurrency, if all the following factors are shown to exist:

a. The proposed development would be consistent with the future land use designation for the specific property and with pertinent portions of the adopted local plan, as determined by the local government.

b. The local government's capital improvements element and the school board's educational facilities plan provide for school facilities adequate to serve the proposed development, and the local government or school board has not implemented that element or the project includes a plan that demonstrates that the capital facilities needed as a result of the project can be reasonably provided.

817794

c. The local government and school board have provided a means by which the landowner will be assessed a proportionate share of the cost of providing the school facilities necessary to serve the proposed development.

2. If a local government applies school concurrency, it may not deny an application for site plan, final subdivision approval, or the functional equivalent for a development or phase of a development authorizing residential development for failure to achieve and maintain the level-of-service standard for public school capacity in a local school concurrency management system where adequate school facilities will be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent. School concurrency is satisfied if the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by actual development of the property, including, but not limited to, the options described in sub-subparagraph a. Options for proportionate-share mitigation of impacts on public school facilities must be established in the comprehensive plan and the interlocal agreement pursuant to s. 163.31777.

a. Appropriate mitigation options include the contribution of land; the construction, expansion, or payment for land acquisition or construction of a public school facility; the construction of a charter school that complies with the requirements of s. 1002.33(18); or the creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits. Such options

817794

must include execution by the applicant and the local government of a development agreement that constitutes a legally binding commitment to pay proportionate-share mitigation for the additional residential units approved by the local government in a development order and actually developed on the property, taking into account residential density allowed on the property prior to the plan amendment that increased the overall residential density. The district school board must be a party to such an agreement. As a condition of its entry into such a development agreement, the local government may require the landowner to agree to continuing renewal of the agreement upon its expiration.

b. If the interlocal agreement and the local government comprehensive plan authorize a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a charter school that complies with the requirements of s. 1002.33(18), as proportionate-share mitigation, the local government shall credit such a contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by local ordinance for public educational facilities ~~the same need~~, on a dollar-for-dollar basis at fair market value. The credit must be based on the total impact fee assessed and not on the impact fee for any particular type of school.

c. Any proportionate-share mitigation must be directed by the school board toward a school capacity improvement identified in the 5-year school board educational facilities plan that satisfies the demands created by the development in accordance

817794

with a binding developer's agreement.

3. This paragraph does not limit the authority of a local government to deny a development permit or its functional equivalent pursuant to its home rule regulatory powers, except as provided in this part.

Section 4. 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 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

817794

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 not ~~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 proportional and 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 proportional and reasonably connected to, or have a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.

(h) The local government must specifically earmark funds collected under the impact fee for use in acquiring, constructing, or improving capital facilities to benefit new users.

(i) Revenues generated by the impact fee may not be used, in whole or in part, to pay existing debt or for previously

817794

approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction.

(4) The local government must credit against the collection of the impact fee any contribution, whether identified in a proportionate share agreement or other form of exaction, related to public education facilities, including land dedication, site planning and design, or construction. Any contribution must be applied to reduce any education-based impact fees on a dollar-for-dollar basis at fair market value.

(5) If a local government increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under s. 163.3180, s. 380.06, or otherwise, which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established.

(6) ~~(4)~~ Audits of financial statements of local governmental entities and district school boards which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must include an affidavit signed by the chief financial officer of the local governmental entity or district school board stating that the local governmental entity or district school board has complied with this section.

(7) ~~(5)~~ In any action challenging an impact fee or the government's failure to provide required dollar-for-dollar credits for the payment of impact fees as provided in s. 163.3180(6)(h)2.b., the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee or credit meets the requirements of state legal

817794

precedent and ~~or~~ this section. The court may not use a deferential standard for the benefit of the government.

(8) A county, municipality, or special district may provide an exception or waiver for an impact fee for the development or construction of housing that is affordable, as defined in s. 420.9071. If a county, municipality, or special district provides such an exception or waiver, it is not required to use any revenues to offset the impact.

(9) This section does not apply to water and sewer connection fees.

Section 5. Section 166.033, Florida Statutes, is amended to read:

166.033 Development permits and orders.—

(1) Within 30 days after receiving an application for approval of a development permit or development order, a municipality must review the application for completeness and issue a letter indicating that all required information is submitted or specifying with particularity any areas that are deficient. If the application is deficient, the applicant has 30 days to address the deficiencies by submitting the required additional information. Within 120 days after the municipality has deemed the application complete, or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing, the municipality must approve, approve with conditions, or deny the application for a development permit or development order. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force majeure or other extraordinary circumstance. An approval, approval with conditions, or denial

817794

of the application for a development permit or development order must include written findings supporting the municipality's decision.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 48

and insert:

offset the impact; providing applicability; amending s. 166.033, F.S.;

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/24/2019	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment to Amendment (817794) (with title amendment)

Between lines 57 and 58
insert:

Section 3. Subsection (3) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(3) A municipality established after the effective date of this act shall, within 1 year after incorporation, establish a local planning agency, pursuant to s. 163.3174, and prepare and

877766

adopt a comprehensive plan of the type and in the manner set out in this act within 3 years after the date of such incorporation. A county comprehensive plan is ~~shall be deemed~~ controlling until the municipality adopts a comprehensive plan in accordance ~~accord~~ with this act. A comprehensive plan adopted after January 1, 2019, and all land development regulations adopted to implement the comprehensive plan must incorporate each development order existing before the comprehensive plan's effective date, may not impair the completion of a development in accordance with such existing development order, and must vest the density and intensity approved by such development order existing on the effective date of the comprehensive plan without limitation or modification.

Section 4. Paragraph (j) is added to subsection (2) of section 163.3202, Florida Statutes, to read:

163.3202 Land development regulations.—

(2) Local land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall at a minimum:

(j) Incorporate preexisting development orders identified pursuant to s. 163.3167(3).

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 281

and insert:

offset the impact; providing applicability; amending s. 163.3167, F.S.; providing requirements for a comprehensive plan adopted after a specified date and

877766

all land development regulations adopted to implement the comprehensive plan; amending s. 163.3202, F.S.; requiring local land development regulations to incorporate certain preexisting development orders; amending

By the Committees on Infrastructure and Security; and Community Affairs; and Senator Lee

596-04073A-19 20191730c2

A bill to be entitled

An act relating to community development and housing; amending s. 125.01055, F.S.; authorizing an inclusionary housing ordinance to require a developer to provide a specified number or percentage of affordable housing units to be included in a development or allow a developer to contribute to a housing fund or other alternatives; requiring a county to provide certain incentives to fully offset all costs to the developer of its affordable housing contribution; amending s. 125.022, F.S.; requiring that a county review the application for completeness and issue a certain letter within a specified period after receiving an application for approval of a development permit or development order; providing procedures for addressing deficiencies in, and for approving or denying, the application; conforming provisions to changes made by the act; defining the term "development order"; amending s. 163.3180, F.S.; revising compliance requirements for a mobility fee-based funding system; requiring a local government to credit certain contributions, constructions, expansions, or payments toward any other impact fee or exaction imposed by local ordinance for public educational facilities; providing requirements for the basis of the credit; amending s. 163.31801, F.S.; adding minimum conditions that certain impact fees must satisfy; requiring a local government to credit against the collection of an impact fee any

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Florida Senate - 2019 CS for CS for SB 1730

596-04073A-19 20191730c2

contribution related to public education facilities, subject to certain requirements; requiring the holder of certain impact fee credits to be entitled to a proportionate increase in the credit balance if a local government increases its impact fee rates; providing that the government, in certain actions, has the burden of proving by a preponderance of the evidence that the imposition or amount of certain required dollar-for-dollar credits for the payment of impact fees meets certain requirements; prohibiting the court from using a deferential standard for the benefit of the government; authorizing a county, municipality, or special district to provide an exception or waiver for an impact fee for the development or construction of housing that is affordable; providing that if a county, municipality, or special district provides such an exception or waiver, it is not required to use any revenues to offset the impact; amending s. 166.033, F.S.; requiring that a municipality review the application for completeness and issue a certain letter within a specified period after receiving an application for approval of a development permit or development order; providing procedures for addressing deficiencies in, and for approving or denying, the application; conforming provisions to changes made by the act; defining the term "development order"; amending s. 166.04151, F.S.; authorizing an inclusionary housing ordinance to require a developer to provide a

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

specified number or percentage of affordable housing units to be included in a development or allow a developer to contribute to a housing fund or other alternatives; requiring a municipality to provide certain incentives to fully offset all costs to the developer of its affordable housing contribution; amending s. 494.001, F.S.; revising the definition of the term "mortgage loan"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 125.01055, Florida Statutes, is amended to read:

125.01055 Affordable housing.—

(1) Notwithstanding any other provision of law, a county may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.

(2) An inclusionary housing ordinance may require a developer to provide a specified number or percentage of affordable housing units to be included in a development or allow a developer to contribute to a housing fund or other alternatives in lieu of building the affordable housing units. However, in exchange, a county must provide incentives to fully offset all costs to the developer of its affordable housing contribution. Such incentives may include, but are not limited to:

(a) Allowing the developer density or intensity bonus

incentives or more floor space than allowed under the current or proposed future land use designation or zoning;

(b) Reducing or waiving fees, such as impact fees or water and sewer charges; or

(c) Granting other incentives.

Section 2. Section 125.022, Florida Statutes, is amended to read:

125.022 Development permits and orders.—

(1) Within 30 days after receiving an application for approval of a development permit or development order, a county must review the application for completeness and issue a letter indicating that all required information is submitted or specifying with particularity any areas that are deficient. If the application is deficient, the applicant has 30 days to address the deficiencies by submitting the required additional information. Within 120 days after the county has deemed the application complete, the county must approve, approve with conditions, or deny the application for a development permit or development order. The time periods contained in this section may be waived in writing by the applicant. An approval, approval with conditions, or denial of the application for a development permit or development order must include written findings supporting the county's decision.

(2) ~~(1)~~ When reviewing an application for a development permit or development order that is certified by a professional listed in s. 403.0877, a county may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Before a third request for additional information, the applicant must be

offered a meeting to attempt to resolve outstanding issues. Except as provided in subsection (5)~~(4)~~, if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the county, at the applicant's request, shall proceed to process the application for approval or denial.

(3)~~(2)~~ When a county denies an application for a development permit or development order, the county shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit or order.

(4)~~(3)~~ As used in this section, the terms ~~term~~ "development permit" and "development order" have ~~has~~ the same meaning as in s. 163.3164, but do ~~does~~ not include building permits.

(5)~~(4)~~ For any development permit application filed with the county after July 1, 2012, a county may not require as a condition of processing or issuing a development permit or development order that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county action on the local development permit.

(6)~~(5)~~ Issuance of a development permit or development order by a county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a

violation of state or federal law. A county shall attach such a disclaimer to the issuance of a development permit and shall include a permit condition that all other applicable state or federal permits be obtained before commencement of the development.

(7)~~(6)~~ This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.

Section 3. Paragraph (i) of subsection (5) and paragraph (h) of subsection (6) of section 163.3180, Florida Statutes, are amended to read:

163.3180 Concurrency.—

(5)

(i) If a local government elects to repeal transportation concurrency, it is encouraged to adopt an alternative mobility funding system that uses one or more of the tools and techniques identified in paragraph (f). Any alternative mobility funding system adopted may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government. The revenue from the funding mechanism used in the alternative system must be used to implement the needs of the local government's plan which serves as the basis for the fee imposed. A mobility fee-based funding system must comply with s. 163.31801 governing ~~the dual rational nexus test applicable to~~ impact fees. An alternative system that is not mobility fee-

based shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h).

(6)

(h)1. In order to limit the liability of local governments, a local government may allow a landowner to proceed with development of a specific parcel of land notwithstanding a failure of the development to satisfy school concurrency, if all the following factors are shown to exist:

a. The proposed development would be consistent with the future land use designation for the specific property and with pertinent portions of the adopted local plan, as determined by the local government.

b. The local government's capital improvements element and the school board's educational facilities plan provide for school facilities adequate to serve the proposed development, and the local government or school board has not implemented that element or the project includes a plan that demonstrates that the capital facilities needed as a result of the project can be reasonably provided.

c. The local government and school board have provided a means by which the landowner will be assessed a proportionate share of the cost of providing the school facilities necessary to serve the proposed development.

2. If a local government applies school concurrency, it may not deny an application for site plan, final subdivision approval, or the functional equivalent for a development or phase of a development authorizing residential development for failure to achieve and maintain the level-of-service standard

for public school capacity in a local school concurrency management system where adequate school facilities will be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent. School concurrency is satisfied if the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by actual development of the property, including, but not limited to, the options described in sub-subparagraph a. Options for proportionate-share mitigation of impacts on public school facilities must be established in the comprehensive plan and the interlocal agreement pursuant to s. 163.31777.

a. Appropriate mitigation options include the contribution of land; the construction, expansion, or payment for land acquisition or construction of a public school facility; the construction of a charter school that complies with the requirements of s. 1002.33(18); or the creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits. Such options must include execution by the applicant and the local government of a development agreement that constitutes a legally binding commitment to pay proportionate-share mitigation for the additional residential units approved by the local government in a development order and actually developed on the property, taking into account residential density allowed on the property prior to the plan amendment that increased the overall residential density. The district school board must be a party to such an agreement. As a condition of its entry into such a

development agreement, the local government may require the landowner to agree to continuing renewal of the agreement upon its expiration.

b. If the interlocal agreement and the local government comprehensive plan authorize a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a charter school that complies with the requirements of s. 1002.33(18), as proportionate-share mitigation, the local government shall credit such a contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by local ordinance for public educational facilities ~~the same need~~, on a dollar-for-dollar basis at fair market value. The credit must be based on the total impact fee assessed and not on the impact fee for any particular type of school.

c. Any proportionate-share mitigation must be directed by the school board toward a school capacity improvement identified in the 5-year school board educational facilities plan that satisfies the demands created by the development in accordance with a binding developer's agreement.

3. This paragraph does not limit the authority of a local government to deny a development permit or its functional equivalent pursuant to its home rule regulatory powers, except as provided in this part.

Section 4. Section 163.31801, Florida Statutes, is amended to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges ~~definitions; ordinances levying~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~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 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 not ~~be provided no~~ less than 90 days before the effective date

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 proportional and 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 proportional and reasonably connected to, or have a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.

(h) The local government must specifically earmark funds collected under the impact fee for use in acquiring, constructing, or improving capital facilities to benefit new users.

(i) Revenues generated by the impact fee may not be used, in whole or in part, to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction.

(4) The local government must credit against the collection of the impact fee any contribution, whether identified in a proportionate share agreement or other form of exaction, related to public education facilities, including land dedication, site planning and design, or construction. Any contribution must be applied to reduce impact fees on a dollar-for-dollar basis at

fair market value.

(5) If a local government increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under s. 163.3180, s. 380.06, or otherwise, which were in existence prior to the increase, is entitled to a proportionate increase in the credit balance.

(6) ~~(4)~~ Audits of financial statements of local governmental entities and district school boards which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must include an affidavit signed by the chief financial officer of the local governmental entity or district school board stating that the local governmental entity or district school board has complied with this section.

(7) ~~(5)~~ In any action challenging an impact fee or the government's failure to provide required dollar-for-dollar credits for the payment of impact fees as provided in s. 163.3180(6)(h)2.b., the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee or credit meets the requirements of state legal precedent and ~~or~~ this section. The court may not use a deferential standard for the benefit of the government.

(8) A county, municipality, or special district may provide an exception or waiver for an impact fee for the development or construction of housing that is affordable, as defined in s. 420.9071. If a county, municipality, or special district provides such an exception or waiver, it is not required to use any revenues to offset the impact.

Section 5. Section 166.033, Florida Statutes, is amended to read:

166.033 Development permits and orders.—

(1) Within 30 days after receiving an application for approval of a development permit or development order, a municipality must review the application for completeness and issue a letter indicating that all required information is submitted or specifying with particularity any areas that are deficient. If the application is deficient, the applicant has 30 days to address the deficiencies by submitting the required additional information. Within 120 days after the municipality has deemed the application complete, the municipality must approve, approve with conditions, or deny the application for a development permit or development order. The time periods contained in this subsection may be waived in writing by the applicant. An approval, approval with conditions, or denial of the application for a development permit or development order must include written findings supporting the municipality's decision.

(2) ~~(1)~~ When reviewing an application for a development permit or development order that is certified by a professional listed in s. 403.0877, a municipality may not request additional information from the applicant more than three times, unless the applicant waives the limitation in writing. Before a third request for additional information, the applicant must be offered a meeting to attempt to resolve outstanding issues. Except as provided in subsection (5) ~~(4)~~, if the applicant believes the request for additional information is not authorized by ordinance, rule, statute, or other legal authority, the municipality, at the applicant's request, shall proceed to process the application for approval or denial.

(3) ~~(2)~~ When a municipality denies an application for a development permit or development order, the municipality shall give written notice to the applicant. The notice must include a citation to the applicable portions of an ordinance, rule, statute, or other legal authority for the denial of the permit or order.

(4) ~~(3)~~ As used in this section, the terms ~~term~~ "development permit" and "development order" have ~~has~~ the same meaning as in s. 163.3164, but do ~~does~~ not include building permits.

(5) ~~(4)~~ For any development permit application filed with the municipality after July 1, 2012, a municipality may not require as a condition of processing or issuing a development permit or development order that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the municipal action on the local development permit.

(6) ~~(5)~~ Issuance of a development permit or development order by a municipality does not ~~in any way~~ create any right on the part of an applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the municipality for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A municipality shall attach such a disclaimer to the issuance of development permits and shall include a permit condition that all other applicable state or federal permits be obtained before commencement of the development.

(7)~~(6)~~ This section does not prohibit a municipality from providing information to an applicant regarding what other state or federal permits may apply.

Section 6. Section 166.04151, Florida Statutes, is amended to read:

166.04151 Affordable housing.—

(1) Notwithstanding any other provision of law, a municipality may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances.

(2) An inclusionary housing ordinance may require a developer to provide a specified number or percentage of affordable housing units to be included in a development or allow a developer to contribute to a housing fund or other alternatives in lieu of building the affordable housing units. However, in exchange, a municipality must provide incentives to fully offset all costs to the developer of its affordable housing contribution. Such incentives may include, but are not limited to:

(a) Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designation or zoning;

(b) Reducing or waiving fees, such as impact fees or water and sewer charges; or

(c) Granting other incentives.

Section 7. Subsection (24) of section 494.001, Florida Statues, is amended to read:

494.001 Definitions.—As used in this chapter, the term:

(24) "Mortgage loan" means any:

(a) Residential loan that ~~primarily for personal, family, or household use which~~ is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in s. 103(w) ~~s. 103(v)~~ of the federal Truth in Lending Act, or for the purchase of residential real estate upon which a dwelling is to be constructed;

(b) Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor; or

(c) Loan on improved real property consisting of five or more dwelling units if the borrower is an individual or the lender is a noninstitutional investor.

Section 8. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 11, 2019

I respectfully request that **Senate Bill #1730**, relating to Community Development and Housing, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Tom Lee

Senator Tom Lee
Florida Senate, District 20

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

4/20/2015 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) 1730

Meeting Date *Bill Number (if applicable)*

877766

Amendment Barcode (if applicable)

Topic Community Development

Name Jeff Branch

Job Title Legislative Advocate

Address _____ Phone 701-3701

Street

Tallahassee FL _____ Email _____

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-19
Meeting Date

1730
Bill Number (if applicable)

877766
Amendment Barcode (if applicable)

Topic _____

Name DAVID CULLEN

Job Title _____

Address 1674 UNIV. PKWY #296
Street

Phone 941-323-2404

SARASOTA FL 34243
City *State* *Zip*

Email cullensea

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-19
Meeting Date

1730
Bill Number (if applicable)

Topic Community development and housing

877606
Amendment Barcode (if applicable)

Name Laura Youmans

Job Title LEGISLATIVE COUNSEL

Address 100 N. MONROE ST
Street

Phone 294-1838

TAL FL 32301
City *State* *Zip*

Email laura.youmans@fl.counties.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against
(The Chair will read this information into the record.)

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/19
Meeting Date

1730
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Community Development

Name Christopher Emmanuel

Job Title Policy Director

Address 136 S. Bronough St
Street

TLH FL 32301
City *State* *Zip*

Phone 850 933 1223

Email cemmanuel@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/22/19
Meeting Date

1730
Bill Number (if applicable)

Topic Community Development and Housing

Amendment Barcode (if applicable

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St
Street

Phone 224-7173

Tallahassee FL 32301
City *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/1

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/19
Meeting/Date

1730
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St Suite 300
Street

Phone 222-7500

Tallahassee FL 32301
City *State* *Zip*

Email garyh@hgslaw.com

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Association of Florida Community Developers

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/19
Meeting Date

1730
Bill Number (if applicable)

Topic 1730 - Mortgage

Mortgage Licensing
Amendment Barcode (if applicable)

Name Bernie Navarro

Job Title President

Address 7000 SW 97 Ave #201
Street
Miami FL 33173
City *State* *Zip*

Phone 3054455275

Email bnavarro@benworth capitol.com

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against
(The Chair will read this information into the record.)

Representing Myself

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/19
Meeting Date

1730
Bill Number (if applicable)

Topic 1730 MORTGAGE

Amendment Barcode (if applicable)

Name ERNIE PONTICORVO

Job Title INVESTOR

Address 6619 S. DIXIE HWY #274
Street
MIAMI FL 33143
City *State* *Zip*

Phone 3056420208

Email ernie ponticorvo @ gmail.com

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against
(The Chair will read this information into the record.)

Representing ~~MYSELF~~ CUBAN LATIN BUILDERS ASSOC.

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-23-2019
Meeting Date

SB 1730
Bill Number (if applicable)

Topic SB 1730: Inclusionary Zoning & Affordable Housing

Amendment Barcode (if applicable)

Name Alayah Glenn

Job Title Researcher in Residence

Address 3000 Biscayne Blvd. Suite 106
Street

Phone

Miami FL 33130
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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04/23/19
Meeting Date

1730
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Claudia Navarro

Job Title Community Organizer

Address 2240 NW 105 St
Street

Phone 786 510 6737

Miami FL 33147
City *State* *Zip*

Email claudia@theworkerscenter.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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23-19
Meeting Date

1730
Bill Number (if applicable)

Topic Prop. Dev / Affordable Housing

Amendment Barcode (if applicable)

Name Tramisa Bryant

Job Title Housing Organizer

Address 145 N.W. 54th Street
Street

Phone 305-759-8717

Miami FL 33127
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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/2019
Meeting Date

1730
Bill Number (if applicable)

Topic PROP. DEV. / AFFORDABLE HOUSING

Amendment Barcode (if applicable)

Name ALANA GREER

Job Title CO-DIRECTOR ~~EQUITY~~ COMMUNITY JUSTICE PROJECT

Address 3000 BISCAYNE BLVD SUITE 106 Phone 305 907 7697
Street

MIAMI FL 33137 Email ALANA@COMMUNITYJUSTICEPROJECT.COM
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing ~~GSIF~~

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2019-04-23
Meeting Date

SB 1770
Bill Number (if applicable)

Topic SB 1770

Amendment Barcode (if applicable)

Name ADRIAN MADRIZ

Job Title HOUSING ORGANIZER

Address 428 SW 4TH ST, APT 11
Street

Phone 786-523-4739

MIAMI FL 33130
City *State* *Zip*

Email ADRIAN@SMASH.MIAMI

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing SMASH, INC / MWC

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

04/23/19
Meeting Date

1730
Bill Number (if applicable)

Topic Affordable Housing

Amendment Barcode (if applicable)

Name Monica Maheda

Job Title Media and Communications Coordinator

Address 7541 NW 54th St
Street

Phone 9549305823

Miami FL 33161
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☑ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date	Bill Number (if applicable)
	1730

Topic _____ Amendment Barcode (if applicable)

Name Devetria Stratford

Job Title Membership Organizer

Address 745 NW 55th St Phone 786 817 0302

Street

Miami FL 33127 Email _____

City State Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/19
Meeting Date

SB 1730
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Mortgage loan

Name Valerie Saunders

Job Title Government Affairs Chair - FAMP

Address 113 S Monroe St, 1st Floor
Street

Phone

Tallahassee FL 32301
City *State* *Zip*

Email

Speaking: ☐ For ☑ Against (current bill but in favor of amendment filed by Starge) ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Association of Mortgage Professionals

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

5.23.19
Meeting Date

1738
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 1676 Univ. Pkwy #296
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 SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 7100
INTRODUCER:	Innovation, Industry, and Technology Committee
SUBJECT:	Public Records/Department of the Lottery
DATE:	April 22, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Kraemer	Imhof		**IT Submitted as Comm. Bill/Fav**
1.	Kraemer	Phelps	RC	**Favorable**

I. Summary:

SB 7100 amends ss. 24.105(12) and 24.118(4), F.S., relating to confidential and exempt information, to create public records exemptions for specified information related to the operations and processes of the Department of the Lottery (department). The exemptions are necessary to protect the security and integrity of lottery operations, and to allow the department to participate in multistate lottery games. Information held by the department is designated as confidential and exempt, but may be disclosed under certain circumstances.

The exemptions are subject to the Open Government Sunset Review Act (OGSR) and will stand repealed on October 2, 2024, unless reviewed and reenacted by the Legislature.

The bill creates public records exemptions, and therefore it requires a two-thirds vote of the members present and voting for final passage.

The bill takes effect upon becoming a law.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2] In addition to the Florida Constitution, the Florida Statutes provide that the public may access

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

legislative and executive branch records.[3] Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.[4] The Public Records Act states that:

> [i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.[5]

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted public records as being "any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type."[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of each of the House and the Senate.[9] The exemption must explicitly lay out the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[10] A statutory exemption, which does not meet these two criteria, may be unconstitutional and may not be judicially saved.[11]

When creating a public records exemption, the Legislature may provide that a record is "confidential and exempt" or "exempt."[12] Records designated "confidential and exempt" may be released by the records custodian only under the circumstances defined by the Legislature.

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[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S., and FLA. CONST. art. I, s. 24(b). Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

[4] Public records laws are found throughout the Florida Statutes.

[5] Section 119.01(1), F.S.

[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc*., 379 So. 2d 633, 640 (Fla. 1980).

[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

[9] FLA. CONST. art. I, s. 24(c).

[10] *Id*.

[11] *Halifax Hosp. Medical Center v. News-Journal Corp.,* 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id*. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id*. at 196.

[12] If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[13]

Open Government Sunset Review Act

The OGSR prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[14] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment. In order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.[15] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[16] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[17]
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[18] or
- It protects trade or business secrets.[19]

The OGSR also requires specified questions to be considered during the review process.[20] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[21] If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then

[13] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[14] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
[15] Section 119.15(3), F.S.
[16] Section 119.15(6)(b), F.S.
[17] Section 119.15(6)(b)1., F.S.
[18] Section 119.15(6)(b)2., F.S.
[19] Section 119.15(6)(b)3., F.S.
[20] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[21] FLA. CONST. art. I, s. 24(c).

a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[22]

Department of the Lottery

Section 15 of Article X of the State Constitution allows lotteries to be operated by the state. Section 24.102(2), F.S., provides:

- The net proceeds of lottery games shall be used to support improvements in public education;
- Lottery operations shall be undertaken as an entrepreneurial business enterprise; and
- The department shall be accountable through audits, financial disclosure, open meetings, and public records laws.

The department operates the Florida Lottery to maximize revenues "consonant with the dignity of the state and the welfare of its citizens"[23] for the benefit of public education.[24]

Section 24.105(12), F.S., provides that the department may determine by rule information relating to the operation of the lottery which is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if necessary to the security and integrity of the lottery. Such information includes trade secrets; security measures and reports; bid and contractual information that, if disclosed, would impair the department to contract for goods or services on favorable terms, and personnel information unrelated to compensation, duties, qualifications, or responsibilities. Confidential information may be released to other governmental entities as needed in connection with the performance of their duties, but the recipient must retain the confidentiality of the information provided.

Penalties for the improper disclosure of information lottery information that is designated as confidential and exempt are addressed in s. 24.118(4), F.S. A person who, with intent to defraud or to provide a financial or other advantage to himself, herself, or another, knowingly and willfully discloses such confidential and exempt information, commits a felony of the first degree.[25]

III. Effect of Proposed Changes:

This bill amends s. 24.105(12), F.S., to create s. 24.1051(1), F.S., relating to exemptions from inspection or copying of public records, relating to the following information held by the department:

- Information that, if released, could harm the security or integrity of the department, including information:
  - Relating to the security of the department's technologies and practices to protect networks, software, and data systems from attack, damage, or unauthorized access;

[22] Section 119.15(7), F.S.
[23] *See* s. 24.104, F.S.
[24] *See* s. 24.121(2), F.S.
[25] Section 775.082, F.S., provides a felony of the first degree is punishable by a term of imprisonment not to exceed thirty years. Section 775.083, F.S., provides a felony of the first degree is punishable by a fine not to exceed $10,000.

  - Relating to security information and measures of the department, whether physical or virtual;
  - About lottery games, promotions, and tickets, such as description, design, production, printing, packaging, shipping, delivery, storage, and validation processes; and
  - Concerning terminals and devices that issue tickets;
- Information required to be maintained as confidential in order for the department to participate in multistate lottery associations or games;
- Personal identifying information obtained by the department when processing background investigations of current or potential retailers or vendors; and
- Financial information about a vendor or lottery ticket retailer which is not publicly available and is provided for review of the entity's financial responsibility,[26] provided that the entity marks such information as confidential. However, financial information related to any contract, agreement, or addendum with the department, including the amount of money paid, any payment structure or plan, expenditures, incentives, bonuses, fees, and penalties, are public record.

The bill provides the exemption is remedial in nature, and states the legislative purpose and intent for the exemption to apply to information held by the department before, on, or after the effective date of the act.

Information that is made confidential and exempt under the bill may be released by the department to other governmental entities as needed for the performance of their duties, but recipients must maintain the confidential and exempt status of the information provided.

The bill states the legislative intent for creating the public records exemptions in the bill and overriding the strong public policy of open government, so that effective, efficient administration of the lottery may be maintained, and the department may participate in multistate games to generate revenue for public education, based upon the following compelling purposes:
- Ensuring the security and integrity of lottery operations to safeguard against players gaining an unfair advantage over other players and to enable the department to operate consistent with the dignity of the state lottery;
- Preventing the public disclosure of security information that would jeopardize the integrity and efficiency of the lottery and impair administration of the lottery;
- Allowing compliance with contracts requiring information to be held confidential as part of the operation and promotion of a multistate lottery with other states;
- Protecting personal identifying information of current or potential retailers and vendors for processing background investigations, as the release of sensitive personal information could cause great financial harm, cause unwarranted damage to reputations, and increase the risk of identity theft; and
- Preventing the disclosure of financial information of a vendor or retailer that is not publicly available and is provided to the department for review of financial responsibility of the entity, as the release of such information could harm the business operations of those the department seeks to contract with, cause them injury in the marketplace, and decrease the likelihood that they will contract with the department.

[26] *See* s. 24.111, F.S., relating to vendors that contract with the department, and s. 24.112, F.S., relating to lottery ticket retailers.

Section 24.1051(1)(d), F.S., provides for the repeal of the exemptions pursuant to the OGSR on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill transfers s. 24.118(4), F.S., relating to the penalties for the improper disclosure of lottery information that is designated as confidential and exempt, to s. 24.1051(4), F.S.

The bill includes technical drafting changes, conforming changes, elimination of obsolete language, and a directive to the Division of Law Revision.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded exemption for public records and public meetings. If an exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. The bill creates a public records exemption, therefore it requires a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 24.105 and 24.118.

This bill creates section 24.1051 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By the Committee on Innovation, Industry, and Technology

580-04147-19 20197100__

A bill to be entitled

An act relating to public records; transferring, renumbering, and amending ss. 24.105(12) and 24.118(4), F.S.; exempting from public records requirements certain security information held by the Department of the Lottery, information about lottery games, personal identifying information of retailers and vendors for purposes of background checks, and certain financial information held by the department; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing applicability; providing a directive to the Division of Law Revision; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a), (b), and (c) of subsection (12) of section 24.105, Florida Statutes, are transferred, renumbered as subsections (1), (2), and (3), respectively, of section 24.1051, Florida Statutes, and amended, and subsection (4) of section 24.118, Florida Statutes, is transferred, renumbered as subsection (4) of section 24.1051, Florida Statutes, and amended, to read:

24.1051 Exemptions from inspection or copying of public records.—

(1)(a) ~~(12)(a)~~ The following information held by the department ~~Determine by rule information relating to the operation of the lottery which~~ is confidential and exempt from

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

580-04147-19 20197100__

~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution:~~.~~

1. ~~Such~~ Information that, if released, could harm the security or integrity of the department, including:

a. Information relating to the ~~includes trade secrets;~~ security of the department's technologies, processes, and practices designed to protect networks, computers, data processing software, data, and data ~~measures,~~ systems from attack, damage, or unauthorized access. ~~procedures;~~

b. Security ~~reports;~~ information or information that would reveal security measures of the department, whether physical or virtual.

c. Information about lottery games, promotions, tickets, and ticket stock, including information concerning the description, design, production, printing, packaging, shipping, delivery, storage, and validation.

d. Information concerning terminals, machines, and devices that issue tickets.

2. Information that must be maintained as confidential in order for the department to participate in a multistate lottery association or game.

3. Personal identifying information obtained by the department when processing background investigations of current or potential retailers or vendors.

4. Financial ~~bids or other contractual data, the disclosure of which would impair the efforts of the department to contract for goods or services on favorable terms; employee personnel information unrelated to compensation, duties, qualifications, or responsibilities; and~~ information about an entity which is

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

not publicly available and is provided to the department in connection with its review of the financial responsibility of the entity ~~obtained by the Division of Security~~ pursuant to s. 24.111 or s. 24.112, provided that the entity marks such information as confidential. However, financial information related to any contract or agreement, or an addendum thereto, with the department, including the amount of money paid, any payment structure or plan, expenditures, incentives, bonuses, fees, and penalties, shall be public record.

(b) This exemption is remedial in nature, and it is the intent of the Legislature that this exemption apply to information held by the department before, on, or after the effective date of this act.

(c) Information made confidential and exempt under this subsection ~~its investigations which is otherwise confidential. To be deemed confidential, the information must be necessary to the security and integrity of the lottery. Confidential information~~ may be released to other governmental entities as needed in connection with the performance of their duties. The receiving governmental entity shall maintain the confidential and exempt status ~~retain the confidentiality~~ of such information ~~as provided for in this subsection~~.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

(2)~~(b) Maintain the confidentiality of~~ The street address and the telephone number of a winner are~~, in that such information is~~ confidential and exempt from ~~the provisions of~~ s.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

119.07(1) and s. 24(a), Art. I of the State Constitution, unless the winner consents to the release of such information or as provided for in s. 24.115(4) or s. 409.2577.

(3)~~(c)~~ Any information made confidential and exempt ~~from the provisions of s. 119.07(1)~~ under this section ~~subsection~~ shall be disclosed to the Auditor General, to the Office of Program Policy Analysis and Government Accountability, or to the independent auditor selected under s. 24.123 upon such person's request therefor. If the President of the Senate or the Speaker of the House of Representatives certifies that information made confidential and exempt under this section ~~subsection~~ is necessary for effecting legislative changes, the requested information shall be disclosed to him or her, and he or she may disclose such information to members of the Legislature and legislative staff as necessary to effect such purpose.

(4) ~~BREACH OF CONFIDENTIALITY.~~—Any person who, with intent to defraud or with intent to provide a financial or other advantage to himself, herself, or another, knowingly and willfully discloses any information relating to the lottery designated as confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution pursuant to this act is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. (1) The Legislature finds that it is a public necessity that the following information be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

(a) Information relating to the security of the Department of the Lottery. Ensuring the security and integrity of lottery

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

operations safeguards against players gaining an unfair advantage over other players and enables the department to operate in a manner consistent with the dignity of the state lottery. If such security information were made available to the public, the integrity and efficiency of the lottery would be jeopardized and the effective and efficient administration of the lottery would be significantly impaired. For these reasons, the Legislature finds that it is a public necessity to maintain the confidential and exempt status of such information. Maintaining the effective and efficient administration of the lottery is a sufficiently compelling purpose to override the strong public policy of open government and cannot be accomplished without this exemption.

(b) Information required to be held confidential in order for the department to participate in multistate games and associations. The department is authorized to enter into agreements with other states for the operation and promotion of a multistate lottery; and without the exemption, the department would be unable to join certain associations and games, thus causing the state to miss opportunities to generate revenue for education. As a result, the effective and efficient administration of the lottery would be significantly impaired if the confidentiality of these records is not maintained. For these reasons, the Legislature finds that it is a public necessity to maintain the confidential and exempt status of such information. Maintaining the effective and efficient administration of the lottery is a sufficiently compelling purpose to override the strong public policy of open government and cannot be accomplished without this exemption.

(c) Personal identifying information of current or potential retailers and vendors for purposes of processing background investigations. The release of such sensitive personal information could cause great financial harm to an individual and his or her family, cause unwarranted damage to the good name and reputation of such individuals, and increase the risk of identity theft. Without the exemption, current and potential retailers and vendors may be reluctant to participate as a department retailer or vendor, and the effective and efficient administration of the lottery would be significantly impaired. For these reasons, the Legislature finds that it is a public necessity to maintain the confidential and exempt status of such information. Maintaining the effective and efficient administration of the lottery and protecting sensitive personal information concerning individuals are sufficiently compelling purposes to override the strong public policy of open government and cannot be accomplished without this exemption.

(d) Financial information about an entity that is not publicly available and is provided to the department in connection with its review of the financial responsibility of the entity. The release of such information could harm the business operations of entities the department wishes to contract with, injure those entities in the marketplace, and decrease the likelihood that such entities work with the department. As a result, the effective and efficient administration of the lottery would be significantly impaired without maintaining the confidentiality of such financial information. For these reasons, the Legislature finds that it is a public necessity to maintain the confidential and exempt

status of such information. Maintaining the effective and efficient administration of the lottery and protecting such confidential information concerning entities are sufficiently compelling purposes to override the strong public policy of open government and cannot be accomplished without this exemption.

(2) The Legislature further finds that these public record exemptions must be given retroactive application because they are remedial in nature.

Section 3. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes a law.

Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/19
Meeting Date

7100
Bill Number (if applicable)

Topic Public Records / Dep. of Lottery

Amendment Barcode (if applicable)

Name Jake Felder

Job Title Legislative Affairs Director Florida Lottery

Address 250 Marriot Dr.
Street

Phone

Tallahassee FL 32399
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Department of Lottery

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/HB 629
INTRODUCER:	Gaming Control Subcommittee and Representative Robinson
SUBJECT:	Lottery Games
DATE:	April 23, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Phelps	RC	**Fav/1 Amendment**

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

CS/HB 629 requires lottery tickets to be exclusively in paper form that is purchased and conveyed by an authorized retailer within the physical premises of the authorized retailer. The bill prohibits the use of a personal electronic device to play, store, or redeem a lottery ticket or game or representation thereof. A personal electronic device may be used to pay for the ticket or game while on the premises of an authorized retailer. A person who violates the prohibition commits a misdemeanor of the second degree, which is punishable by a definite term of imprisonment not to exceed 60 days or a fine of no more than $500.

Beginning January 1, 2020, the bill requires every advertisement or promotions for lottery games to include the statement: WARNING: PLAYING A LOTTERY GAME CONSTITUTES GAMBLING AND MAY LEAD TO ADDICTION AND/OR COMPULSIVE BEHAVIOR. THE CHANCES OF WINNING A BIG PRIZE ARE VERY LOW.

If the advertisement is in print, including a newspaper, magazine or billboard, or on television, the internet or another electronic medium it must occupy at least 10 percent of the surface area of the advertisement or promotion. If the advertisement is on the radio, the statement must be audibly announced at the conclusion of the advertisement or promotion.

Beginning January 1, 2020, all contracts for lottery tickets must require the vendor to include the above statement on every lottery ticket under ch. 24, F.S. The statement must appear in prominent text on the front of each ticket, occupy at least 10 percent of the face of the ticket, and be on every lotter ticket printed on or after January 1, 2021.

CS/HB 629 may have a negative impact on state revenues. *See* Section V., Fiscal Impact Statement.

The effective date of the bill is July 1, 2019.

II. Present Situation:

General Overview of Gambling in Florida

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] conducting a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,[5] bingo,[6] cardrooms,[7] charitable drawings,[8] game promotions (sweepstakes),[9] and bowling tournaments.[10] In addition, Chapters 550 and 551, F.S., respectively, authorize pari-mutuel wagering on certain live events at licensed facilities and slot machine gaming at specified locations.

Article X, section 7 of the Florida Constitution prohibits lotteries other than the types of pari-mutuel pools authorized by law.

The Florida Lottery

In 1986, Florida voters approved Article X, section 15 of the Florida Constitution to allow lotteries to be operated by the state. Section 15 of Article X of the Florida Constitution, provides:

> Lotteries may be operated by the state…. On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.

Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery pursuant to the constitutional authorization set forth above. Section 24.102, F.S., creates the Department of the Lottery (department) and states the Legislature's intent that it be self-supporting, revenue-producing, and function as an entrepreneurial business enterprise. Section 24.102(2), F.S., provides:

- The net proceeds of lottery games shall be used to support improvements in public education;

[1] Section 849.08, F.S.
[2] Section 849.01, F.S.
[3] Section 849.09, F.S.
[4] Section 849.16, F.S.
[5] Section 849.085, F.S.
[6] Section 849.0931, F.S.
[7] Section 849.086, F.S.
[8] Section 849.0935, F.S.
[9] Section 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[10] Section 546.141, F.S.

- Lottery operations shall be undertaken as an entrepreneurial business enterprise; and
- The department shall be accountable through audits, financial disclosure, open meetings, and public records laws.

The department operates the Florida Lottery to maximize revenues "consonant with the dignity of the state and the welfare of its citizens"[11] for the benefit of public education.[12]

Florida began offering lottery games in 1988, with a $1 weekly drawing.[13] Since then, the Lottery has grown to include approximately 60 different scratch-off games available at over 13,000 retailer locations, with Lottery ticket prices ranging from $1 to $30.[14] This growth resulted in more than $6.7 billion in total sales for the 2017-2018 fiscal year.

Lottery Warnings and Problem Gambling

Currently, the department is not required to inform customers who purchase lottery tickets of the risks associated with gambling, including the potential for compulsive or addictive gambling. The Lottery's website includes a "Play Responsibly" page with the prominent headline "HAVE FUN BUT REMEMBER…IT ONLY TAKES ONE TICKET TO WIN!" Below the headline, the "Play Responsibly" page includes "tips for safer gaming" and contact information for the Florida Council on Problem Gambling, the National Problem Gambling Helpline, and Gamblers Anonymous.[15] The department also provides information about gambling-related problems and contact information for the same problem-gambling resources on its "Where to Play" webpage.[16]

Addiction is characterized by the "inability to consistently abstain, impairment in behavioral control, craving, diminished recognition of significant problems with one's behaviors and interpersonal relationships, and a dysfunctional emotional response."[17] Opponents of gambling contend that participants in gambling are particularly susceptible to addiction.[18] Gambling studies indicate that games of chance present the illusion of quick and effortless financial gain yet can often lead to financial loss due to the statistical improbability of winning a prize.[19] In addition, the following statement is found on the back of certain lottery products: "Play Responsibly – If you or someone you know has a gambling problem, call 1-888-ADMIT-IT."[20]

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[11] *See* s. 24.104, F.S.
[12] *See* s. 24.121(2), F.S.
[13] *See* Department of the Lottery, *History*, http://www.flalottery.com/history (last visited Apr. 19, 2019).
[14] *Id*.; and Lottery of the Lottery, *Scratch Offs*, http://www.flalottery.com/scratch-offs?amount=30 (last visited Apr. 19, 2019).
[15] *See* Department of the Lottery, *Play Responsibly*, https://www.flalottery.com/playResponsibly (last visited Apr. 19, 2019).
[16] *See* Department of the Lottery, *Gambling Should Never Be a Problem*, http://www.flalottery.com/whereToPlay (last visited Apr. 19, 2019).
[17] American Society of Addiction Medicine, *Definition of Addiction*, http://www.asam.org/quality-practice/definition-of-addiction (last visited Apr. 19, 2019).
[18] *See* Psychguides.com, *Compulsive Gambling Symptoms, Causes and Effects*, http://www.psychguides.com/guides/compulsive-gambling-symptoms-causes-and-effects/ (last visited Apr. 19, 2019).
[19] *Id*.
[20] Copy on file with the Innovation, Industry, and Technology Committee.

III. Effect of Proposed Changes:

The bill amends s. 24.107, F.S., to revise the requirements for all advertisements or promotions of lottery games. Beginning January 1, 2020, every advertisement or promotions for lottery games must include the statement:

> WARNING: PLAYING A LOTTERY GAME CONSTITUTES GAMBLING AND MAY LEAD TO ADDICTION AND/OR COMPULSIVE BEHAVIOR. THE CHANCES OF WINNING A BIG PRIZE ARE VERY LOW.

If the advertisement or promotion is on television, the internet or another electronic medium it must appear in black font on a white background and occupy at least 10 percent of the surface area of the advertisement or promotion. If the advertisement is in print, including a newspaper, magazine or billboard, the statement must appear in prominent text and occupy at least 10 percent of the surface area of the advertisement or promotion. If the advertisement is on the radio, the statement must be audibly announced at the conclusion of the advertisement or promotion.

The bill amends s. 24.111, F.S., to require that, beginning January 1, 2020, all contracts with a vendor must contain a provision requiring the vendor to print the following statement on every lottery ticket:

> WARNING: PLAYING A LOTTERY GAME CONSTITUTES GAMBLING AND MAY LEAD TO ADDICTION AND/OR COMPULSIVE BEHAVIOR. THE CHANCES OF WINNING A BIG PRIZE ARE VERY LOW.

The statement must appear in prominent text on the front of each ticket and occupy at least 10 percent of the total face of the lottery ticket.

The effective date of the bill is July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

On March 8, 2019, the Revenue Estimating Conference (REC) estimated that the bill will result in a reduction in lottery ticket sales and transfers to the Educational Enhancement Trust Fund (EETF). The REC estimated transfer reductions to the EETF over the next three fiscal years of $31.6 million for Fiscal Year 2019-2020, $64.4 million for Fiscal Year 2020-2021, and $65.2 million for Fiscal Year 2021-2022.[21] The following chart shows the estimated fiscal impact to the EETF for the next five fiscal years:[22]

Fiscal Year	Cash ($/Millions)	Recurring ($/Millions)
2019-2020	(31.6)	(63.2)
2020-2021	(64.4)	(64.4)
2021-2022	(65.2)	(65.2)
2022-2023	(66.2)	(66.2)
2023-2024	(67.9)	(67.9)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[21] Office of Economic & Demographic Research, *Revenue Estimating Conference, Impact Conference*, March 8, 2019, available at: http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/_pdf/Impact0308.pdf (last visited Apr. 19, 2019).
[22] *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 24.107 and 24.111.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 834516 by Rules on April 23, 2019:
The amendment removes the provision creating s. 24.1056, F.S., to require that lottery tickets must be in paper form, prohibiting the use of a personal electronic device to play, store, or redeem a lottery ticket or game or representation thereof, with certain conditions, and providing criminal penalties.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

834516

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/24/2019	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 20 - 53.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 2 - 7

and insert:

An act relating to lottery games; amending s. 24.107,

A bill to be entitled

An act relating to lottery games; creating s. 24.1056, F.S.; prohibiting the use of personal electronic devices to play, store, redeem, sell, or purchase lottery tickets or games; providing exceptions; defining the term "personal electronic device"; providing criminal penalties; amending s. 24.107, F.S.; requiring the Department of the Lottery to include a specified warning in advertisements or promotions of lottery games; providing requirements for such warning; amending s. 24.111, F.S.; requiring contracts between the department and a vendor to include a provision that requires the vendor to print a specified warning on all lottery tickets; providing requirements for such warning; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 24.1056, Florida Statutes, is created to read:

24.1056 Prohibition against use of personal electronic devices in lottery games.—

(1) The provisions of this chapter are strictly limited to lottery tickets that are exclusively in paper form, purchased from and conveyed by an authorized retailer within the physical premises of the authorized retailer, and redeemed in a manner as prescribed in this chapter.

(2) A person may not use a personal electronic device to play, store, or redeem a lottery ticket or game or representation thereof. However, the storage of a photographic image of a lottery ticket or game on a personal electronic device exclusively for personal use is permissible, provided the image is not used in any manner in conjunction with or in lieu of the paper ticket or game for purposes of playing or redeeming the paper ticket or game.

(3) A person may not use or solicit the use of a personal electronic device in order to sell or purchase a lottery ticket or game or representation thereof unless the device is used exclusively to render payment for a lottery ticket or game purchased from and conveyed by an authorized retailer within the physical premises of the authorized retailer.

(4) For purposes of this section, the term "personal electronic device" means a cellular telephone, smart phone, smart watch, tablet, laptop computer, desktop computer, or any other electronic device capable of connecting to the Internet or any other communications network or data system, but does not include a device operated solely by the department, a retailer, or a vendor, or a vending machine authorized pursuant to s. 24.112(15).

(5) A person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Subsection (3) is added to section 24.107, Florida Statutes, to read:

24.107 Advertising and promotion of lottery games.—

(3) Beginning January 1, 2020, every advertisement or promotion of lottery games under this chapter shall include the following statement: "WARNING: PLAYING A LOTTERY GAME CONSTITUTES GAMBLING AND MAY LEAD TO ADDICTION AND/OR COMPULSIVE BEHAVIOR. THE CHANCES OF WINNING A BIG PRIZE ARE VERY LOW." The statement must:

(a) If on television, on the Internet, or in any other electronic medium, appear in black font on a white background and occupy at least 10 percent of the surface area of the advertisement or promotion.

(b) If in print, including in a newspaper, in a magazine, or on a billboard, appear in prominent text and occupy at least 10 percent of the surface area of the advertisement or promotion.

(c) If on radio, be audibly announced at the conclusion of the advertisement or promotion.

Section 3. Subsection (8) is added to section 24.111, Florida Statutes, to read:

24.111 Vendors; disclosure and contract requirements.—

(8) Beginning January 1, 2020, all contracts subject to this section shall contain a provision that requires the vendor to print the following statement on every lottery ticket sold under this chapter: "WARNING: PLAYING A LOTTERY GAME CONSTITUTES GAMBLING AND MAY LEAD TO ADDICTION AND/OR COMPULSIVE BEHAVIOR. THE CHANCES OF WINNING A BIG PRIZE ARE VERY LOW." The statement must:

(a) Appear in prominent text on the front side of each lottery ticket.

(b) Occupy at least 10 percent of the total face of the lottery ticket.

(c) Appear on every lottery ticket printed on or after January 1, 2021, pursuant to this chapter.

Section 4. This act shall take effect July 1, 2019.

834516

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/24/2019	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 20 - 53.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete lines 2 - 7

and insert:

An act relating to lottery games; amending s. 24.107,

FLORIDA

POWERBALL

POWERPLAY®

PRINTED: 03/01/2019 21:08:40
041336 11079600 1372-036231592-120440

A 17 33 53 58 59 PB 01 Q6

POWER PLAY NO

* Sat Mar 02, 2019 *
1 DRAW

$2.00

1372-036231592-120440

JACKPOTS: FLORIDA LOTTO $2.5 MILLION
POWERBALL EST. $348 MILLION
***
PLAY THE NEW JACKPOT TRIPLE PLAY GAME
GET 3 SETS OF NUMBERS FOR $1!
ADD COMBO TO COMBINE MATCHES & WIN MORE

flalottery.com

...claimed within the first 60 days after the winning drawing to elect the cash option. Redeem es under $600 at any Lottery retailer. Prizes of $600 or more may be claimed in person at a ery office or by mailing the winning ticket to Florida Lottery, 250 Marriott Drive, Tallahassee, 32399-9939 along with completed Claim Form and copy of photo identification. Information forms are available at flalottery.com. The risk of mailing tickets remains with the player. Call) 487-7777 or TDD (850) 487-7784 for assistance. All tickets, transactions, and winners are ject to Lottery rules and State law. You are responsible for the accuracy of your ticket. Ticket chasers must be at least 18 years old.

AME (Please Print) _____

DRESS _____

_____ STATE _____ ZIP _____

ONE NUMBER (_____) _____ FG 01/17

SIGN YOUR TICKET

FLORIDA LOTTERY
A WIN FOR EDUCATION

AVOID HEAT · DO NOT IRON · KEEP DRY

flalottery.com

Responsibly – If you or someone you know has a gambling problem, call toll-free: 1-888-ADMIT-IT

L-1001

FH 366334135

REDEEM: Place your full name on the back of the ticket. Prizes must be claimed within 180 after the winning drawing. Prizes for which a single-payment cash option is available must laimed within the first 60 days after the winning drawing to elect the cash option. Redeem es under $600 at any Lottery retailer. Prizes of $600 or more may be claimed in person at a ery office or by mailing the winning ticket to Florida Lottery, 250 Marriott Drive, Tallahassee, 2399-9939 along with completed Claim Form and copy of photo identification. Information forms are available at flalottery.com. The risk of mailing tickets remains with the player. Call) 487-7777 or TDD (850) 487-7784 for assistance. All tickets, transactions, and winners are ject to Lottery rules and State law. You are responsible for the accuracy of your ticket. Ticket hasers must be at least 18 years old.

AME (Please Print) _____

DRESS _____

_____ STATE _____ ZIP _____

ONE NUMBER (_____) _____ FG 01/17

SIGN YOUR TICKET

FLORIDA LOTTERY
A WIN FOR EDUCATION

AVOID HEAT · DO NOT IRON · KEEP DRY

flalottery.com

Responsibly – If you or someone you know has a gambling problem, call toll-free: 1-888-ADMIT-IT

-1001

FH 366334136

REDEEM: Place your full name on the back of the ticket. Prizes must be claimed within 180

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23
Meeting Date

629
Bill Number (if applicable)

Topic Lottery Games

Amendment Barcode (if applicable)

Name Jim Poppell

Job Title Secretary of Florida Lottery

Address 250 Marriott dr.
Street

Phone

Tallahassee FL 32399
City *State* *Zip*

Email

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Lottery

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/HB 879
INTRODUCER:	Health Market Reform Subcommittee and Representative Williamson
SUBJECT:	Genetic Information Used for Insurance Purposes
DATE:	April 19, 2019 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Phelps	RC	**Favorable**

I. Summary:

CS/HB 879 prohibits life insurers, life insurers and long-term care insurers from using genetic information, in the absence of a diagnosis related to such information:

- To cancel, limit, or deny coverage;
- To establish differentials in premium rates; or
- For underwriting purposes.

The bill also prohibits life insurers and long-term care insurers from requiring or soliciting genetic test results, using genetic test results, or considering a person's decisions or actions relating to genetic testing in any manner for any insurance purpose.

Florida currently applies these prohibitions to health insurers.

The provisions of the bill will apply to policies issued or renewed by life insurers and long-term care insurers on or after January 1, 2020.

II. Present Situation:

Use of Genetic Information for Insurance Purposes – Florida Requirements

Insurance policies for life, disability income, and long-term care[1] are exempt from s. 627.4301, F.S., which provides standards for the use of genetic information by health insurers. Health insurers[2] may not, in the absence of a diagnosis of a condition related to genetic information, use

[1] Section 627.4301(2)(c), F.S. Other types of insurance that are wholly exempt from the statute are accident-only policies, hospital indemnity or fixed indemnity policies, dental policies, and vision policies.

[2] Section 627.4301(1)(b), F.S., defines health insurer to mean, "an authorized insurer offering health insurance as defined in s. 624.603, F.S., a self-insured plan as defined in s. 624.031, F.S., a multiple-employer welfare arrangement as defined in s. 624.437, F.S., a prepaid limited health service organization as defined in s. 636.003, F.S., a health maintenance organization as defined in s. 641.19, F.S., a prepaid health clinic as defined in s. 641.402, F.S., a fraternal benefit society as defined in s. 632.601, F.S., or any health care arrangement whereby risk is assumed."

such information to cancel, limit, or deny coverage, or establish differentials in premium rates. Health insurers are also prohibited from requiring or soliciting genetic information, using genetic test results, or considering a person's decisions or actions relating to genetic testing in any manner for any insurance purpose.

Section 627.4031, F.S., defines "genetic information" to mean information derived from genetic testing to determine the presence or absence of variations or mutations, including carrier status, in an individual's genetic material or genes that are:

- Scientifically or medically believed to cause a disease disorder, or syndrome, or are associated with a statistically increased risk of developing a disease; or
- Associated with a statistically increased risk of developing a disease, disorder, or syndrome, which is producing or showing no symptoms at the time of testing.

Genetic testing, for purposes of s. 627.4031, F.S., does not include routine physical examinations or chemical, blood, or urine analysis, unless specifically conducted to obtain genetic information, or questions regarding family history.

Federal Laws on the Use of Genetic Information for Insurance Purposes

Federal law generally prohibits health insurers from soliciting genetic information and using such information for underwriting purposes. Federal law does not apply these prohibitions to life insurance, disability insurance, or long-term care insurance.

Genetic Information Nondiscrimination Act of 2008

The Genetic Information Nondiscrimination Act of 2008 (GINA) amended a number of existing federal laws to prohibit health insurers from using genetic information for underwriting purposes.[3] The act does not apply to life insurance, long-term care insurance or disability insurance.

Title I of GINA provides protections against discrimination by health insurers on the basis of genetic information.[4] GINA prohibits health insurers and health plan administrators from using genetic information to make rating or coverage decisions.[5] These decisions include eligibility for coverage and setting premium or contribution amounts.

GINA generally prohibits health insurers and health plan administrators from requesting or requiring genetic information of an individual or the individual's family members,[6] nor may such information be requested, required or purchased for underwriting purposes.[7] Underwriting purposes include rules for eligibility, determining coverage or benefits, cost-sharing mechanisms, calculating premiums or contribution amounts, rebates, payments in kind, pre-

[3] Pub. L. No. 110-233, s. 122 Stat. 881-921 (2008). https://www.gpo.gov/fdsys/pkg/PLAW-110publ233/pdf/PLAW-110publ233.pdf (last accessed April 19, 2019).
[4] 110th Congress, *Summary: H.R.493 Public Law* (May 21, 2008) (last accessed April 19, 2019).
[5] *See* 29 USC 1182; 42 USC 300gg-1; and 42 USC 300gg-53.
[6] Department of Health and Human Services, *"GINA" The Genetic Information Nondiscrimination Act of 2008: Information for Researchers and Health Care Professionals*, (April 6, 2009). https://www.genome.gov/pages/policyethics/geneticdiscrimination/ginainfodoc.pdf (last accessed April 19, 2019).
[7] *See* 29 USC 1182(d); 42 USC 300gg-4(d); and 42 USC 300gg-53(e).

existing condition exclusions, and other activities related to the creation, renewal, or replacement of health insurance or health benefits. Underwriting purposes does not include determining medical appropriateness where an individual seeks a health benefit under a plan, coverage, or policy.[8] Genetic information may be used by an insurer to make a determination regarding the payment of benefits, for example, as the basis of a diagnosis that then would lead to benefits being provided under the insurance policy.

The protections in GINA apply to the individual and group health markets, including employer sponsored plans under the Employee Retirement Income Security Act of 1974 (ERISA).[9] GINA generally expanded many of the genetic information protections in the Health Insurance Portability and Accountability Act of 1996[10] (HIPAA) and applied them to the individual, group and Medicare supplemental marketplaces.[11] The protections enacted in GINA do not apply to Medicare or Medicaid because both programs bar the use of genetic information as a condition of eligibility.[12] GINA also prohibits employment discrimination on the basis of genetic information.[13]

States may provide stronger protections than GINA, which provides a baseline level of protection against prohibited discrimination on the basis of genetic information.

Health Insurance Portability and Accountability Act of 1996

HIPAA establishes national standards to ensure the privacy and nondisclosure of personal health information. The rule applies to "covered entities" which means a health plan, health care clearinghouse, other health care providers, and their business associates.[14] HIPAA provides standards for the use and disclosure of protected health information and generally prohibits covered entities and their business associates from disclosing protected health information, except as otherwise permitted or required.[15] Covered entities generally may not sell protected health information.[16] HIPPA, as modified by GINA, also prohibits health plans from using or disclosing protected health information that is genetic information for underwriting purposes.[17]

Patient Protection and Affordable Care Act of 2010

The Patient Protection and Affordable Care Act of 2010 (ACA) requires all individual and group health plans to enroll applicants regardless of their health status, age, gender, or other factors that

[8] *See* 45 CFR 164.502(a)(5)(i)(4)(B).
[9] Perry W. Payne, Jr. et al, *Health Insurance and the Genetic Information Nondiscrimination Act of 2008: Implications for Public Health Policy and Practice*, Public Health Rep., Vol. 124 (March-April 2009), 328, 331.
[10] Codified 42 USC 300gg, 29 USC 1181 et seq., and 42 USC 1320d et seq.
[11] *See* Payne at pg. 329.
[12] National Institutes of Health, *The Genetic Information Nondiscrimination Act (GINA)*.
[13] *See* 29 CFR 1635(a), which prohibits the use of genetic information in employment decision making; restricts employers and other entities from requesting, requiring, or purchasing genetic information; requires that genetic information be maintained as a confidential medical record, and places strict limits on disclosure of genetic information; and provides remedies for individuals whose genetic information is acquired, used, or disclosed in violation of GINA.
[14] See 45 CFR 160.103.
[15] See 45 CFR 164.502(a).
[16] See 45 CFR 164.502(a)(5)(ii)(A).
[17] See 45 CFR 164.502(a)(5)(i).

might predict the use of health services.[18] These guaranteed issue and guaranteed renewability requirements apply to genetic testing.

Use of Genetic Information for Insurance Purposes – Requirements in Other States

Federal law under GINA applies to all states and provides a baseline level of protection that states may exceed. The NIH has identified 105 state statutes addressing health insurance nondiscrimination across 48 states and the District of Columbia.[19] Fewer states address genetic testing regarding other lines of insurance such as life insurance, disability insurance, and long-term care insurance.[20]

Examples of such statutes include Oregon, which requires informed consent to conduct testing, prohibits the use of genetic information for underwriting or ratemaking for any policy for hospital and medical expense, and prohibits using the genetic information of a blood relative for underwriting purposes regarding any insurance policy.[21] Informed consent when an insurer requests genetic testing for life or disability insurance is required in California, New Jersey, and New York.[22] Massachusetts prohibits unfair discrimination because of the basis of genetic information or a genetic test and prohibits requiring an applicant or existing policyholder to undergo genetic testing.[23] Arizona prohibits the use of genetic information for underwriting or rating disability insurance in the absence of a diagnosis, and life and disability insurance policies may not use genetic information for underwriting or ratemaking unless supported by the applicant's medical condition, medical history, and either claims experience or actuarial projections.[24]

Genetic Testing

Genetic testing includes a number of medical tests that identify and examine chromosomes, genes, or proteins for the purpose of obtaining genetic information.[25] Genetic testing is often used for medical or genealogical purposes.

Medical Genetic Testing

Genetic testing can be done to diagnose a genetic disorder, to predict the possibility of future illness, and predict a patient's response to therapy.[26] More than 2,000 genetic tests are currently

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[18] See 42 USC 300gg-1 and 42 USC 300gg-2.
[19] National Institutes of Health, *Genome Statute and Legislation Database Search*. https://www.genome.gov/policyethics/legdatabase/pubsearch.cfm (database search for "state statute," "health insurance nondiscrimination" performed by Committee on Banking and Insurance professional staff on April 19, 2019).
[20] *See id*. (database search for "state statute," "other lines of insurance nondiscrimination" performed by Committee on Banking and Insurance professional staff on April 19, 2019).
[21] Section 746.135, O.R.S.
[22] *See* Cal. Ins. Code s. 10146 et seq.; s. 17B:30-12, N.J.S.; and ISC s. 2615, N.Y.C.L.
[23] Chapter 175 sections 108I and 120E, M.G.L.
[24] Section 20-448, A.R.S.
[25] National Institutes of Health, *Genetic Testing*, pgs. 6-8 (April 16, 2019). Available for download at https://ghr.nlm.nih.gov/primer/testing/uses (last accessed April 19, 2019).
[26] Francis S. Collins, *A Brief Primer on Genetic Testing* (January 24, 2003). https://www.genome.gov/10506784/a-brief-primer-on-genetic-testing/ (last accessed April 19, 2019).

available and more tests are constantly being developed.[27] The National Institutes of Health[28] (NIH) have identified the following available types of medical genetic testing:[29]

- *Diagnostic testing* identifies or rules out a specific genetic or chromosomal condition, and is often used to confirm a diagnosis when a particular condition is suspected based on the individual's symptoms. For example, a person experiencing abnormal muscle weakness may undergo diagnostic testing that screens for various muscular dystrophies.
- *Predictive and presymptomatic testing* is used to detect gene mutations associated with disorders that appear after birth, often later in life. This testing is often used by people who are asymptomatic, but have a family member with a genetic disorder. Predictive testing can identify mutations that will result in genetic disorder, or that increase a person's risk of developing disorders with a genetic basis, such as cancer.
- *Carrier testing* identifies people who carry one copy of a gene mutation that, when present in two copies, causes a genetic disorder. This test is often used by parents to determine their risk of having a child with a genetic disorder.
- *Preimplantation testing* is used to detect genetic changes in embryos developed by assisted reproductive techniques such as in-vitro fertilization. Small numbers of cells are taken from the embryos and tested for genetic changes prior to implantation of a fertilized egg.
- *Prenatal testing* detects changes in a baby's genes or chromosomes before birth. Such testing is often offered if there is an increased risk the baby will have a genetic or chromosomal disorder.
- *Newborn screening* is performed shortly after birth to identify genetic disorders that can be treated early in life. Florida screens for 31 disorders recommended by the United States Department of Health and Human Services Recommended Uniform Screening Panel and 22 secondary disorders, unless a parent objects in writing.[30]

Genetic testing is often used for research purposes. For example, genetic testing may be used to discover genes or increase understanding of genes that are newly discovered or not well understood.[31] Testing results as part of a research study are usually not available to patients or healthcare providers.[32]

The Human Genome Project, which in April 2003 successfully sequenced and mapped all of the genes of humans, and a variety of other genetic testing has led to multiple medical advances. For example, genetic testing identified that the reason the drug Plavix, which is commonly used to prevent blood clots in patients at risk for heart attacks and strokes, does not work for approximately 30 percent of the United States population because variations in the CYP2C19

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[27] *See* Ohio State University Wexner Medical Center, *Facts About Testing*. https://wexnermedical.osu.edu/genetics/facts-about-testing (last accessed April 19, 2019).
[28] The National Institutes of Health is the medical research agency of the United States federal government. The NIH is part of the United States Department of Health and Human Services. The NIH is made of 27 different Institutes and Centers, each having a specific research agenda.
[29] *See* fn. 25, National Institutes of Health, *Genetic Testing*, at pgs. 5-6.
[30] Florida Department of Health, *Newborn Screening*. http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/index.html (last accessed April 19, 2019).
[31] *See* fn. 27, Ohio State University Wexner Medical Center.
[32] *See* fn. 25, National Institutes of Health, *Genetic Testing*, at pg. 24.

gene account for the lack of a response.[33] Thus genetic testing can identify persons for whom the drug will not be effective.

The American Medical Association supports broad protections against genetic discrimination because it believes genetic testing and genetic information is essential to advancements in medical knowledge and care.[34] Accordingly, the organization supports comprehensive federal protection against genetic discrimination because "patients remain at-risk of discrimination in a broad array of areas such as life, long-term care, and disability insurance as well as housing, education, public accommodations, mortgage lending, and elections."

Methods of genetic testing used for medical purposes include:

- Molecular genetic tests (Gene tests) that study single genes or short lengths of DNA to identify variations or mutations that lead to a genetic disorder.
- Chromosomal genetic tests that analyze whole chromosomes or long lengths of DNA to see if there are large genetic changes, such as an extra copy of a chromosome, that cause a genetic condition.
- Biochemical genetic tests study the amount or activity level of proteins; abnormalities in either can indicate changes to the DNA that result in a genetic disorder.

Genetic Ancestry Testing

Genetic ancestry testing, also called genetic genealogy, is used to identify relationships between families and identify patterns of genetic variation that are often shared among people of particular backgrounds.[35] According to the National Institutes of Health (NIH), genetic ancestry testing results may differ between providers because they compare genetic information to different databases. The tests can yield unexpected results because human populations migrate and mix with other nearby groups. Scientists can use large numbers of genetic ancestry test results to explore the history of populations. Three common types of genetic ancestry testing include:[36]

- Single nucleotide polymorphism testing evaluate large numbers of variations across a person's entire genome. The results are compared with those of others who have taken the tests to provide an estimate of a person's ethnic background.
- Mitochondrial DNA testing identifies genetic variations in mitochondrial DNA, which provides information about the direct female ancestral lines.
- Y chromosome testing, performed exclusively on males, is often used to investigate whether two families with the same surname are related.

[33] Francis S. Collins, Perspectives on the Human Genome Project, pg. 50 (June 7, 2010). https://www.genome.gov/pages/newsroom/webcasts/2010sciencereportersworkshop/collins_nhgrisciencewriters060710.pdf (last accessed April 19, 2019).
[34] American Medical Association, *Genetic Discrimination – Appendix II. AMA Legislative Principles on Genetic Discrimination and Surreptitious Testing*, (March 2013) https://www.ama-assn.org/sites/default/files/media-browser/public/genetic-discrimination-policy-paper.pdf (last accessed April 19, 2019).
[35] *See* fn. 25, National Institutes of Health, *Genetic Testing*, at pg. 25.
[36] *See* fn. 25, National Institutes of Health, *Genetic Testing*, at pg. 26.

Direct to Consumer Genetic Testing

Traditionally, genetic testing was available only through healthcare providers.[37] Direct-to-consumer genetic testing provides access to genetic testing outside the healthcare context. Generally, the consumer purchases a genetic testing kit from a vendor who mails the kit to the consumer. The consumer collects a DNA sample and mails it back to the vendor. The vendor uses a laboratory to conduct the test. The consumer is then notified of the test results.

Direct-to-consumer genetic testing has primarily been used for genealogical purposes, but increasing numbers of products now provide medical information. For example, the vendor 23andME offers, with FDA approval, genetic testing that examines the consumer's risks for certain diseases including Parkinson's disease, celiac disease, and late-onset Alzheimer's disease.[38]

Direct to consumer genetic testing is increasing in popularity, with one company reporting having sold approximately 1.5 million genetic testing kits from November 24, 2017, through November 27, 2017.[39] The increased proliferation of such testing is accompanied by increased concerns about the privacy of such information. The privacy protections of HIPAA usually do not apply to direct-to-consumer genetic testing because the vendors selling such tests are often not "covered entities" and thus not subject to HIPAA. The Federal Trade Commission recently warned consumers to consider the privacy implications of genetic testing kits.[40]

Life Insurance, Disability Insurance, and Long-Term Care Insurance

Life insurance is the insurance of human lives.[41] Life insurance can be purchased in the following forms:[42]

- Term life insurance provides coverage for a set term of years and pays a death benefit if the insured dies during the term.[43]
- Permanent life insurance remains in place if the insured pays premiums and pays a death benefit. Such policies have an actual cash value component that increases over time and from which the policyowner may borrow. There are four types of permanent life insurance:
  - Whole life insurance offers a fixed premium, guaranteed annual cash value growth and a guaranteed death benefit. It does not provide investment flexibility and the policy coverage, once established, may not be changed.

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[37] National Institutes of Health, *Genetic Testing*, at pg. 11.
[38] 23andMe, *Find Out What Your DNA Says About Your Health, Traits and Ancestry* https://www.23andme.com/dna-health-ancestry/ (last accessed April 19, 2019).
[39] Megan Molteni, *Ancestry's Genetic Testing Kits Are Heading For Your Stocking This Year*, Wired, Dec. 1, 2017, https://www.wired.com/story/ancestrys-genetic-testing-kits-are-heading-for-your-stocking-this-year/ (last accessed April 19, 2019).
[40] Federal Trade Commission, *DNA Test Kits: Consider the Privacy Implications*, (Dec. 12, 2017).https://www.consumer.ftc.gov/blog/2017/12/dna-test-kits-consider-privacy-implications (last accessed April 19, 2019).
[41] Section 624.602, F.S.
[42] National Association of Insurance Commissioners, *Life Insurance – Considerations for All Life Situations*, http://www.insureuonline.org/insureu_type_life.htm (last accessed April 19, 2019).
[43] National Association of Insurance Commissioners, *Life Insurance FAQs*, http://www.insureuonline.org/consumer_life_faqs.htm (last accessed April 19, 2019).

- Universal life insurance allows the policyholder to determine the amount and timing of premium payments within certain limits. The coverage level may be adjusted. It guarantees certain levels of annual cash value growth but not investment flexibility.
- Variable life insurance allows allocation of investment funds, but does not guarantee minimum cash value because of fluctuations in the value of investments.
- Variable universal life insurance combines variable and universal life insurance.

Life insurance also encompasses annuities and disability policies.[44] An annuity is a contract between a customer and an insurer wherein the customer makes a lump-sum payment or a series of payments to an insurer that in return agrees to make periodic payments to the annuitant at a future date, either for the annuitant's life or a specified period. Disability insurance pays a weekly or monthly income for a set period if the insured becomes disabled and cannot continue working or obtain work.

Life insurance underwriters seek to identify and classify the risk represented by a proposed insured and then classify those risks into pools of similar mortality or morbidity risk.[45] Insureds within the same risk classification pay the same premiums, which must be adequate to ensure solvency, pay claims, and provide the insurer (with investment income) a reasonable rate of return.

Disability insurance compensates the insured for a portion of income lost because of a disabling injury or illness.[46] There are two types of disability insurance: short-term and long-term. A short-term policy typically replaces a portion of lost income from 3 to 6 months following the disability. Long-term policies generally begin 6 months after the disability and can last a set number of years or until retirement age. Disability insurance is sometimes offered by life insurers.

Insurance policy forms must be filed and approved by the OIR.[47] The Unfair Insurance Trade Practices Act prohibits "knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class and expectation of life, in the rates charged for a life insurance or annuity contract, in the dividends or other benefits payable thereon, or in any other term or condition of such contract."[48] Similarly, the act prohibits knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class, as determined at the time of initial issuance of the coverage, and essentially the same hazard, in the amount of premium, policy fees, or rates charged for a policy or contract of disability insurance, in benefits payable, in the terms or conditions of the contract, or in any other manner.[49]

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[44] Section 624.602, F.S.
[45] American Council of Life Insurers, *Life Insurer Issues*. (On file with the Senate Committee on Banking and Insurance).
[46] *See* National Association of Insurance Commissioners, *A Worker's Most Valuable Asset: Protecting Your Financial Future with Disability Insurance* http://www.naic.org/documents/consumer_alert_protecting_financial_future_disability_insurance.htm (last accessed April 19, 2019).
[47] Section 624.410, F.S.
[48] Section 626.9541(1)(g)1., F.S.
[49] Section 626.9541(1)(g)2., F.S.

Long-term care (LTC) insurance covers the costs of nursing homes, assisted living, home health care, and other long-term care services. A long-term care insurance policy provides coverage for medically necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative, maintenance or personal care services provided in a setting other than an acute care unit of a hospital.[50] Long-term care insurance usually pays fixed-dollar amounts or the actual costs of care, often subject to a maximum daily benefit amount.[51]

The long-term insurance market provides an example of the negative effects of insurers not accurately projecting their underwriting risk. Long-term care insurers made incorrect assumptions when selling the coverage, particularly in the 1980s and 1990s.[52] The LTC insurers overestimated the number of people that would cancel their coverage or allow it to lapse, underestimated the life span of insureds and the time span of the treatment they would receive, and overestimated earnings on LTC premiums which were negatively affected by dropping interest rates.[53] As a result, long-term care insurance premiums have been rising, often substantially, for the past decade.[54]

In response to substantial LTC premium increases, Florida law prohibits LTC rate increases that would result in a premium in excess of that charged on a newly issued policy, except to reflect benefit differences.[55] If the insurer is not writing new LTC policies, the rate cannot exceed the new business rate of insurers representing 80 percent of the carriers in the marketplace. In January 2017, the OIR issued consent orders allowing two of the state's largest LTC insurers, Metropolitan Life Insurance Company and Unum Life Insurance Company of America, to substantially raise LTC monthly premiums, phased in over 3 years.[56] Many insurers that write LTC insurance have taken substantial losses. Recently, General Electric announced a $6.2 billion charge against earnings and a $15 billion shortfall in insurance reserves related to long-term care insurance obligations.[57]

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[50] Section 627.9404(1), F.S.
[51] Florida Department of Financial Services, Long-Term Care: A Guide for Consumers, pg. 5, (2009). https://www.myfloridacfo.com/division/consumers/UnderstandingCoverage/Guides/documents/LTCGuide.pdf (last accessed March 7, 2019).
[52] *See* Leslie Scism, *Millions Bought Insurance to Cover Retirement Health Costs. Now They Face an Awful Choice,* Wall Street Journal, January 17, 2018. https://www.wsj.com/articles/millions-bought-insurance-to-cover-retirement-health-costs-now-they-face-an-awful-choice-1516206708 (last accessed April 19, 2019).
[53] *See* Office of Insurance Regulation, *Long-Term Care Public Rate Hearings*. (The Internet page references a rate filing decision made by the OIR on Jan. 12, 2017, related to LTC products for two insurers). https://www.floir.com/Sections/LandH/LongTermCareHearing.aspx (last accessed April 19, 2019); Scism at fn. 52.
[54] *See* Scism at fn. 52; Office of Insurance Regulation at fn. 53. https://www.floir.com/Sections/LandH/LongTermCareHearing.aspx (last accessed April 19, 2019).
[55] Section 627.9407(7)(c), F.S.
[56] *See* Office of Insurance Regulation, *Consent Order In the Matter of: Metropolitan Life Insurance Company*, Case No. 200646-16-CO (Jan. 12, 2017) https://www.floir.com/siteDocuments/MetLife200646-16-CO.pdf (last accessed April 19, 2019); Office of Insurance Regulation, *Consent Order In The Matter of Unum Life Insurance Company of America*, Case No. 200879-16-CO (Jan. 12, 2017) https://www.floir.com/siteDocuments/Unum200879-16-CO.pdf (last accessed April 19, 2019).
[57] Sonali Basak, Katherine Chiglinsky, et al, *GE's Surprise $15 Billion Shortfall Was 14 Years in the Making*, Chicago Tribune, January 25, 2018. http://www.chicagotribune.com/business/ct-biz-ge-general-electric-accounting-20180125-story.html (last accessed April 19, 2019); Steve Lohr and Chad Bray, *At G.E., $6.2 Billion Charge for Finance Unit Hurts C.E.O.'s Turnaround Push*, New York Times, Jan. 16, 2018. https://www.nytimes.com/2018/01/16/business/dealbook/general-electric-ge-capital.html (last accessed April 19, 2019).

The American Council of Life Insurers has expressed concerns that the proliferation of genetic testing could increase adverse selection and impact the availability and affordability of products over time.[58] Studies addressing whether genetic testing leads to adverse selection have reached varying conclusions. Studies of women tested for the BRCA1 gene mutation (linked to breast cancer risk)[59] and adults tested for Alzheimer's risk[60] found little evidence of adverse selection in the life insurance market. However, the study regarding Alzheimer's risk found evidence of adverse selection for long-term care insurance, as 17 percent of those who tested positive subsequently changed their LTC policy in the year after testing positive of Alzheimer's risk, in comparison with 2 percent of those who tested negative and 4 percent of those who did not receive test results.[61]

III. Effect of Proposed Changes:

Section 1 amends s. 627.4301, F.S., to prohibit life insurers and long-term care insurers from canceling, limiting, or denying coverage or establishing differentials in premium rates, based on genetic information, if there is no diagnosis of a condition related to the genetic information. Life insurers and long-term care insurers also may not use such genetic information for underwriting purposes.

The bill also prohibits life insurers and long-term care insurers from requiring or soliciting genetic test results, using genetic test results, or considering a person's decisions or actions relating to genetic testing in any manner for any insurance purpose.

For purposes of s. 627.4301, F.S., the bill defines the following terms:

- "Life insurer" has the same meaning as in s. 624.602, F.S., and includes an insurer issuing life insurance contracts that grant additional benefits if the insured is disabled. Section 624.602, F.S., defines a life insurer as an insurer engaged in the business of issuing life insurance contracts, including contracts of combined life and health and accident insurance.
- "Long-term care insurer" means an insurer that issues long-term care insurance policies as described in s. 627.9404, F.S.

Section 2 specifies the act applies to policies entered into or renewed on or after January 1, 2020.

Section 3 provides an effective date of July 1, 2019.

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[58] Gina Kolata, *New Gene Tests Pose a Threat to Insurers*, New York Times (May 12, 2017) https://www.nytimes.com/2017/05/12/health/new-gene-tests-pose-a-threat-to-insurers.html (last accessed April 19, 2019).
[59] Cathleen D. Zick, et. al., *Genetic Testing, Adverse Selection, and the Demand for Life Insurance*, pgs. 29-39 American Journal of Medical Genetics (July 2000) (Abstract provided by NIH at https://www.ncbi.nlm.nih.gov/pubmed/10861679 (last accessed April 19, 2019)).
[60] Cathleen D. Zick, *Genetic Testing For Alzheimer's Disease And Its Impact on Insurance Purchasing Behavior*, pgs. 483-490, Health Affairs vol. 23, no. 2 (March/April 2005) https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.24.2.483 (last accessed April 19, 2019).
[61] *See* Zick fn. 60 at pgs. 487-488.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill restricts the use of genetic information in underwriting, risk classification, and rate setting by life insurers and long-term care insurers and could result in changes in premiums for such products.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.4301 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

A bill to be entitled

An act relating to genetic information used for insurance purposes; amending s. 627.4301, F.S.; defining terms; prohibiting life insurers and long-term care insurers from canceling, limiting, or denying coverage, or establishing differentials in premium rates, based on genetic information; prohibiting such insurers from taking certain actions relating to genetic information for any insurance purpose; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.4301, Florida Statutes, is amended to read:

627.4301 Genetic information for insurance purposes.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Genetic information" means information derived from genetic testing to determine the presence or absence of variations or mutations, including carrier status, in an individual's genetic material or genes that are scientifically or medically believed to cause a disease, disorder, or syndrome, or are associated with a statistically increased risk of developing a disease, disorder, or syndrome, which is

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

FLORIDA HOUSE OF REPRESENTATIVES

CS/HB 879 2019

asymptomatic at the time of testing. Such testing does not include routine physical examinations or chemical, blood, or urine analysis, unless conducted purposefully to obtain genetic information, or questions regarding family history.

(b) "Health insurer" means an authorized insurer offering health insurance as defined in s. 624.603, a self-insured plan as defined in s. 624.031, a multiple-employer welfare arrangement as defined in s. 624.437, a prepaid limited health service organization as defined in s. 636.003, a health maintenance organization as defined in s. 641.19, a prepaid health clinic as defined in s. 641.402, a fraternal benefit society as defined in s. 632.601, or any health care arrangement whereby risk is assumed.

(c) "Life insurer" has the same meaning as in s. 624.602 and includes an insurer issuing life insurance contracts that grant additional benefits in the event of the insured's disability.

(d) "Long-term care insurer" means an insurer that issues long-term care insurance policies as described in s. 627.9404.

(2) USE OF GENETIC INFORMATION.—

(a) In the absence of a diagnosis of a condition related to genetic information, no health insurer, life insurer, or long-term care insurer authorized to transact insurance in this state may cancel, limit, or deny coverage, or establish differentials in premium rates, based on such information.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0879-01-c1

(b) Health insurers, life insurers, and long-term care insurers may not require or solicit genetic information, use genetic test results, or consider a person's decisions or actions relating to genetic testing in any manner for any insurance purpose.

(c) This section does not apply to the underwriting or issuance of an ~~a life insurance policy, disability income policy, long-term care policy,~~ accident-only policy, hospital indemnity or fixed indemnity policy, dental policy, or vision policy or any other actions of an insurer directly related to an ~~a life insurance policy, disability income policy, long-term care policy,~~ accident-only policy, hospital indemnity or fixed indemnity policy, dental policy, or vision policy.

Section 2. This act applies to policies entered into or renewed on or after January 1, 2020.

Section 3. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23
Meeting Date

HB 879
Bill Number (if applicable)

Topic Genetic Information Used for Insurance Purposes

Amendment Barcode (if applicable)

Name Meredith Stanfield

Job Title Director of Legislative & Cabinet Affairs

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Phone (850) 413-2890

Email Meredith.Stanfield@myFloridaCFO.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CFO Jimmy Patronis

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-27
Meeting Date

879
Bill Number (if applicable)

Topic Genetic Information

Amendment Barcode (if applicable)

Name Tom Joos

Job Title

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Tallahassee FL 32301
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Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Moffitt Cancer Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Apr 23/2019
Meeting Date

H 879
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Meenan

Job Title _____

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Tallahassee FL
City *State* *Zip*

Email Tim@meenanlawfirm.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing National Association of Insurance & Financial Advisors

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/2019 (Meeting Date) HB 879 (Bill Number (if applicable))

Topic _____ Amendment Barcode (if applicable)

Name Paul Sanford

Job Title _____

Address 106 S. Monroe St (Street) Phone 850-222-7200

Tallahassee FL 32301 (City / State / Zip) Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Ins. Council - American Council of Life Insurers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	HB 7067
INTRODUCER:	Health Quality Subcommittee and Representative Yarborough
SUBJECT:	Registration Fees
DATE:	April 20, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Phelps	RC	**Favorable**

I. Summary:

HB 7067, which is linked to HB 23, provides that an applicant for registration as an out-of-state telehealth provider must pay an initial registration fee of $150 and that an out-of-state telehealth provider registrant must pay a biennial registration renewal fee of $150 with a completed application for renewal.

The Florida Constitution requires that legislation that imposes or authorizes new state taxes or fees,[1] or that raises existing state taxes or fees,[2] must be approved by two-thirds of the membership of each house of the Legislature, and the tax or fee provisions must be passed in a separate bill that contains no other subject.[3] HB 7067 creates and imposes a new fee on out-of-state telehealth providers who register to provide health care services via telehealth to patients in Florida under s. 456.47(4), F.S., as created by HB 23 or similar legislation. As such, the Florida Constitution may require that such a fee provision must be approved in a stand-alone bill by two-thirds of the membership of each house of the Legislature.

The bill has an indeterminate positive fiscal impact on the Department of Health (DOH).

The bill is effective on the same date that HB 23 or similar legislation takes effect.[4]

II. Present Situation:

Telehealth

The federal Health Resource Services Administration defines telehealth as the use of electronic information and telecommunications technologies to support and promote long-distance clinical

[1] FLA. CONST. art. VII, s. 19(a).
[2] FLA. CONST. art. VII, s. 19(b).
[3] FLA. CONST. art. VII, s. 19(e).
[4] As of this writing, HB 23 provides an effective date of July 1, 2019. *See:* http://www.flsenate.gov/Session/Bill/2019/00023 (last visited April 20, 2019)

health care, patient, and professional health-related education, public health and health administration. Technologies include videoconferencing, the Internet, store-and-forward imaging, streaming media, and terrestrial and wireless communications.[5]

The federal Centers for Medicare & Medicaid Services defines telehealth as:

> The use of telecommunications and information technology to provide access to health assessment, diagnosis, intervention, consultation, supervision and information across distance. Telehealth includes technologies such as telephones, facsimile machines, electronic mail systems, and remote patient monitoring devises, which are used to collect and transmit data for monitoring and interpretation.[6]

For more information about telehealth in general, see the analysis of SB 1526.[7]

Telehealth in Florida

Florida does not currently have a statutory structure for the delivery of health care services through telehealth. Some health care practitioner regulatory boards[8] within the DOH have adopted rules for the provision of health care services through telehealth, and the state Medicaid program allows for the provision of health care services for Medicaid recipients through telehealth under certain parameters. However, a health care practitioner must be licensed under a health care practice act within Florida law in order to lawfully provide services through telehealth for patients located in Florida.

Health Care Practitioner Licensure

The DOH is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.[9] The Division of Medical Quality Assurance (MQA) within the DOH has general regulatory authority over Florida health care practitioners.[10] The MQA works in conjunction with 22 boards and four councils to license and regulate seven types

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[5] Hedges, Ron, *Telemedicine, Information Governance and Litigation: The Chicken and the Egg*, IGIQ: A Journal of AHMIA Blog, (Feb. 15, 2018) https://journal.ahima.org/2018/02/15/telemedicine-information-governance-and-litigation-the-chicken-and-the-egg/ (last visited April 19, 2019)

[6] Department of Health and Human Services, Centers for Medicare & Medicaid Services *Telemedicine*, available at https://www.medicaid.gov/medicaid/benefits/telemed/index.html (last viewed April 19, 2019).

[7] See: http://www.flsenate.gov/Session/Bill/2019/1526/Analyses/2019s01526.ap.PDF (last visited April 20, 2019)

[8] Under s. 456.001(1), F.S., "board" is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the DOH Division of Medical Quality Assurance.

[9] Section 20.43(1)(g), F.S.

[10] Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dieticians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.

of health care facilities and more than 40 health care professions.[11] Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA.

Under current law, the costs of regulation of health care practitioners must be borne by the licensees and licensure applicants.[12] The definition of "license" includes any permit, registration, certificate, or license, including a provisional license, issued by the DOH.[13] Regulatory boards, in consultation with the DOH, must set licensure renewal fees by rule, and renewal fees must be:[14]

- Based on revenue projections prepared using generally accepted accounting procedures;
- Adequate to cover all expenses relating to that board identified in the DOH long-range policy plan;
- Reasonable, fair, and not serve as a barrier to licensure;
- Based on potential earnings from working under the scope of the license;
- Similar to fees imposed on similar licensure types; and
- No more than 10 percent greater than the actual cost to regulate that profession for the previous biennium.

III. Effect of Proposed Changes:

HB 7067 adds paragraph (i) to s. 456.47(4), F.S., as created by HB 23,[15] to provide that an applicant for registration as an out-of-state telehealth provider must pay an initial registration fee of $150 and that an out-of-state telehealth provider registrant must pay a biennial registration renewal fee of $150 with a completed application for renewal.

HB 7067 will be effective on the same date that HB 23 or similar legislation takes effect.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[11] Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2017-208* 3, available at *http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1718.pdf* (last visited April 19, 2019).
[12] Section 456.025(1), F.S.
[13] Section 456.001(5), F.S.
[14] *Supra*, note 12.
[15] HB 23 creates s. 456.47(4), F.S., to require the DOH or the applicable health care practitioner regulatory board to register out-of-state health care providers who meet certain criteria for the purpose of authorizing such registrants to lawfully provide health care services to patients in Florida via telehealth without having to be licensed by Florida as a health care practitioner under the respective practice act.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19, of the Florida Constitution requires that a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, s. 19(d)(1), of the Florida Constitution defines "fee" to mean "any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service."

HB 7067 creates and imposes a new fee on out-of-state telehealth providers who register to provide health care services via telehealth to patients in Florida. As such, the Florida Constitution may require that such a provision must be approved in a stand-alone bill by two-thirds of the membership of each house of the Legislature.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals who meet the criteria to become registered as out-of-state telehealth providers and who seek such registration will incur a registration fee of $150. If such registrants seek renewal of their registrations, they will incur a biennial renewal fee of $150.

C. Government Sector Impact:

The fiscal impact on the Department of Health is positive but indeterminate and will depend on how many out-of-state health care practitioners seek registration and renewal of their registrations to provide health care services via telehealth to patients in Florida.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.47.[16]

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[16] Section 456.47, F.S., is created under HB 23, to which HB 7067 is linked.

A bill to be entitled

An act relating to registration fees; amending s. 456.47; requiring an out-of-state health care provider to pay an application fee and biennial renewal fee to be registered to provide telehealth services in this state; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (i) is added to subsection (4) of section 456.47, Florida Statutes, as created by HB 23, to read:

456.47 Use of telehealth to provide services.—

(4) REGISTRATION OF OUT-OF-STATE TELEHEALTH PROVIDERS.—

(i) An applicant for registration must pay an initial registration fee of $150. Each registrant must pay a biennial registration renewal fee of $150 with a completed application for renewal.

Section 2. This act shall take effect on the same date that HB 23 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

CODING: Words stricken are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/19
Meeting Date

HB 7067
Bill Number (if applicable)

Topic Registration Fees

Amendment Barcode (if applicable)

Name Alison Dudley

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Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against
(The Chair will read this information into the record.)

Representing Florida Radiological Society

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/23/19
Meeting Date

HB 7067
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Scott

Job Title _____

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Tallahassee FL 32308
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Phone 850 224-6496

Email jscott@flmedical.org

Speaking: ☐ For ☑ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	HB 7073
INTRODUCER:	Health Quality Subcommittee and Representatives Plakon and Leek
SUBJECT:	Permit and Inspection Fees
DATE:	April 21, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Phelps	RC	**Favorable**

I. Summary:

HB 7073, which is linked to HB 19, authorizes the Department of Health's (DOH) Board of Pharmacy and the Department of Business and Professional Regulation (DBPR) to charge fees relating to new permits created under HB 19.

HB 19 seeks to create an International Prescription Drug Importation Program, subject to the negotiation of a "federal arrangement or upon obtaining federal guidance," along with the following permits: an international export pharmacy permit under the Board of Pharmacy and an international prescription drug wholesale distributor permit under the DBPR.

The Florida Constitution requires that legislation that imposes or authorizes new state taxes or fees,[1] or that raises existing state taxes or fees,[2] must be approved by two-thirds of the membership of each house of the Legislature, and the tax or fee provisions must be passed in a separate bill that contains no other subject.[3] HB 7073 authorizes the imposition of fees for permits created under HB 19 or similar legislation. As such, the Florida Constitution may require that such a fee provision must be approved in a stand-alone bill by two-thirds of the membership of each house of the Legislature.

HB 7073 has an indeterminate positive fiscal impact on the DOH and the DBPR.

The bill will be effective on the same date that HB 19 or similar legislation takes effect.[4]

[1] FLA. CONST. art. VII, s. 19(a).
[2] FLA. CONST. art. VII, s. 19(b).
[3] FLA. CONST. art. VII, s. 19(e).
[4] As of this writing, HB 19 provides an effective date of July 1, 2019. *See:* http://www.flsenate.gov/Session/Bill/2019/00019 (last visited April 21, 2019)

II. Present Situation:

Permit Fees

Drugs, Devices, and Cosmetics

The DBPR's Division of Drugs, Devices, and Cosmetics protects public health, safety, and welfare from adulterated, contaminated, and misbranded drugs, drug ingredients, and cosmetics by enforcing part I of ch. 499, F.S., the Florida Drug and Cosmetic Act.[5] The Florida Drug and Cosmetic Act conforms to federal Food and Drug Administration drug laws and regulations and authorizes the DBPR to issue permits to Florida drug manufacturers and wholesale distributors and register drugs manufactured, packaged, repackaged, labeled, or relabeled in Florida.[6] Florida has 18 distinct permits based on the type of entity and intended activity and includes permits for entities within the state, out of state, or even outside of the United States.[7]

Section 499.041, F.S., provides a schedule of fees for the DBPR to follow and establishes ranges of fees for each permitting type and category. For prescription drug wholesale distributor permits, the DBPR must set the annual permit fee between $300 and $800 and must charge out-of-state prescription drug wholesale distributors an on-site inspection fee between $1,000 and $3,000. Section 499.012, F.S., also sets a $100 late renewal fee for prescription drug wholesale distributors.

Pharmacies

The Board of Pharmacy (Board) within the DOH regulates the practice of pharmacy, which includes licensing and monitoring pharmacists and pharmacies to ensure safe practice.[8] To operate a pharmacy, an entity must first obtain a pharmacy permit from the Board.[9] Under current law, the costs of regulation of health care professions must be borne by the licensees and licensure applicants.[10] As such, s. 465.022(14), F.S., requires the Board to set the following fees for pharmacy permits:

- Initial permit fee not to exceed $250.
- Biennial permit fee not to exceed $250.
- Delinquent fee not to exceed $100.
- Change of location fee not to exceed $100.

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[5] FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, *Division of Drugs, Devices, and Cosmetics*, http://www.myfloridalicense.com/DBPR/drugs-devices-and-cosmetics/ (last visited April 21, 2019).
[6] Section 499.01, F.S.
[7] A permit is required for a prescription drug manufacturer; a prescription drug repackager; a nonresident prescription drug manufacturer; a prescription drug wholesale distributor; an out-of-state prescription drug wholesale distributor; a retail pharmacy drug wholesale distributor; a restricted prescription drug distributor; a complimentary drug distributor; a freight forwarder; a veterinary prescription drug retail establishment; a veterinary prescription drug wholesale distributor; a limited prescription drug veterinary wholesale distributor; an over-the-counter drug manufacturer; a device manufacturer; a cosmetic manufacturer; a third party logistics provider; or a health care clinic establishment. *See* s. 499.01(1), F.S.
[8] Chapter 465, F.S.; FLORIDA BOARD OF PHARMACY, https://floridaspharmacy.gov/ (last visited April 21, 2019).
[9] Section 465.022, F.S
[10] Section 456.025(1), F.S.

International Prescription Drug Importation Program

HB 19 seeks to create the following two new permit categories for participation in an International Prescription Drug Importation Program that HB 19 also seeks to create:[11]

- An international prescription drug wholesale distributor permit under the DBPR; and
- An international export pharmacy permit under the Board.

Currently, the DBPR and the Board cover the cost of regulating wholesale distributors and pharmacies through permitting fees. Creating new permits would increase regulatory costs for DBPR and the Board. Without authorization to charge permitting fees, the DBPR and the Board would likely not have adequate resources to cover the costs associated with regulating these new entities under the provisions of HB 19.

III. Effect of Proposed Changes:

The bill, which is linked to HB 19, authorizes the DBPR and the Board to charge the following fees for new permits created by HB 19:

- The Board may charge international export pharmacies initial permit and renewal fees up to $250, delinquent fees up to $100, and change of location fees up to $100.
- The DBPR must charge international prescription drug wholesale distributors an annual permit fee between $300 and $800, an annual on-site inspection fee within a range between $1,000 and $3,000, and a late permit renewal fee of $100.

These are consistent with permit fees that the DBPR and the Board currently charge for similar entities. These fees would offset costs associated with regulating these new entities under the provisions of HB 19.

The bill becomes effective on the same date as HB 19 or similar legislation takes effect.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[11] HB 19 provides that, notwithstanding the federal Food, Drug, and Cosmetic Act, the DBPR, in collaboration with the DOH, must negotiate a "federal arrangement" to operate an International Prescription Drug Importation Program for importing prescription drugs into the state. Under HB 19, implementation of the program is contingent upon such "federal arrangement or upon obtaining federal guidance." It is unclear what sort of federal arrangement or federal guidance might authorize the program because such a program appears to be currently illegal under federal law, and there appears to be no authority for any executive branch agency to waive the provisions of federal law that make such a program illegal.

D. State Tax or Fee Increases:

Article VII, s. 19, of the Florida Constitution requires that a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, s. 19(d)(1), of the Florida Constitution defines "fee" to mean "any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service."

HB 7073 authorizes the imposition of fees for permits created under HB 19 or similar legislation. As such, the Florida Constitution may require that such a fee provision must be approved in a stand-alone bill by two-thirds of the membership of each house of the Legislature.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If an International Prescription Drug Importation Program is ever implemented under HB 19, entities seeking the permits created under HB 19 would incur the fees authorized under HB 7073. Applicants for an international export pharmacy would have to pay initial and biennial renewal permit fees of up to $250 to the Board. Additionally, applicants for an international prescription drug wholesale distributor would have to pay an annual permit fee between $300 and $800 and an annual onsite inspection fee between $1,000 and $3,000 to the DBPR.

C. Government Sector Impact:

If an International Prescription Drug Importation Program is ever implemented under HB 19, HB 7073 would generate additional revenues for the Board and the DBPR. The additional revenue the Board or DBPR would receive is indeterminate because the number of entities that may choose to apply for such permits is not known.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 465.0157, 499.012, and 499.041.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

A bill to be entitled

An act relating to permit and inspection fees; amending s. 465.0157, F.S.; requiring initial and renewal fees for international export pharmacy permits; amending s. 499.012, F.S.; requiring late renewal fees for international prescription drug wholesale distributors; amending s. 499.041, F.S.; requiring annual permit and inspection fees for international prescription drug wholesale distributors; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 465.0157, Florida Statutes, as created by HB 19, is renumbered as subsection (5), and a new subsection (4) is added to that section to read:

465.0157 International export pharmacy permit.—

(4) The fee for an initial permit and biennial renewal of the permit shall be set by the board pursuant to s. 465.022(14).

Section 2. Paragraph (d) of subsection (5) of section 499.012, Florida Statutes, is amended to read:

499.012 Permit application requirements.—

(5)

(d) A permit issued under this part may be renewed by making application for renewal on forms furnished by the

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FLORIDA HOUSE OF REPRESENTATIVES

HB 7073 2019

department and paying the appropriate fees.

1. If a prescription drug wholesale distributor, ~~or~~ an out-of-state prescription drug wholesale distributor, or an international prescription drug wholesale distributor renewal application and fee are submitted and postmarked later than 45 days before the expiration date of the permit, the permit may be renewed only upon payment of a late renewal fee of $100, plus the required renewal fee.

2. If any other renewal application and fee are submitted and postmarked after the expiration date of the permit, the permit may be renewed only upon payment of a late renewal delinquent fee of $100, plus the required renewal fee, not later than 60 days after the expiration date.

3. A permittee who submits a renewal application in accordance with this paragraph may continue to operate under its permit, unless the permit is suspended or revoked, until final disposition of the renewal application.

4. Failure to renew a permit in accordance with this section precludes any future renewal of that permit. If a permit issued pursuant to this part has expired and cannot be renewed, before an establishment may engage in activities that require a permit under this part, the establishment must submit an application for a new permit, pay the applicable application fee, the initial permit fee, and all applicable penalties, and be issued a new permit by the department.

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hb7073-00

Section 3. Paragraph (i) is added to subsection (2) of section 499.041, Florida Statutes, and subsection (8) of that section is amended, to read:

499.041 Schedule of fees for drug, device, and cosmetic applications and permits, product registrations, and free-sale certificates.—

(2) The department shall assess an applicant that is required to have a wholesaling permit an annual fee within the ranges established in this section for the specific type of wholesaling.

(i) The fee for an international prescription drug wholesale distributor permit may not be less than $300 or more than $800 annually.

(8) The department shall assess an out-of-state prescription drug wholesale distributor applicant or permittee or an international prescription drug wholesale distributor applicant or permittee an onsite inspection fee of not less than $1,000 or more than $3,000 annually, to be based on the actual cost of the inspection if an onsite inspection is performed by agents of the department.

Section 4. This act shall take effect on the same date that HB 19 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

CourtSmart Tag Report

Room: EL 110 **Case No.:** **Type:**
Caption: Senate Rules Committee **Judge:**

Started: 4/23/2019 1:59:00 PM
Ends: 4/23/2019 6:00:01 PM Length: 04:01:02

1:59:04 PM Meeting called to order by Chair Benacquisto
2:00:04 PM Roll call
2:00:12 PM Quorum present
2:01:16 PM Senator Torres recognized to introduce CS/SM 804
2:02:27 PM Questions?
2:02:33 PM Senator Torres waives his close
2:02:41 PM Roll call
2:02:45 PM CS/SM 804 reported favorably
2:03:19 PM Senator Wright recognized to introduce SB 746
2:04:13 PM Questions?
2:04:16 PM Public testimony
2:04:21 PM Alison Dudley waives in support
2:04:29 PM Roll call
2:04:37 PM SB 746 reported favorably
2:04:59 PM Senator Stewart recognized to introduce SB 116
2:05:27 PM Questions?
2:05:36 PM Senator Stewart recognized to introduce delete all amendment 189694
2:06:21 PM Questions?
2:06:23 PM Public testimony
2:06:24 PM Michael Crabb speaks on amendment 189694
2:06:50 PM Senator Brandes in debate
2:06:56 PM Amendment 189694 adopted
2:07:05 PM Back on the bill as amended
2:07:09 PM Public testimony
2:07:11 PM Gary Hester waives in support
2:07:15 PM Michael Crabb waives in support
2:07:20 PM Debate?
2:07:27 PM Senator Thurston in debate
2:07:44 PM Senator Stewart waives her close
2:07:54 PM Roll call
2:08:02 PM CS/SB 116 reported favorably
2:09:04 PM Senator Baxley recognized to introduce CS/SB 1432
2:09:36 PM Senator Baxley recognized to introduce amendment 315452
2:09:52 PM Amendment 315452 adopted
2:09:57 PM Back on the bill as amended
2:10:02 PM Senator Baxley waives his close
2:10:14 PM Roll call
2:10:19 PM CS/CS/SB 1432 reported favorably
2:10:52 PM Senator Baxley recognized to introduce SB 1616
2:11:33 PM Questions?
2:11:36 PM Public testimony
2:11:39 PM Demetrius Minor waives in support
2:11:46 PM Senator Baxley waives his close
2:11:53 PM Roll call
2:11:56 PM SB 1616 reported favorably
2:12:36 PM Senator Broxson recognized to introduce CS/SB 620
2:14:24 PM Senator Broxson recognized to introduce amendment 824062
2:15:08 PM Amendment 824062 withdrawn
2:15:23 PM Senator Broxson recognized to introduce amendment 252012
2:16:26 PM Debate?
2:16:29 PM Senator Brandes in debate
2:16:57 PM Amendment 252012 adopted

2:17:01 PM Back on the bill as amended
2:17:12 PM Debate?
2:17:14 PM Senator Brandes in debate
2:18:16 PM Senator Lee in debate
2:18:21 PM Senator Gibson in debate
2:18:29 PM Senator Broxson waives his close
2:18:33 PM Roll call
2:18:35 PM CS/CS/SB 620 reported favorably
2:18:58 PM Senator Broxson recognized to introduce CS/SB 1690
2:19:20 PM Questions?
2:19:24 PM Pubic Testimony
2:19:31 PM David Roberts waives in support
2:19:38 PM Tim Meenan waives in support
2:19:39 PM Senator Broxson waives his close
2:19:48 PM Roll call
2:19:50 PM CS/SB 1690 reported favorably
2:20:45 PM Senator Harrell recognized to introduce CS/SB 1124
2:21:29 PM Senator Harrell waives her close
2:21:43 PM Roll call
2:21:46 PM CS/SB 1124 reported favorably
2:22:17 PM Senator Powell recognized to introduce CS/SB 838
2:22:57 PM Questions?
2:23:03 PM Senator Powell recognized to introduce amendment 475810
2:23:26 PM Amendment 475810 adopted
2:23:32 PM Back on the bill as amended
2:23:36 PM Public testimony
2:23:42 PM Dr. Nancy Lawther waives in support
2:23:45 PM Alisa LaPolt waives in support
2:23:48 PM Shane Messer waives in support
2:23:53 PM Senator Powell waives his close
2:23:59 PM Roll call
2:24:00 PM CS/CS/SB 838 reported favorably
2:24:49 PM Senator Hooper recognized to introduce CS/SB 722
2:25:26 PM Senator Hooper recognized to introduce amendment 696908
2:26:01 PM Public testimony
2:26:09 PM Jim Tolley waives in support
2:26:15 PM Amendment 696908 adopted
2:26:20 PM Back on the bill as amended
2:26:27 PM Public testimony
2:26:31 PM Gary Hester waives in support
2:26:41 PM Steve Greenlaw waives in support
2:26:44 PM Greg Lees waives in support
2:26:49 PM Jim Millican waives in support
2:26:56 PM Jim Tolley waives in support
2:26:58 PM Stephen Winn waives in support
2:27:00 PM Debate?
2:27:01 PM Senator Book in debate
2:27:43 PM Senator Hooper waives his close
2:27:50 PM Roll call
2:27:52 PM CS/CS/SB 722 reported favorably
2:28:13 PM Senator Hooper recognized to introduce SB 7074
2:28:36 PM Senator Montford recognized to introduce amendment 145574
2:29:57 PM Amendment 145574 adopted
2:30:05 PM Back on the bill as amended
2:30:11 PM Debate?
2:30:14 PM Senator Hooper waives his close
2:30:19 PM Roll call
2:30:21 PM CS/SB 7074 reported favorably
2:30:53 PM Senator Hooper recognized to introduce CS/CS/SB 908
2:31:32 PM Senator Hooper recognized to introduce delete all amendment 427046
2:31:57 PM Senator Hooper recognized to introduce amendment to amendment 515784
2:32:10 PM Amendment to the amendment 515784 adopted

2:32:38 PM Back on the delete all as amended
2:32:43 PM Public testimony
2:32:53 PM Ellyn Bogdanoff speaks on amendment 427046
2:33:58 PM Senator Brandes asks a question
2:34:08 PM Ellyn Bogdanoff in response
2:34:35 PM Senator Book asks a question
2:34:50 PM Senator Hooper to close on delete all 427046
2:37:08 PM Delete all adopted
2:37:15 PM Back on the bill as amended
2:37:21 PM Public testimony
2:37:41 PM Jim Tolley waives in support
2:37:45 PM Jim Millican waives in support
2:37:51 PM Jorge Chamizo waives in support
2:37:56 PM Tim Meenan waives in support
2:38:04 PM Ellyn Bogdanoff waives in support
2:38:06 PM Debate?
2:38:12 PM Senator Brandes in debate
2:38:18 PM Senator Hooper waives his close
2:38:27 PM Roll call
2:38:29 PM CS/CS/CS/SB 908 reported favorably
2:39:14 PM Senator Gruters recognized to introduce CS/SB 1024
2:40:07 PM Senator Gruters recognized to introduce amendment 343332
2:40:28 PM Public testimony
2:40:31 PM Justin Thames waives in support
2:40:38 PM Amendment 343332 adopted
2:40:54 PM Back on the bill as amended
2:41:10 PM Public testimony
2:41:20 PM Meredith Stanfield waives in support
2:41:33 PM Roll call
2:41:36 PM CS/CS/SB 1024 reported favorably
2:42:10 PM Justin Thames waives in support
2:42:21 PM Senator Gruters recognized to introduce CS/SB 1252
2:42:37 PM Senator Gruters waives his close
2:42:45 PM Roll call
2:42:46 PM CS/SB 1252 reported favorably
2:42:59 PM Senator Gruters recognized to introduce SB 1422
2:43:40 PM Senator Rodriguez asks a question
2:44:22 PM Senator Gruters in response
2:45:01 PM Senator Thurston asks a question
2:45:08 PM Senator Gruters in response
2:46:08 PM Senator Thurston asks a question
2:46:15 PM Senator Gruters in response
2:46:25 PM Senator Rodriguez recognized to introduce amendment 646986
2:47:39 PM Senator Gruters recognized in debate on amendment
2:48:39 PM Senator Rodriguez waives close on amendment 646986
2:48:55 PM Amendment 646986 not adopted
2:49:02 PM Back on the bill
2:49:12 PM Debate?
2:49:14 PM Senator Rodriguez in debate
2:50:09 PM Senator Gruters recognized to close on SB 1422
2:50:34 PM SB 1422 reported favorably
2:51:19 PM Senator Perry recognized to introduce CS/CS/SB 616
2:51:40 PM Public testimony
2:52:08 PM Allen Douglas waives in support
2:52:18 PM Senator Perry recognized to introduce amendment 495484
2:52:42 PM Amendment 495484 adopted
2:52:47 PM Back on the bill as amended
2:53:08 PM Roll call
2:53:32 PM CS/CS/CS/SB 616 reported favorably
2:53:36 PM Senator Perry recognized to introduce SB 1494
2:54:01 PM Public testimony
2:54:06 PM Dan Peterson waives in support

2:54:09 PM Senator Perry waives his close
2:54:14 PM Roll call
2:54:17 PM SB 1494 reported favorably
2:54:36 PM Senator Perry recognized to introduce SB 7044
2:55:00 PM Senator Perry waives his close
2:55:05 PM Roll call
2:55:23 PM SB 7044 reported favorably
2:55:49 PM Senator Pizzo recognized to introduce SB 604
2:56:30 PM Senator Pizzo waives his close
2:56:34 PM Roll call
2:56:37 PM SB 604 reported favorably
2:57:24 PM Senator Mayfield recognized to introduce CS/CS/SB 1180
2:58:11 PM Senator Mayfield recognized to introduce amendment 635224
2:58:48 PM Senator Montford asks a question
2:59:20 PM Senator Mayfield in response
2:59:43 PM Senator Montford asks a question
2:59:52 PM Senator Mayfield in response
3:00:00 PM Senator Mayfield recognized to introduce amendment to the amendment 385302
3:01:52 PM Amendment to the amendment 385302 adopted
3:01:59 PM Back on the delete all as amended
3:03:14 PM Senator Thurston asks a question
3:03:29 PM Senator Mayfield in response
3:04:46 PM Senator Montford asks a question
3:05:34 PM Senator Mayfield in response
3:05:48 PM Public testimony
3:05:52 PM Brewster Bevis waives in support
3:06:00 PM Joy Ryan waives in support
3:06:02 PM Dr. Robert Levin speaks on amendment 635224
3:09:24 PM Debate?
3:09:39 PM Senator Gibson in debate
3:10:29 PM Amendment 635224 adopted
3:10:34 PM Back on the bill as amended
3:10:38 PM Public testimony
3:10:42 PM Brewster Bevis waives in support
3:10:48 PM Jarrod Fowler waives in support
3:10:50 PM Scott Woods speaks on CS/CS/CS/SB 1180
3:12:32 PM Senator Mayfield recognized to close on CS/CS/CS/SB 1180
3:13:26 PM Roll call
3:13:31 PM CS/CS/CS/SB 1180 reported favorably
3:14:31 PM Senator Montford recognized to introduce CS/SB 1622
3:15:01 PM Public testimony
3:15:10 PM Celiena Hart waives in opposition
3:15:17 PM Lindsey Zander waives in support
3:15:19 PM Victoria Zepp waives in support
3:15:35 PM Senator Montford waives his close
3:15:37 PM Roll call
3:15:42 PM CS/SB 1622 reported favorably
3:16:09 PM Senator Stargel recognized to introduce CS/CS/SB 772
3:16:40 PM Public testimony
3:16:45 PM Sandra Mortham waives in support
3:16:49 PM Brewster Bevis waives in support
3:16:51 PM Carolyn Johnson waives in support
3:16:54 PM Paul Sanford waives in support
3:17:05 PM Senator Stargel waives her close
3:17:12 PM Roll call
3:18:06 PM CS/CS/SB 772 reported favorably
3:18:13 PM Senator Flores recognized to introduce CS/SB 1476
3:18:36 PM Public testimony
3:19:11 PM Steve Russ speaks on CS/SB 1476
3:20:19 PM Debate?
3:20:22 PM Senator Brandes in debate
3:21:08 PM Senator Flores recognized to close on CS/SB 1476

3:22:36 PM Roll call
3:22:40 PM CS/SB 1476 reported favorably
3:23:18 PM Senator Simpson recognized to introduce SB 7100
3:23:32 PM Public testimony
3:23:41 PM Jake Felder waives in support
3:23:43 PM Senator Simpson waives his close
3:23:48 PM Roll call
3:23:50 PM SB 7100 reported favorably
3:24:30 PM Senator Book recognized to introduce CS/SB 236
3:26:22 PM Senator Book waives her close
3:26:25 PM Roll call
3:26:36 PM CS/SB 236 reported favorably
3:27:05 PM Senator Book recognized to introduce SB 1210
3:27:46 PM Public testimony
3:27:51 PM Jim Tolley waives in support
3:27:53 PM Meredith Stanfield waives in support
3:27:59 PM Debate?
3:28:19 PM Roll call
3:28:25 PM SB 1210 reported favorably
3:29:10 PM Senator Lee recognized to introduce CS/SB 1656
3:29:25 PM Senator Brandes in debate
3:29:34 PM Senator Lee recognized to close on CS/SB 1656
3:29:51 PM Roll call
3:29:55 PM CS/SB 1656 reported favorably
3:30:33 PM Senator Lee recognized to introduce CS/SB 728
3:30:59 PM Senator Lee recognized to introduce amendment 455636
3:32:10 PM Amendment 455636 withdrawn
3:32:19 PM Back on the bill
3:32:26 PM Public testimony
3:32:30 PM Cheryl Stuart waives in support
3:32:35 PM Senator Lee waives his close
3:32:41 PM Roll call
3:32:43 PM CS/SB 728 reported favorably
3:33:12 PM Senator Lee recognized to introduce CS/SB 1638
3:33:54 PM Senator Lee recognized to introduce amendment 614976
3:35:34 PM Senator Flores asks a question
3:36:00 PM Senator Lee in response
3:37:33 PM Senator Flores asks a question
3:38:00 PM Senator Lee in response
3:39:10 PM Senator Gibson asks a question
3:41:04 PM Senator Lee in response
3:41:16 PM Senator Gibson asks a questions
3:41:36 PM Senator Lee in response
3:42:56 PM Senator Gibson asks a question
3:43:37 PM Senator Lee in response
3:44:06 PM Senator Gibson asks a question
3:44:14 PM Senator Lee in response
3:44:30 PM Senator Farmer asks a question
3:45:12 PM Senator Lee in response
3:45:46 PM Debate?
3:46:46 PM Senator Bradley in debate
3:47:05 PM Senator Lee to close on amendment 614976
3:47:29 PM Amendment 614976 not adopted
3:47:47 PM Senator Lee recognized to introduce amendment 828292
3:49:07 PM Senator Bradley asks a question
3:49:17 PM Senator Lee in response
3:49:33 PM Amendment 828292 adopted
3:49:48 PM Back on the bill as amended
3:49:54 PM Senator Lee waives his close
3:50:00 PM Roll call
3:50:17 PM CS/CS/SB 1638 reported favorably
3:51:00 PM Senator Baxley recognized to introduce SB 7066

3:51:30 PM Senator Baxley recognized to introduce delete all amendment 834194
3:53:14 PM Senator Brandes asks a question
3:53:44 PM Senator Flores asks a question
3:54:34 PM Senator Baxley in response
3:55:25 PM Senator Flores with a follow up
3:55:38 PM Senator Baxley in response
3:56:28 PM Senator Gibson asks a question
3:56:45 PM Senator Baxley in response
3:57:17 PM Senator Gibson with a follow up
3:57:31 PM Senator Baxley in response
3:57:53 PM Senator Gibson with a follow up
3:58:16 PM Senator Baxley in response
3:59:16 PM Amendment to amendment 139958 withdrawn
3:59:26 PM Senator Rodriguez recognized to introduce amendment to the amendment 640434
4:00:18 PM Public testimony
4:00:22 PM Paul Lux waives in opposition
4:00:50 PM Amendment to the amendment 640434 not adopted
4:01:46 PM Amendment 834194 adopted
4:02:16 PM Back on the bill as amended
4:02:34 PM Public testimony
4:02:40 PM LaShawn Floyd waives in opposition
4:02:42 PM Dawn Douglas waives in opposition
4:02:46 PM Roll call
4:02:49 PM CS/SB 7066 reported favorably
4:03:20 PM Senator Bradley recognized to introduce CS/HB 629
4:03:49 PM Senator Hutson recognized to introduce amendment 834516
4:04:35 PM Senator Gibson asks a question on the amendment
4:05:15 PM Senator Hutson in response
4:05:27 PM Senator Gibson with a follow up
4:06:59 PM Senator Montford asks a question
4:07:24 PM Senator Hutson in response
4:07:32 PM Senator Farmer asks a question
4:08:02 PM Senator Hutson in response
4:08:08 PM Senator Farmer with a follow up
4:08:16 PM Amendment 834516 adopted
4:08:51 PM Back on the bill as amended
4:08:56 PM Senator Thurston asks a question
4:09:17 PM Senator Bradley in response
4:10:31 PM Senator Thurston with a follow up
4:10:52 PM Senator Bradley in response
4:11:05 PM Senator Gibson asks a question
4:11:32 PM Senator Bradley in response
4:11:49 PM Senator Gibson with a follow up
4:11:57 PM Senator Bradley in response
4:13:24 PM Senator Gibson asks a question
4:14:07 PM Senator Bradley in response
4:14:49 PM Senator Montford asks a question
4:15:11 PM Senator Bradley in response
4:16:12 PM Public testimony
4:16:22 PM Jim Poppell speaks on CS/HB 629
4:20:45 PM Senator Thurston asks a question
4:21:24 PM Jim Poppell in response
4:21:45 PM Senator Bradley to close on CS/HB 629
4:23:04 PM Roll call
4:23:08 PM CS/HB 629 reported favorably
4:24:22 PM Senator Bradley recognized to introduce HB 7067
4:25:16 PM Public testimony
4:25:20 PM Alison Dudley waives in opposition
4:25:25 PM Jeff Scott speaks on HB 7067
4:26:30 PM Senator Brandes in debate
4:27:10 PM Senator Bradley recognized to close on HB 7067
4:28:15 PM Roll call

4:28:24 PM HB 7067 reported favorably
4:28:48 PM Senator Bradley recognized to introduce HB 7073
4:29:16 PM Senator Bradley waives his close
4:29:22 PM Roll call
4:29:25 PM HB 7073 reported favorably
4:30:04 PM Senator Bean recognized to introduce CS/HB 879
4:30:52 PM Senator Thurston asks a question
4:31:02 PM Senator Bean in response
4:31:23 PM Senator Thurston with a follow up
4:31:36 PM Senator Bean in response
4:32:05 PM Senator Thurston with a follow up
4:32:15 PM Senator Bean in response
4:32:33 PM Public testimony
4:32:37 PM Meredith Stanfield waives in support
4:32:49 PM Tom Joos waives in support
4:32:53 PM Tim Meenan waives in support
4:33:03 PM Paul Sanford speaks on CS/HB 879
4:34:32 PM Senator Brandes in debate
4:34:41 PM Senator Farmer in debate
4:35:02 PM Senator Lee in debate
4:36:04 PM Senator Bean recognized to close on CS/HB 879
4:36:42 PM Roll call
4:36:44 PM CS/HB 879 reported favorably
4:37:32 PM Senator Thurston recognized to introduce CS/SB 38
4:38:31 PM Senator Thurston waives his close
4:38:36 PM Roll call
4:38:46 PM CS/SB 38 reported favorably
4:39:29 PM Senator Brandes recognized to introduce CS/SB 302
4:39:51 PM Senator Brandes recognized to introduce delete all amendment 163830
4:39:58 PM Senator Brandes recognized to introduce amendment to amendment 590480
4:40:14 PM Amendment to the amendment 590480 adopted
4:40:17 PM Back on the amendment as amended
4:40:20 PM Amendment 163830 adopted
4:40:30 PM Public testimony
4:40:33 PM Cesar Fernandez waives in support
4:40:53 PM Back on the bill as amended
4:40:59 PM Public testimony
4:41:07 PM Jim Millican waives in support
4:41:12 PM Jorge Chamizo waives in support
4:41:13 PM Christian Camara waives in support
4:41:13 PM Matt Jordan waives in support
4:41:19 PM Senator Brandes waives his close
4:41:26 PM Roll call
4:41:31 PM CS/CS/SB 302 reported favorably
4:41:50 PM Senator Rodriguez recognized to introduce SB 1338
4:42:13 PM Public testimony
4:42:17 PM Brittany Finkbeiner waives in support
4:42:22 PM Senator Rodriguez waives his close
4:42:29 PM Roll call
4:42:37 PM SB 1338 reported favorably
4:43:06 PM Senator Albritton recognized to introduce CS/CS/SB 1400
4:43:25 PM Senator Albritton recognized to introduce amendment 279584
4:44:20 PM Amendment 279584 withdrawn
4:44:40 PM Back on the bill
4:44:43 PM Public testimony
4:44:48 PM Dan Peterson waives in support
4:44:53 PM Senator Albritton waives his close
4:44:59 PM Roll call
4:45:08 PM CS/CS/SB 1400 reported favorably
4:45:30 PM Senator Brandes recognized to introduce CS/SB 7086
4:46:11 PM Senator Brandes recognized to introduce delete all amendment 116400
4:47:10 PM Senator Lee asks a question

4:47:48 PM Senator Brandes in response
4:48:35 PM Senator Rodriguez recognized to introduce the amendment to the amendment 786538
4:49:50 PM Public testimony
4:49:59 PM Mark Schlakman speaks on amendment 786538
4:51:30 PM Senator Brandes in response
4:51:39 PM Amendment to the amendment 786538 not adopted
4:52:06 PM Senator Rodriguez recognized to introduce the amendment to the amendment 620860
4:52:36 PM Mark Schlakman speaks on amendment 620860
4:53:28 PM Senator Brandes in response
4:53:52 PM Senator Rodriguez to close on amendment 620860
4:54:23 PM Amendment to the amendment 620860 not adopted
4:55:00 PM Senator Rodriguez recognized to introduce the amendment to the amendment 136384
4:55:48 PM Senator Rodriguez recognized to introduce the amendment to the amendment 275642
4:56:13 PM Senator Rodriguez recognized to introduce the amendment to the amendment 477272
4:56:29 PM Amendments to the amendment 136384, 275642, 477272 withdrawn
4:57:02 PM Back on the delete all
4:57:23 PM Public testimony
4:57:25 PM Neil Volz speaks on delete all amendment 116400
4:58:16 PM Mark Schlakman speaks on delete all amendment 116400
5:00:09 PM Cecile Scoon speaks on delete all amendment 116400
5:03:03 PM Amendment 116400 adopted
5:03:41 PM Back on the bill as amended
5:03:54 PM Public testimony
5:03:58 PM Michael Anderson waives in opposition
5:04:28 PM Bob Rackleff waives in opposition
5:04:34 PM Barbara DeVane waives in opposition
5:04:38 PM Pamela Burch Fort waives in opposition
5:04:41 PM Michael Dobson waives in opposition
5:04:46 PM Wilene Dennis Dozier waives in opposition
5:04:50 PM Venice McNair waives in opposition
5:04:56 PM David Cullen waives in opposition
5:04:59 PM Kara Gross waives in opposition
5:05:05 PM Debate?
5:05:06 PM Senator Thurston in debate
5:05:17 PM Senator Braynon in debate
5:06:28 PM Senator Book in debate
5:06:56 PM Senator Simmons in debate
5:10:40 PM Senator Rodriguez in debate
5:11:23 PM Senator Brandes recognized to close on CS/CS/SB 7086
5:12:22 PM Roll call
5:12:28 PM CS/CS/SB 7086 reported favorably
5:13:38 PM Senator Hutson recognized to introduce CS/CS/SB 1140
5:14:17 PM Senator Hutson recognized to introduce amendment 124644
5:14:29 PM Senator Hutson recognized to introduce amendment to the amendment 344278
5:14:47 PM Amendment to amendment 344278 adopted
5:14:54 PM Back on amendment 124644 as amended
5:15:47 PM Public testimony
5:15:52 PM Rebecca O'Hara waives in support
5:15:55 PM Laura Youmans waives in support
5:16:02 PM Amendment 344278 adopted
5:16:27 PM Senator Hutson recognized to introduce amendment 552588
5:16:41 PM Public testimony
5:16:47 PM Rebecca O'Hara waives in support
5:16:50 PM Laura Youmans waives in support
5:16:57 PM Amendment 552588 adopted
5:17:17 PM Back on the bill as amended
5:17:22 PM Public testimony
5:17:29 PM Christopher Emmanuel waives in support
5:17:34 PM Brewster Bevis waives in support
5:17:41 PM Rebecca O'Hara speaks on CS/CS/CS/SB 1140
5:19:27 PM Senator Gibson asks a question
5:19:55 PM Rebecca O'Hara in response

5:20:32 PM Senator Gibson asks a question
5:21:26 PM Jake Farmer waives in support
5:21:28 PM Samantha Padgett waives in support
5:21:34 PM Laura Youmans speaks on CS/CS/CS/SB 1140
5:22:31 PM Carolyn Underwood waives in opposition
5:22:44 PM Megan Girard waives in opposition
5:23:26 PM Dawn Douglas waives in opposition
5:23:33 PM LaShawn Floyd waives in opposition
5:23:37 PM Iran Alicea waives in opposition
5:23:43 PM Brendan Sullivan waives in opposition
5:23:50 PM Jackie McColister waives in opposition
5:23:53 PM Sherene Tolbat waives in opposition
5:23:55 PM Reginald Maddox waives in opposition
5:24:00 PM Wednesday Godley waives in opposition
5:24:07 PM Rich Templin waives in opposition
5:24:09 PM Debate?
5:24:32 PM Senator Farmer in debate
5:25:42 PM Senator Gibson in debate
5:25:50 PM Senator Hutson recognized to close on CS/CS/CS/SB 1140
5:26:51 PM Roll call
5:26:56 PM CS/CS/CS/SB 1140 reported favorably
5:27:57 PM Senator Simmons recognized to introduce CS/SB 1618
5:29:12 PM Amendment 923616 withdrawn
5:30:07 PM Public testimony
5:30:14 PM Dr. Nancy Lawther waives in support
5:30:32 PM Rivers Buford speaks on CS/SB 1618
5:31:12 PM Ashley Lyerly waives in opposition
5:31:18 PM Jennifer Cunningham waives in support
5:31:25 PM Melissa Villor speaks on CS/SB 1618
5:32:55 PM Matt Jordan here for information
5:33:08 PM Back on the bill
5:33:18 PM Senator Simmons waives his close
5:33:24 PM Roll call
5:33:28 PM CS/SB 1618 reported favorably
5:34:03 PM Senator Lee recognized to introduce CS/CS/SB 1730
5:36:08 PM Amendment 944856 withdrawn
5:36:39 PM Amendment 356486 withdrawn
5:37:07 PM Senator Simpson recognized to introduce amendment to the amendment 877766
5:38:22 PM Public testimony
5:38:31 PM Jeff Branch waives in opposition
5:38:36 PM David Cullen waives in opposition
5:38:42 PM Laura Youmans waives in opposition
5:39:02 PM Amendment to the amendment 877766 adopted
5:40:03 PM Back on the amendment as amended
5:40:09 PM Senator Lee recognized to close on amendment 817794
5:40:18 PM Amendment 817794 adopted
5:40:31 PM Public testimony
5:41:26 PM Christopher Emmanuel waives in support
5:41:31 PM Brewster Bevis waives in support
5:41:36 PM Gary Hunter waives in support
5:41:41 PM Bernie Navarro waives in support
5:41:57 PM Ernie Portuondo waives in support
5:42:07 PM Alayah Glenn speaks on CS/CS/CS/SB 1730
5:42:48 PM Claudia Navarro waives in opposition
5:42:56 PM Trenise Bryant speaks on CS/CS/CS/SB 1730
5:43:22 PM Alana Greer speaks on CS/CS/CS/SB 1730
5:44:36 PM Adrian Madriz speaks on CS/CS/CS/SB 1730
5:45:43 PM Monica Mahecha waives in opposition
5:45:55 PM Devetria Stratford waives in opposition
5:46:07 PM Valerie Saunders speaks on CS/CS/CS/SB 1730
5:46:57 PM David Cullen speaks on CS/CS/CS/SB 1730
5:47:24 PM Debate?

5:47:26 PM Senator Rodriguez in debate
5:47:59 PM Senator Braynon in debate
5:48:21 PM Senator Lee recognized to close on CS/CS/CS/SB 1730
5:49:18 PM Roll call
5:49:21 PM CS/CS/CS/SB 1730 reported favorably
5:50:16 PM Senator Rouson recognized to introduce CS/CS/SB 874
5:50:55 PM Public testimony
5:51:00 PM Dorene Barker waives in opposition
5:51:05 PM Alice Vickers speaks on CS/CS/SB 874
5:52:29 PM Pamela Burch Fort waives in opposition
5:52:38 PM Ezra Garrett speaks on CS/CS/SB 874
5:53:29 PM Ingrid Delgado waives in opposition
5:53:42 PM Oscar Gonzales waives in support
5:53:52 PM Debate?
5:53:55 PM Senator Thurston in debate
5:54:17 PM Senator Rouson recognized to close on CS/CS/SB 874
5:54:47 PM Roll call
5:54:55 PM CS/CS/SB 874 reported favorably
5:55:49 PM Senator Simmons recognized to introduce SB 7106
5:57:04 PM SB 7106 TP
5:57:56 PM Motions?
5:59:20 PM Chair Benacquisto motions affirmative after the vote on 7086 and 1618
5:59:22 PM Senator Braynon motions affirmative after the vote on 616, 1494, 7044, 620 and 1690
5:59:34 PM Senator Book motions affirmative after the vote on 746, 804, 1618 and negative on 629
5:59:37 PM Senator Simmons motions affirmative after the vote on 1690 and 1638
5:59:39 PM Senator Simpson motions affirmative after the vote on 620, 1690, 236, 1210 and 1656
5:59:44 PM Senator Stargel motions affirmative after the vote on 746 and 804
5:59:45 PM Senator Flores motions affirmative after the vote on 746 and 804
5:59:46 PM Senator Bradley motions affirmative after the vote on 620, 746, 804, 1690, 1124, 1180, 236, 772, 1476, 7100 and 1400
5:59:47 PM Without objection, show these motions adopted
5:59:48 PM Meeting adjourned